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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–FV–13–0009; FV13–905–2 IR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxing Size and Grade Requirements on Valencia and Other Late Type Oranges

Correction

■ In rule document 2013–11389 beginning on page 28115 in the issue of Tuesday, May 14, 2013, make the following correction:

§ 905.306 [Corrected]

On page 28117, the table should read:

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* *	* *	* *	*
Valencia and other late type	08/01/2012–05/14/2013	U.S. No. 1	2 8/16
	05/15/2013–06/14/2013	U.S. No. 1 Golden	2 4/16
	06/15/2013–08/31/2013	U.S. No. 2, External; U.S. No. 1, Internal	2 4/16
	On or after 09/01/13		
	September 1–May 14	U.S. No. 1	2 8/16
	May 15–June 14	U.S. No. 1	2 4/16
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[FR Doc. C1–2013–11389 Filed 4–8–14; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1463

RIN 0560–AH30

Tobacco Transition Program Assessments; Final Appeals and Revisions Procedures

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule, technical amendment.

SUMMARY: The Commodity Credit Corporation (CCC) is amending the regulations for the Tobacco Transition Program (TTP) to clarify the final administrative actions required for the orderly close-out of the program. Through the Tobacco Transition Payment Program (TTPP), which is part of the TTP, eligible former tobacco quota holders and producers of quota tobacco receive payments from funds that CCC collects through quarterly assessments on domestic manufacturers and importers of tobacco products as required by the Fair and Equitable Tobacco Reform Act of 2004 (FETRA). This rule clarifies final dates and deadlines for the assessments and related program actions, including when CCC will make any final revisions to the quarterly assessments, when documentation is required for administrative appeals filed after FY 2014, when final appeals may be filed, and when CCC decisions on final appeals will take place.

DATES: *Effective date:* April 9, 2014.

FOR FURTHER INFORMATION CONTACT: Darlene Soto; telephone: (202) 720–0542. Persons with disabilities who require alternative means for communications (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

The TTP regulations are specified in 7 CFR part 1463. TTP was authorized by Title VI of the American Jobs Creation Act of 2004 (Pub. L. 108–357). Title VI is also known as FETRA (7 U.S.C. 518–519a). FETRA repeals the tobacco marketing quota and related price support programs authorized by Title III of the Agricultural Adjustment Act of 1938 and by the Agricultural Act of 1949, and provides for payments to persons who were owners of farms with tobacco quotas (referred to as tobacco quota holders), or who were producers of quota tobacco. The payments end in calendar year 2014. As specified in FETRA, TTPP uses funds from assessments collected quarterly on domestic tobacco manufacturers and importers (also referred to here as ''entities'') to make the payments referred to above.

Administrative support for the assessment portion of TTP will end in March 2016. Therefore, CCC needs to clarify a few final procedures and dates for the orderly close-out of the program. This rule clarifies administrative issues about how assessments and appeals will be handled after FY 2014. Specifically:

- Procedures and dates for issuance of final revised, or ''trued,'' quarterly assessment revisions;
- When supporting documents are required for administrative appeals filed after FY 2014;
- Final dates for filing appeals; and
- When final CCC decisions on appeals will take place.

All the changes in this rule are administrative in nature; the basic procedures for assessments and appeals are not changing with this rule. This rule simply amends the regulations to specify the final dates for appeals and submission of supporting documents for appeals, and the final appeals procedures, including clarifying the address to which appeals and supporting documents must be sent. Those final dates and procedures will be added to 7 CFR 1463.11, ''Appeals and Judicial Review.'' The dates and procedures for final revisions to the assessments are clarified in this document, but do not require any change to the regulations.

Additional clarifying information about final assessment procedures and other actions for the close-out of TTPP was provided in a notice published in the **Federal Register** on August 2, 2013 [78 FR 46905].

Issuance of Final Revised, or ''Trued,'' Quarterly Assessment Revisions

After the end of each fiscal year, CCC requests tobacco import and tax data from the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau, and the U.S. Department of Homeland Security's Customs and Border Protection. CCC uses this data to determine any errors or omissions in the data it used to calculate the TTP assessments, identify and assess non-reporting entities, finalize the payments to tobacco quota holders or persons who were producers of quota tobacco, and compute the borrowed daily net interest amount. CCC then determines any necessary changes to entities' market shares for all four quarters of the fiscal year and issues final revised, or ''trued,'' assessments. The revisions are typically issued on June 1 after a given fiscal year. For example, FY 2014's final revised, or ''trued,'' assessments will be issued on June 1, 2015.

Occasionally, a second assessment revision, i.e., a revision of what has been referred to here as the ''final revised'' assessment, is needed, due to data updates or reporting errors. For FY 2005–2010, second assessment revisions, or ''second trued'' assessments, have already been calculated and issued to all entities, taking into account reporting errors which required correction. Assessments for FY2011–FY2014 may require a ''second trued'' assessment. If necessary, CCC will make any necessary revisions for all ten fiscal years and issue revised assessments on or before December 1, 2015. After that date, there will be no revised assessments for any fiscal years issued.

Final Appeals Documentation Required Within 30 Days

As specified in 7 CFR 1463.11, entities have 30 business days after receiving notice of an assessment or other decision, to submit a written statement appealing that determination, including any dispute about the amount of the determination. That is not changing with this rule. However, the previous version of the regulation did not specify a timeframe within which entities are required to provide supporting documentation to CCC to support an appeal. Accordingly, this rule amends 7 CFR 1463.11 to clarify that for appeals filed after October 1, 2014, appellants have 30 calendar days after submission of the written statement of appeal to CCC to provide any supporting documentation to CCC. Any documents received after that time will not be considered by the hearing officer. This clarification is necessary for an orderly end to the program.

This 30 calendar day window to provide supporting documentation only applies to appeals made after October 1, 2014, regardless of the date of the relevant assessment. For example, if CCC issues an entity its March 2014 final revised, or ''trued'' assessment, on June 1, 2015, and that entity files an appeal of that trued assessment with CCC on July 10, 2015, then that entity will have 30 calendar days thereafter—or until August 9, 2015—to provide any supporting documentation, either as requested by CCC or as the company deems relevant. In all cases, CCC will render an administrative determination within 30 calendar days after receiving the supporting documentation. In the

event CCC has not rendered a decision in such time, all administrative remedies available to the appellant will be deemed to be exhausted. In this example, CCC would make a ruling on the appeal by September 8, 2015.

Appeals must be submitted to the address specified in 7 CFR 1463.11(a), which is clarified in this rule to provide the current room number of the TTPP staff.

Final Dates for All Appeals

This rule amends 7 CFR 1463.11 to specify the final dates for appeals and other actions. It specifies that the final date that entities may file an administrative appeal is January 14, 2016; that is 30 business days after CCC will issue any last revised assessments.

Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 642(b) of FETRA (Pub. L. 108–357), which requires that the regulations are to be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notice and comment rulemaking and public participation in rulemaking. These regulations are therefore issued as final.

Executive Order 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is a technical amendment, which is administrative in nature and is not expected to have costs or benefits. This technical amendment did not require Office of Management and Budget (OMB) designation under Executive Order 12866, ''Regulatory Planning and Review,'' and therefore OMB has not reviewed this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) 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. This rule is not subject to the Regulatory Flexibility Act because CCC is not required by any law to publish a proposed rule for public comments on this rule.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799). FSA has determined that the provisions identified in this final rule are administrative in nature, intended to ensure the orderly close-out of the program, and do not constitute a major Federal action that would significantly affect the quality of the human environment, individually or cumulatively. Therefore, FSA will not prepare an environmental assessment or environmental impact statement.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons specified in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule do not have any substantial direct effect on 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, except as required by law. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments.'' This Executive Order imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The policies contained in this rule do not preempt Tribal law.

The policies contained in this rule do not, to our knowledge, impose substantial unreimbursed direct compliance costs on Indian Tribal governments, have Tribal implications, or preempt Tribal law. USDA continues to consult with Tribal officials to have a meaningful consultation and collaboration on the development and strengthening of USDA regulations. USDA will respond in a timely and meaningful manner to all Tribal government requests for consultation concerning this rule and will provide additional venues, such as Webinars and teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996, (Pub. L. 104–121, SBREFA). Therefore, CCC is not required to delay the effective date for 60 days from the date of publication to allow for Congressional review. Accordingly, this rule is effective on the date of publication in the **Federal Register**.

Federal Assistance Programs

The title and number of the Federal Domestic Assistance Program found in the Catalog of Federal Domestic Assistance to which this rule applies is Tobacco Transition Payment Program —10.085.

Paperwork Reduction Act

These regulations are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 642 of Public Law 108–357 (7 U.S.C. 519a), which provides that these regulations, which are necessary to implement TTPP, be promulgated and administered without regard to the Paperwork Reduction Act.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 1463

Agriculture, Agricultural commodities, Acreage allotments, Marketing quotas, Price support programs, Tobacco, Tobacco transition payments.

For the reasons discussed in the preamble, CCC amends 7 CFR part 1463 as follows:

PART 1463—2005–2014 TOBACCO TRANSITION PROGRAM

■ 1. The authority citation for part 1463 continues to read as follows:

Authority: 7 U.S.C. 518–519a, 714b, and 714c.

Subpart A—Tobacco Transition Assessments

■ 2. Amend § 1463.11 by revising paragraphs (a) and (c) to read as follows:

§ 1463.11 Appeals and judicial review.

(a) An entity may appeal any adverse determination made under this subpart, including with respect to the amount of the assessment, by submitting a written statement that sets forth the basis of the dispute to Darlene Soto, Tobacco Transition Assessment Program Manager, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 3722, Mail Stop 0515, Washington DC 20250–0514, within 30 business days of the date of receipt of the notification by CCC of its determination.

* * * * *

(c) For any appeals filed after October 1, 2014, appellants must submit all supporting documentation within 30 calendar days following the date of the initial written appeal to CCC. Any documents received after that time will not be considered by the hearing officer.

(1) The final date that entities may file an appeal is January 14, 2016.

(2) If 30 calendar days elapse following receipt by CCC of the final submission of supporting documentation by an appellant with respect to any appeal filed under this section regarding an assessment imposed on a domestic manufacturer or importer of tobacco products, without a final administrative decision by CCC, then all administrative remedies available to the appellant will be deemed to be exhausted; except, if the 30th calendar day would fall on a weekend day or federal holiday, then the 30th calendar day will be deemed the next business day following such weekend day or federal holiday.

* * * * *

Signed on April 3, 2014.

Juan M. Garcia,

Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2014–07979 Filed 4–8–14; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB15

Energy and Water Use Labeling for Consumer Products Under the Energy Policy and Conservation Act (''Energy Labeling Rule'')

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule.

SUMMARY: The Commission issues conforming amendments to the Energy Labeling Rule (''Rule'') to require a new Department of Energy (DOE) test procedure for televisions and establish data reporting requirements for those products.

DATES: The amendments are effective on May 9, 2014.

ADDRESSES: Requests for copies of this document should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including this document, are available at *http://www.ftc.gov*.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326–2889, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission's Energy Labeling Rule (Rule) (16 CFR part 305), issued pursuant to the Energy Policy and Conservation Act (EPCA), requires energy labeling for major household appliances and other consumer products to help consumers compare competing models. When first published in 1979, the Rule applied to eight product categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. The Commission has since expanded the Rule's coverage to include central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, certain types of water heaters, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels on many of these products, and prohibits retailers from removing the labels or rendering them illegible. In addition, the Rule directs sellers, including retailers, to post label information on

Web sites and in paper catalogs from which consumers can order products. EnergyGuide labels for covered appliances must contain three key disclosures: estimated annual energy cost (for most products); a product's energy consumption or energy efficiency rating as determined from DOE test procedures; and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models.[1] For energy cost calculations, the Rule specifies national average costs for applicable energy sources (*e.g.,* electricity, natural gas, oil) as calculated by DOE. The Rule sets a five-year schedule for updating range of comparability and average unit energy cost information.[2] The Commission updates the range information based on manufacturer data submitted pursuant to the Rule's reporting requirements.

II. Final Amendments

The Commission issues conforming amendments to revise the Rule's television testing and reporting requirements in response to a new DOE television test procedure published on October 25, 2013 (78 FR 63823). The Commission proposed these amendments in a Notice published on December 26, 2013 (78 FR 78305) and received two comments.[3] These amendments will ensure the Rule's television labeling requirements are consistent with EPCA, which mandates that FTC labels reflect applicable DOE test procedures.[4]

Background: When the Commission first issued labeling requirements for televisions in 2011 (76 FR 1038 (Jan. 6, 2011)), no DOE test procedure existed for such products. Accordingly, the FTC required manufacturers to use the Environmental Protection Agency's (EPA's) ENERGY STAR test procedure to measure television energy use. However, as discussed in several previous **Federal Register** documents, the Commission anticipated that amendments would be necessary after completion of the DOE test procedure.[5] DOE recently completed its test procedure, which manufacturers must begin using on April 23, 2014.[6]

To conform the labeling rule to the new DOE test procedure, the Commission proposed three amendments. First, it proposed removing the Rule's reference to the ENERGY STAR test in section 305.5 and replacing it with the DOE procedure.[7] Second, the Commission proposed a new reporting requirement for televisions consistent with requirements for most other labeled products, such as refrigerators and clothes washers.[8] Manufacturers would be allowed to submit their new television data through the DOE's web-based reporting tool, the Compliance and Certification Management System (CCMS).[9] To ensure adequate time after April 23, 2014 for the first round of data reports, the Commission proposed to set a May 1 date for annual submissions (section 305.8). After the Commission reviews the new data, it will consider issuing updated comparability ranges for television labels.[10] Finally, the amendments update the definition of ''television'' in section 305.3 to incorporate DOE's definition of that term and to limit labeling coverage to the scope of DOE's test procedure. For the most part, DOE's definition of ''television'' and the coverage of its test procedure are consistent with FTC's current rule. However, DOE determined not to cover very small models with screen sizes of 15 inches or less in its procedure because consumers often do not use such devices as typical televisions.[11]

Comments: The commenters did not oppose the amendments. However, they raised three minor issues.[12] First, CEA and Panasonic asked whether models discontinued in the previous year should be included in the initial 2014 data report. Second, Panasonic asked whether manufacturers may report energy use figures that are more conservative (*i.e.,* showing higher energy use) than the test values. Finally, CEA, though recognizing EPCA's mandate to tie television labeling to the DOE test procedure, noted that the DOE test procedure may not keep pace with the market and thus may pose challenges to the quality and credibility of the EnergyGuide and ENERGY STAR programs in the future.

Discussion: The Commission issues the final amendments mostly as proposed in the December 26, 2013 Proposed Rule. However, to ensure manufacturers have adequate time to submit reports this year, the Commission has set the annual reporting date for June 1, instead of May 1. In response to comments, the Commission advises that the initial 2014 data submissions need only include models currently in production, and manufacturers should not include test data for models already discontinued. In addition, as discussed in a final rule last year, the Commission concurs with DOE guidance allowing manufacturers to rate models more conservatively than the tested performance.[13] Finally, while the FTC is obligated to require the DOE test procedure, the FTC staff will work with DOE to identify the need for possible test procedure changes should they become necessary in the future.[14]

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as

[1] Where no ''applicable'' DOE test exists for televisions, EPCA authorizes the Commission to use ''adequate non-Department of Energy test procedures'' to obtain information for energy disclosures. 42 U.S.C. 6294(a)(2)(I)(ii). During FTC's television labeling proceeding, DOE announced plans to develop a new test procedure. 74 FR 53640, 53641 (Oct. 20, 2009).

[2] 16 CFR 305.10.

[3] The comments can be found at *http://www.ftc.gov/policy/public-comments/initiative-539.*

[4] 42 U.S.C. 6294(c).

[5] For example, the Commission explained in 2011 that ''[w]hen DOE completes its own rulemaking to develop a television test procedure for use in that agency's efficiency standards program, the Commission will issue conforming amendments consistent with EPCA's requirements that the labels use information from DOE test procedures when such procedures are available.'' 76 FR 1038, 1040 (Jan. 6, 2011). *See also* 78 FR 43974, 43975 (July 23, 2013); 78 FR 1779, 1780 (Jan. 9, 2013).

[6] Any energy representation, including those made on a label, for a covered product must fairly reflect the results of a new DOE test procedure 180 days after that test's issuance. *See* 42 U.S.C. 6293(c)(2). In its October 25, 2013 Rule, DOE identified April 23, 2014 as the date for revised representations.

[7] EPCA gives Commission no discretion to retain the ENERGY STAR procedure. 42 U.S.C. 6294(a)(2)(I).

[8] The new DOE test procedure triggers EPCA's reporting provisions, which require manufacturers to submit energy reports to the Commission derived from DOE test procedures for all new models and annually for models in current production. 42 U.S.C. 6296(b)(1) and (4). Consistent with the Rule's required reports for other covered products, the content for the television reports in the final amendments include brand name; model number; screen size (diagonal in inches); power (in watts) consumed in on mode, standby-passive mode, in standby-active mode, low mode, and off mode; and annual energy consumption (kWh/year) for each basic model in current production. Currently, DOE rules do not contain reporting provisions for televisions.

[9] *See https://www.regulations.doe.gov/ccms.*

[10] Section 305.17 contains the television ranges.

[11] *See* 10 CFR 430.2 and App. H, sec. 1; 78 FR at 63825–26. The amendments also delete obsolete subparagraph 305.17(h), which contains specific labeling directions for televisions of nine inches or fewer.

[12] CEA also provided comments on two issues they had raised before the Commission earlier as part of the ongoing regulatory review. *See* CEA Comments (#560957–00012). In particular, the commenters urged the Commission to allow electronic (*i.e.,* paperless) labeling and to eliminate ranges of comparability on labels.

[13] *See* 78 FR 2200, 2201 (Jan. 10, 2013) (FTC guidance); 76 FR 12422, 12429 (Mar. 7, 2011) (DOE policy); and 10 CFR 429.14(a)(2)(i) (DOE rules).

[14] The Commission will address the CEA's broader concerns about electronic labeling and comparability ranges separately as part of the ongoing regulation review.

defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule's existing information collection requirements through February 29, 2016 (OMB Control No. 3084–0069). The Commission accounted for the burden of testing and labeling televisions when it first issued the labeling requirements (76 FR 1038 (Jan. 6, 2011)). However, the new DOE test procedure triggers EPCA's requirement that manufacturers retest their televisions for any energy representations made 180 days after DOE publishes the test, including those on the FTC label. This creates an additional, one-time burden. Accordingly, the Commission is submitting these amendments to OMB for review.

In issuing the television labels, FTC staff estimated that 2,000 basic models exist in the marketplace, that manufacturers test two units per model, and that testing requires one hour per unit tested. Using these estimates, the Commission expects the new testing will require a one-time burden of 4,000 additional hours of burden. Annualized over a 3-year PRA clearance cycle, this one-time burden amounts to 1,333 hours. Assuming further that this testing will be implemented by electrical engineers, and applying an associated hourly wage rate of $44.14 per hour, labor costs for testing would annualized total of $58,839.[15] In addition, the amendments would increase the Rule's reporting requirements. Staff estimates that the average reporting burden for these manufacturers is approximately two minutes per basic model to enter information into DOE's online database. Based on this estimate, multiplied by an estimated total of 2,000 basic television models, the annual reporting burden for manufacturers is an estimated 67 hours (2 minutes × 2,000 models ÷ 60 minutes per hour). Assuming further that these filing requirements will be implemented by data entry workers at an hourly wage rate of $15.11 per hour, the associated labor cost for recordkeeping would be approximately $1,012 per year.[16] Any non-labor costs associated with the amendments are likely to be minimal.

[15] *See* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages—May 2012, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2012), available at: *http://www.bls.gov/news.release/ocwage.t01.htm.*

[16] *See id.*

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (IRFA) with a Proposed Rule and a Final Regulatory Flexibility Analysis (FRFA), if any, with the Final Rule, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[17]

The Commission does not anticipate that the Final Rule will have a significant economic impact on a substantial number of small entities. Consistent with past analysis (76 FR at 1049), the Commission estimates that these new requirements will apply to about 30 product manufacturers. Out of these companies, the Commission expects that no manufacturers qualify as small businesses.[18] Furthermore, the Commission does not expect that the requirements specified in the Final Rule will have a significant economic impact on these entities.

Although the Commission certified under the RFA that the amendments would not, if promulgated, have a significant economic impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the amendments on small entities as follows:

A. Statement of the Need for, and Objectives of, the Amendments

The Commission is proposing amendments to conform the Rule to a recently published DOE test procedure for televisions.

B. Issues Raised by Comments in Response to the IRFA

The Commission did not receive any comments specifically related to the impact of the final amendments on small businesses. The Commission did not receive any comments from the Small Business Administration in response to the proposed rule.

C. Estimate of Number of Small Entities to Which the Amendments Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, television manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees) or if their sales are less than $8.0 million annually. The Commission believes that no manufacturers subject to the Final Rule qualify as small businesses.

[17] 5 U.S.C. 603–605.

[18] *See also* 78 FR at 63838 (DOE's conclusion that no television manufacturers qualify as small businesses).

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Commission recognizes that the Final Rule will involve some increased costs related to reporting these products, and maintaining test records. All of these burdens and the skills required to comply are discussed in the previous section of this document, regarding the Paperwork Reduction Act, and there should be no difference in that burden as applied to small businesses.

E. Alternatives

The Commission sought comments on alternatives to the Proposed Rule, including a delay in the effective dates for the amendments. However, no commenters suggested any changes to the proposed amendments. Accordingly, the Commission issues the amendments as proposed.

Final Rule

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set out above, the Commission amends 16 CFR part 305 as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (''ENERGY LABELING RULE'')

■ 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

■ 2. In § 305.3, revise paragraph (y) to read as follows:

§ 305.3 Description of covered products.

* * * * *

(y) *Television* means a product that is designed to produce dynamic video, contains an internal TV tuner encased within the product housing, and is capable of receiving dynamic visual content from wired or wireless sources including but not limited to: broadcast and similar services for terrestrial, cable, satellite, and/or broadband transmission of analog and/or digital signals; and/or display-specific data connections, such as HDMI, Component video, S-video, Composite video; and/or media storage devices such as a USB flash drive, memory card, or a DVD; and/or network

connections, usually using Internet Protocol, typically carried over Ethernet or Wi-Fi. The requirements of this part are limited to those televisions for which the Department of Energy has adopted and published test procedures for measuring energy use.

■ 3. In § 305.5, revise paragraph (d) and remove paragraph (e), as follows:

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, water use rate, and other required disclosure content.

* * * * *

(d) Representations for ceiling fans under § 305.13 and televisions under § 305.17 must be derived from applicable procedures in 10 CFR parts 429, 430, and 431.

■ 4. In § 305.8, revise paragraphs (a)(1) and (3), add new paragraph (a)(4), and revise paragraph (b)(1) to read as follows:

§ 305.8 Submission of data.

(a)(1) Except as provided in paragraphs (a)(2) through (4) of this section, each manufacturer of a covered product subject to the disclosure requirements of this part and subject to Department of Energy certification requirements in 10 CFR part 429 shall submit annually a report for each model in current production containing the same information that must be submitted to the Department of Energy pursuant to 10 CFR part 429 for that product, and that the Department has identified as public information pursuant to 10 CFR part 429. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the CCMS at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12.

* * * * *

(3) Manufacturers of televisions shall submit annually a report containing the brand name; model number; screen size (diagonal in inches); power (in watts) consumed in on mode, standby-passive mode, in standby-active mode, low mode, and off mode; and annual energy consumption (kWh/year) for each basic model in current production. The report should also include a starting serial number, date code, or other means of identifying the date of manufacture with the first submission for each basic model. In lieu of submitting the required information to the Commission as required by this section, manufacturers may submit such information to the Department of Energy via the Compliance and Certification Management System (CCMS) at *https://regulations.doe.gov/ccms* as provided by 10 CFR 429.12.

(4) This section does not require reports for general service light-emitting diode (LED or OLED) lamps.

(b)(1) All data required by § 305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1.
Refrigerators-freezers	Aug. 1.
Freezers	Aug. 1.
Central air conditioners	July 1.
Heat pumps	July 1.
Dishwashers	June 1.
Water heaters	May 1.
Room air conditioners	July 1.
Furnaces	May 1.
Pool heaters	May 1.
Clothes washers	Oct. 1.
Fluorescent lamp ballasts	Mar. 1.
Showerheads	Mar. 1.
Faucets	Mar. 1.
Water closets	Mar. 1.
Ceiling fans	Mar. 1.
Urinals	Mar. 1.
Metal halide lamp fixtures	Sept. 1.
General service fluorescent lamps	Mar. 1.
Medium base compact fluorescent lamps	Mar. 1.
General service incandescent lamps	Mar. 1.
Televisions	June 1.

* * * * *

§ 305.17—[Amended]

■ 5. In § 305.17, remove paragraph (h).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2014–07739 Filed 4–8–14; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 117

[Docket ID: DOD–2011–OS–0063]

RIN 0790–AI71

National Industrial Security Program

AGENCY: Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This DoD interim final rule (rule) assigns responsibilities and establishes requirements related to the National Industrial Security Program (NISP) to ensure maximum uniformity and effectiveness for both DoD and non-DoD Components, as defined in this rule, for which the Department serves as the Cognizant Security Agency (CSA) and provides industrial security services in accordance with Executive Order (EO) 12829, ''National Industrial Security Program.'' The rule provides guidance on the procedures used to ensure classified information will be properly safeguarded if a contractor has reported foreign ownership, control or

influence (FOCI) information which DoD must evaluate, mitigate, or negate as appropriate. The rule also provides guidance for the evaluation, mitigation, and/or negation of FOCI information reported by a company, as defined in the rule, which is in process for a facility security clearance (FCL).

DATES: *Effective Date:* This rule is effective April 9, 2014. Comments must be received by June 9, 2014.

ADDRESSES: You may submit comments, identified by 32 CFR part 117, Docket No. DoD–2011–OS–0063 or Regulatory Information Number (RIN) 0790–AI71 by any of the following methods:

- Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 4800 Mark Center Drive, 2nd floor, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Valerie Heil, (703) 604–1112.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this part 117, subpart C is to set forth industrial security procedures and practices related to FOCI for the Components to ensure maximum uniformity and effectiveness in the DoD implementation of E.O. 12829.

In accordance with the authority in DoD Directive (DoDD) 5143.01, the purpose of the rule is to implement policy, assign responsibilities, establish requirements and provide procedures, consistent with E.O. 12829, DoD Instruction (DoDI) 5220.22, and E.O. 10865, ''Safeguarding Classified Information within Industry,'' for the protection of classified information that is disclosed to, or developed by contractors.

This rule provides NISP policy to the Components and establishes procedures concerning the initial FCL eligibility of U.S. companies that may be subject to FOCI or continued FCL eligibility for contractors subject to FOCI; provides criteria for determining whether contractors are under FOCI; prescribes responsibilities in FOCI matters; and outlines security measures that may be considered to negate or mitigate the effects of FOCI to an acceptable level. This rule does not levy requirements on U.S. contractors.

Depending upon the nature and extent of FOCI, DoD mitigates FOCI by putting into place mechanisms such as a voting trust agreement (VTA), proxy agreement (PA), special security agreement (SSA) or security control agreement (SCA). These arrangements require trustees, proxy holders or outside directors to oversee and provide business management of the U.S. contractor.

For calendar year (CY) 11, five contractors cleared by DoD were subject to a SCA, of which three required access to SECRET information and two required access to TOP SECRET information. The average number of outside directors for a SCA is two. For CY11, 16 contractors were subject to a SSA, of which 12 required access to SECRET information and four required access to TS information. The average number of outside directors for a SSA is three. In CY 11, there were no VTAs and nine PAs that required access to TS information. The average number of proxy holders for a PA is three. The proxy holders, voting trustees, or outside directors must be eligible for access at the level of the FCL.

CY 11 total estimated costs for personnel security investigations of trustees, proxy holders and outside director are as follows:

(1) The unit cost for a SECRET clearance (National Agency Check with Law and Credit NACLC) is $228.

3 SCA × 2 outside directors × $228/NACLC = $1,368

12 SSA × 3 outside directors × $4005/NACLC = $8,208

(2) The unit cost for a TS (Single Scope Background Investigation—SSBI) is $4,005

2 SCAs × 3 outside directors × $4,005 = $16,020

4 SSAs × 3 outside directors × $4,005 = $48,060

9 PAs × 3 proxy holders × $4,005 = $108,135

Therefore, the total estimated investigation cost for outside directors and proxy holders under SCAs, SSAs and PAs for CY 11 is $181,791. These costs are government costs and not levied on contractors.

FOCI measures provide protection from unauthorized transfer of classified information to foreign interests, thus saving billions of dollars.

At the same time, the procedures in this rule allow companies determined to be under FOCI to be cleared through a FOCI mitigation or negation agreement and thus realize billions of dollars in classified contracts.

By maintaining the capability for foreign-owned U.S. contractors to compete for classified contracts with FOCI mitigation, DoD, through the NISP, enhances competition and realizes cost savings through that competition.

Background

DoD, as one of the four NISP CSAs, provides oversight of more than 10,000 U.S. contractors as well as another 3,000 divisions and branch offices of those contractors on behalf of the DoD Components and the non-DoD Components. Non-DoD Components issuing contracts requiring access to classified information who are not one of the four designated NISP CSAs (i.e., the Department of Energy, the Office of the Director of National Intelligence, the Nuclear Regulatory Commission and the DoD) must enter into agreements with DOD to establish the terms of oversight on their behalf. Currently, the procedures for assessing initial FCL eligibility for U.S. companies and continued FCL eligibility for U.S. contractors which may be subject to FOCI are not uniform or consistent since these procedures do not apply to the non-DoD Components. Currently, DoD does not have uniform procedures to assess the risks and the potential adverse impact on the performance of contracts requiring access to classified information due to any FOCI information reported by U.S. contractors or U.S. companies in process for an FCL. The rule will provide uniform and effective procedures for DoD to assess the risks associated with reports of material changes to FOCI information which are submitted annually by U.S. contractors.

The rule also establishes procedures and criteria for appropriate actions to mitigate or negate any existing FOCI factors when DoD determines a U.S. company in process for an FCL or a U.S. contractor is under FOCI and is thus ineligible for access to classified information. The rule also prescribes responsibilities for FOCI matters, to include assessment of risks which may result from a contractor's FOCI information. Finally, it outlines security measures DoD may consider, implement, and oversee to mitigate or negate the effects of FOCI to an acceptable level for classified contract performance.

The addition of this rule is part of DoD's retrospective plan, completed in August 2011, under Executive Order 13563, ''Improving Regulation and

Regulatory Review.'' Executive Order 13563 emphasizes the importance of retrospective analysis of rules with its ''look back'' requirement, which states that ''within 120 days of the date of this order, each agency shall develop . . . a preliminary plan.'' The plans should ''facilitate the periodic review of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' This rule updates policy and procedures for industry that are more than 20 years old. DoD's full plan and updates can be accessed at: *http://exchange.regulations.gov/exchange/topic/eo-13563.*

Justification for Interim Final Rule

Without this rule, the Components face an elevated risk of unauthorized disclosure of classified information to foreign interests resulting in potential economic losses or damage to U.S. national security. There is such an increased probability of unauthorized disclosure of classified information because the owner of a U.S. company has direct authority over all aspects of his company (e.g., who gets paid, what contracts, including classified contracts are pursued, and access to information/programs that those contracts include. If the U.S. company has a foreign owner and is awarded a contract requiring access to classified information, these procedures provide actions for the USG to take to keep that foreign owner from having direct authority over the disclosure of and access to classified information. If there are no procedures as set forth in this rule to evaluate and determine how to negate or mitigate the foreign ownership, there will be nothing to prevent unauthorized disclosures of classified information since the foreign owner will have unfettered control of the U.S. company. This proposed rule provides the baseline requirements for the USG to evaluate the foreign owner's rights and determine whether those rights can be mitigated to effectively protect classified information and preclude its unauthorized disclosure. Depending upon what a foreign-owned U.S. company is working on, unauthorized disclosure of classified information could have an adverse impact on national security.

This rule allows fair and open competition among U.S. companies, including foreign-owned U.S. companies, who are vying for the opportunity to provide products and services to the Components when access to classified information is required. Also, without this rule, Components will not have the ability to consider innovative technologies developed by foreign-owned U.S. companies due to concerns with awarding a classified contract without a uniform process to assess and effectively mitigate or negate existing FOCI. Finally, the lack of a formal, uniform process has created significant delay in the completion of National Interest Determinations (NIDs) for foreign-owned U.S. contractors. These delays increase the costs to Components by preventing contract performance when access to classified information is required.

This rule provides a baseline for protection of classified information through analysis, evaluation and, if needed, protective measures to mitigate or FOCI information at U.S. companies performing on contracts requiring access to classified information. Government Contracting Activities (GCAs) don't know if there are risks, such as foreign ownership or control of a U.S. company before awarding a contract requiring access to classified information or when a U.S. company is acquired by a foreign interest while performing on any contracts requiring access to classified information without these procedures. The uniform procedures in this rule provide the GCAs with analysis of potential adverse impact and mitigation or negation of FOCI information to allow foreign-owned U.S. companies to compete to perform on classified contracts. DoD and non-DoD Components face an increased probability of the loss or compromise of classified information and subsequent harm to the national security, as a result of the award of classified contracts to foreign-owned U.S. companies without this rule in place for the proper mitigation of FOCI information.

Definitions

For the definitions without a cited source in this rule, upon approval of this rule, those terms and their definitions will be proposed for inclusion in the next edition of the Joint Publication 1–02, ''DoD Dictionary of Military and Associated Terms'' (available at *http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf*).

Regulatory Procedures

E.O. 12866, ''Regulatory Planning and Review'' and E.O. 13563, ''Improving Regulation and Regulatory Review''

It has been certified that 32 CFR part 117 does not:

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

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

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

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

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that 32 CFR part 117 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that 32 CFR part 117 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 117 does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995. Standard Form (SF) 328, ''Certificate Pertaining to Foreign Interests'' has been assigned OMB Control Number 0704–0194.

E.O. 13132, ''Federalism''

It has been certified that 32 CFR part 117 does not have federalism implications, as set forth in E.O. 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 117

Classified information, Facility security clearances, Foreign ownership, control or influence procedures, Security measures.

■ Accordingly, 32 CFR part 117 is added to read as follows:

PART 117—NATIONAL INDUSTRIAL SECURITY PROGRAM

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Procedures for Government Activities Relating to Foreign Ownership, Control or Influence (FOCI)

Sec.
117.51 Purpose.
117.52 Applicability.
117.53 Definitions.
117.54 Policy.
117.55 Responsibilities.
117.56 Foreign ownership, control or influence (FOCI).

Authority: Executive Order (E.O.) 12829, January 6, 1993, 58 FR 3479.

Subpart A—[Reserved]

Subpart B—[Reserved]

Subpart C—Procedures for Government Activities Relating to Foreign Ownership, Control or Influence (FOCI)

§ 117.51 Purpose.

This part sets forth industrial security procedures and practices related to Foreign Ownership, Control or Influence (FOCI) for the Department of Defense (DoD) Components, as defined in this part and non-DoD Components, as defined in this part, to ensure maximum uniformity and effectiveness in DoD implementation of the National Industrial Security Program (NISP) established by Executive Order (E.O.) 12829 ''National Industrial Security Program,'' (available at *http://www.archives.gov/isoo/policy-documents/eo-12829.html*).

§ 117.52 Applicability.

(a) This part applies to:

(1) The DoD Components.

(2) The non-DoD Components. When the term Government Contracting Activities (GCAs) is used, it applies to both DoD Components and non-DoD Components.

(b) This part does not:

(1) Limit in any manner the authority of the Secretary of Defense, the Secretaries of the Army, Navy and Air Force; or the Heads of the Components, as defined in this part, to grant access to classified information under the cognizance of their respective department or agency to any individual or entity designated by them. The granting of such access is outside the scope of the NISP and is governed by Executive Order (E.O.) 13526, ''Classified National Security Information,'' (available at *http://www.archives.gov/isoo/pdf/cnsi-eo.pdf*) and applicable disclosure policies.

(2) Limit the authority of a GCA to limit, deny, or revoke access to classified information under its statutory, regulatory, or contractual jurisdiction.

(3) Levy requirements on contractors and companies currently in process for facility security clearances (FCLs) as they are subject to the requirements of DoD 5220.22–M, ''National Industrial Security Program Operating Manual (NISPOM)'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/522022m.pdf*) and the security requirements of their contracts.

§ 117.53 Definitions.

Unless otherwise noted, these terms and their definitions are for the purposes of this part only.

Access. As defined in DoD 5220.22–M.

Affiliate. As defined in DoD 5220.22–M.

Board resolution. A formal, written decision of a company's board of directors, used to draw attention to a single act or board decision, e.g., to approve or adopt a change to a set of rules, a new program or contract.

Carve-out. As defined in DoD Directive 5205.07, ''Special Access Program (SAP) Policy,'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/520507p.pdf*).

Classified contract. As defined in DoD 5220.22–M.

Classified information. As defined in Joint Publication 1–02 ''DoD Dictionary of Military and Associated Terms'' (available at *http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf*).

Company. As defined in DoD 5220.22–M.

Components. DoD Components and non-DoD Components for which DoD provides industrial security services in accordance with E.O. 12829.

COMSEC. As defined in Joint Publication 6–0, ''Joint Communication System'' (available at *http://www.dtic.mil/doctrine/new_pubs/jp6_0.pdf*).

Contractor. As defined in DoD 5220.22–M.

Counterintelligence. As defined in Joint Publication 1–02.

Covered transaction. As defined in DoD Instruction 2000.25, ''DoD Procedures for Reviewing and Monitoring Transactions Filed with the Committee on Foreign Investment in the United States (CFIUS)''. (available at *http://www.dtic.mil/whs/directives/corres/pdf/200025p.pdf*).

CSA. As defined in DoD 5220.22–M.

Defense articles. As defined in DoD 5220.22–M.

Defense Industrial Base. As defined in Joint Publication 1–02.

Document. As defined in E.O. 13526.

DoD Components. Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within DoD.

Facility. As defined in DoD 5220.22–M.

Facility security clearance (FCL). As defined in DoD 5220.22–M.

Facility Security Officer (FSO). A U.S. citizen contractor employee, who is cleared as one of the Key Management Personnel required for the FCL, to supervise and direct security measures necessary for implementing applicable requirements set forth in DoD 5220.22–M.

FOCI action plan. For purposes of this part, the methods or agreements that can be applied to mitigate or negate the risk of foreign ownership or control to allow a U.S. contractor to maintain or a U.S. company to be granted an FCL.

FOCI mitigation agreement. For purposes of this part, a signed agreement between a foreign interest and a U.S. contractor or a company in process for an FCL which, based on an assessment of FOCI information, imposes various security measures within an institutionalized set of company practices and procedures. Examples include board resolutions, security control agreements (SCAs) and special security agreements.

FOCI negation agreement. For purposes of this part, a signed agreement between a foreign interest and U.S. contractor or a company in process for an FCL under which the foreign owner relinquishes most ownership rights to U.S. citizens who are approved by the U.S. Government and have been favorably adjudicated for access to classified information based on the results of a personnel security clearance investigation. Examples include voting trust agreements (VTAs) and proxy agreements (PAs).

Foreign government information (FGI). As defined in E.O. 13526.

Foreign interest. As defined in DoD 5220.22–M.

GCA. As defined in DoD 5220.22–M.

Industrial security. As defined in DoD 5220.22–M.

Information. As defined in E.O. 13526.

Limited Access Authorization (LAA). As defined in DoD 5220.22–M.

National interest determination (NID). As defined in 32 CFR part 2004, ''National Industrial Security Program Directive No. 1.''

Non-DoD Components. Those USG executive branch departments and agencies identified in DoD 5220.22–M that have entered into agreements with the Secretary of Defense to act as the NISP Cognizant Security Agency (CSA) for, and on their behalf, in rendering security services for the protection of classified information disclosed to or generated by industry pursuant to Section 202 of E.O. 12829.

Personnel security clearance (PCL). As defined in DoD 5220.22–M.

Personnel security clearance assurance (PCLSA). A written certification by USG or applicable foreign government industrial security authorities, which certifies the PCL level or eligibility for a PCL at a specified level for their citizens. The assurance is used, in the case of the United States, to give an LAA to a non-U.S. citizen, provided all other investigative requirements are met.

Prime contract. As defined in DoD 5220.22–M.

Proscribed information. TOP SECRET (TS) information, COMSEC information excluding controlled cryptographic items when unkeyed and utilized with unclassified keys, restricted data (RD), special access program (SAP) information, or sensitive compartmented information (SCI).

Restricted Data (RD). As defined in DoD 5220.22–M.

Sensitive compartmented information (SCI). As defined in Joint Publication 1–02.

Security assurance. A written confirmation, requested by and exchanged between governments, that contains the following elements: Verification of the personnel security clearance (PCL) level of the sponsoring foreign government's citizens or nationals; a statement by a responsible official of the sponsoring foreign government that the recipient of the information is approved by the sponsoring foreign government for access to information of the security classification involved on behalf of the sponsoring government; and an obligation that the sponsoring foreign government will ensure compliance with any security agreement or other use, transfer and security requirements specified by the components. The security assurance usually will be in a request for visit authorization or with courier orders or a transportation plan; but is not related to the PCL security assurance.

Special Access Program (SAP). As defined in E.O. 13526.

Subcontract. As defined in DoD 5220.22–M.

§ 117.54 Policy.

It is DoD policy that DoD FOCI procedures will be used to protect against foreign interests:

(a) Gaining unauthorized access to classified, export-controlled, or all communications security (COMSEC) (classified or unclassified) information in accordance with E.O. 12829 and DoD Instruction 8523.01, ''Communications Security'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/852301p.pdf*). DoD FOCI procedures for access to unclassified COMSEC are set forth in National Security Agency Central Security Service (NSA/CSS) Policy Manual 3–16, ''Control of Communications Security Material'' (available to authorized users of SIPRNET at *www.iad.nsa.smil.mil/resources/library/nsa_office_of_policy_section/pdf/NSA_CSS_MAN-3-16_080505.pdf*).

(b) Adversely affecting the performance of classified contracts, in accordance with E.O. 12829.

(c) Undermining U.S. security and export controls, in accordance with E.O. 12829.

§ 117.55 Responsibilities.

(a) The Under Secretary of Defense for Intelligence (USD(I)) will, in accordance with DoD Directive 5143.01, ''Under Secretary of Defense for Intelligence (USD(I))'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/514301p.pdf*) and DoD Instruction 5220.22, ''National Industrial Security Program'' (see *http://www.dtic.mil/whs/directives/corres/pdf/522022p.pdf*):

(1) Oversee policy and management of the NISP, to include FOCI matters.

(2) Direct, administer, and oversee the FOCI provisions of the NISP to ensure that the program is efficient and consistently implemented.

(3) Provide additional guidance regarding FOCI matters by memorandum as needed.

(4) Coordinate with the Under Secretary of Defense for Policy (USD(P)) and the Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L)) on matters under their cognizance that affect the NISP consistent with paragraphs (c) and (d) of this section.

(b) The Director, Defense Security Service (DSS), in addition to the responsibilities in paragraph (d) of this section, under the authority, direction, and control of the USD(I) will in accordance with DoD Instruction 5220.22, ''National Industrial Security Program'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/522022p.pdf*).

(1) Make FOCI determinations on a case-by-case basis for U.S. contractors or companies under consideration for an FCL under the NISP.

(2) Collect information necessary to examine the source, nature, and extent of a company's ownership, control, or influence by foreign interests.

(3) Determine, on behalf of the GCAs, whether a U.S. company is under FOCI to such a degree that the granting of an FCL would be inconsistent with the U.S. national security interests.

(4) Determine the security measures necessary to negate or mitigate FOCI and make recommendations to the U.S. company and to those GCAs with a contractual interest or other equity in the matter.

(5) Provide GCAs a guide to clarify their roles and responsibilities with respect to the FOCI process and to national interest determinations (NIDs), in particular. Update the guide, as needed, in coordination with the Office of the Under Secretary of Defense for Intelligence (OUSD(I)) Security Directorate.

(6) Determine a U.S. company's eligibility for an FCL on an initial and continuing basis depending on recurring security reviews and other interactions.

(7) Develop proposed changes to maintain the currency and effectiveness of this part. Forward proposed changes and associated justification to the OUSD(I) Security Directorate for consideration as future changes to this part.

(8) Consider and, as warranted, approve requests for exception to DoD 5220.22–M in consultation with affected GCAs for specific contractors and for specific periods of time (such as, to the completion date of a contract) when a contractor is unable to comply with the requirements of DoD 5220.22–M. Consideration of such requests will include an evaluation of any proposed alternative procedures with supporting justification and coordination as applicable, consistent with paragraph (a)(4) of this section.

(9) Coordinate and receive the concurrence of the OUSD(I) Security Directorate on requests for exception to DoD 5220.22–M and consistent with paragraph (a)(4) of this section when any of the following provisions apply:

(i) The request exceeds the authority of the Director, DSS as defined in this section;

(ii) The proposed exception applies to more than one contractor location; or,

(iii) The exception would be contrary to U.S. national policy or international agreements, including those relating to foreign government information (FGI) and international issues under the cognizance of the USD(P) with coordination as applicable, consistent with paragraph (a)(4) of this section.

(c) The USD(P) will, in accordance with DoD Directive 5111.1, ''Under Secretary of Defense for Policy (USD(P))'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/511101p.pdf*), advise the USD(I) and DSS on the foreign relations and international security aspects of FOCI, including FGI, foreign disclosures of U.S. classified information, exports of defense articles and technical data, security arrangements for DoD international programs, North Atlantic Treaty Organization security, and international agreements.

(d) The USD(AT&L) will, in accordance with DoD Directive 5134.01, ''Under Secretary of Defense for Acquisition, Technology and Logistics (USD(AT&L))'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/513401p.pdf*):

(1) Advise the USD(I) on the development and implementation of NISP policies, in accordance with DoD Instruction 5220.22.

(2) Ensure that DoD Components establish and maintain a record capturing the current and legitimate need for access to classified information by contractors in the Defense Industrial Base.

(3) Ensure that acquisition elements of DoD Components comply with the applicable provisions of DoD 5220.22–M.

(e) The Director, DoD SAP Central Office (SAPCO) will, in accordance with DoD Directive 5205.07, ''Special Access Program (SAP) Policy'' (available at *http://www.dtic.mil/whs/directives/corres/pdf/520507p.pdf*), notify DSS of the existence of SAP equities when DSS considers the acceptability of a contractor's FOCI action plan. In addition, the Director, DoD SAPCO, will develop procedures for the consideration of a NID when a contractor cleared under a Special Security Agreement (SSA) requires access to an unacknowledged Special Access Program (SAP).

(f) The Heads of the Components will:

(1) Oversee compliance by GCA personnel with applicable procedures identified in this subpart.

(2) Designate in writing an individual who is authorized to make decisions and provide a coordinated GCA position on FOCI matters to DSS within timelines established in this part.

(3) Submit proposed changes to DoD 5220.22–M, as deemed appropriate, to the OUSD(I) Security Directorate.

§ 117.56 Foreign ownership, control or influence (FOCI).

(a) *General.* This section provides guidance for and establishes procedures concerning the initial or continued FCL eligibility of U.S. companies and U.S. contractors with foreign involvement; provides criteria for determining whether U.S. companies are under FOCI; prescribes responsibilities in FOCI matters; and outlines security measures that DSS may consider to mitigate or negate the effects of FOCI to an acceptable level. As stated in DoD 5220.22–M, and in accordance with E.O. 12829:

(1) The Secretary of Defense serves as the Executive Agent for inspecting and monitoring contractors who require or will require access to, or who store or will store classified information.

(2) The Components reserve the discretionary authority, and have the obligation, to impose any security procedure, safeguard, or restriction they believe necessary to ensure that unauthorized access to classified information is effectively precluded and that performance of classified contracts, as defined in DoD 5220.22–M, is not adversely affected by FOCI.

(b) *Procedures* — (1) *Criteria.* A U.S. company is considered to be under FOCI whenever a foreign interest has the power, direct or indirect (whether or not exercised, and whether or not exercisable through the ownership of the U.S. company's securities, by contractual arrangements or other means), to direct or decide matters affecting the management or operations of the company in a manner that may result in unauthorized access to classified information or may adversely affect the performance of classified contracts.

(2) *FOCI Analysis.* Conducting an analysis of available information on a company to determine the existence, nature, and source of FOCI is a critical aspect of evaluating previously uncleared companies for FCLs and also in determining continued eligibility of contractors for FCLs.

(i) A U.S. company determined to be under FOCI is ineligible for an FCL unless and until security measures have been put in place to mitigate FOCI.

(ii) In making a determination as to whether a company is under FOCI, DSS will consider the information provided by the company or its parent entity on the Standard Form (SF) 328, ''Certificate Pertaining to Foreign Interests,'' (available at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/sf0328.pdf*) and any other relevant information (e.g., filings with the Securities and Exchange Commission (for publicly traded companies), articles of incorporation, by-laws, and loan and shareholder agreements, as well as other publicly available information about the company. Depending on specific circumstances (e.g., extensive minority foreign ownership at a cleared subsidiary in the corporate family), DSS may request one or more of the legal entities that make up a corporate family to submit individual SF 328s and will determine the appropriate FOCI action plan(s) that must be put in place.

(iii) When a contractor has been determined to be under FOCI, the primary consideration will be the safeguarding of classified information. DSS is responsible for taking whatever interim action is necessary to safeguard classified information, in coordination with other affected agencies as appropriate consistent with § 117.54.

(iv) When a merger, sale, or acquisition involving a foreign interest and a contractor is finalized prior to having an acceptable FOCI mitigation or negation agreement in place, DSS will invalidate any existing FCL until such time as DSS determines that the contractor has submitted an acceptable FOCI action plan (see DoD 5220.22–M) and has agreed to interim measures that address FOCI concerns pending formal execution of a FOCI mitigation or negation agreement. Invalidation renders the contractor ineligible to receive new classified material or to bid on new classified contracts. If the affected GCA determines that continued access to classified material is required, DSS may continue the FCL in an invalidated status when there is no indication that classified information is at risk of compromise. If classified information remains at risk of compromise due to the FOCI, DSS will take action to impose appropriate security countermeasures or terminate the FCL, in coordination with the affected GCA.

(v) Changed conditions, such as a change in ownership, indebtedness, or a foreign intelligence threat, may justify certain adjustments to the security terms under which a contractor is cleared or, alternatively, require the use of a particular FOCI mitigation or negation agreement. Depending on specific circumstances, DSS may determine that a contractor is no longer under FOCI or, conversely, that a contractor is no longer eligible for an FCL.

(vi) If the contractor determined to be under FOCI does not have possession of classified material and does not have a current or pending requirement for access to classified information, DSS will administratively terminate the FCL.

(3) *Assessing the Implications of FOCI.* (i) If DSS determines that a company is under FOCI, DSS will assess the extent and manner to which the FOCI may result in unauthorized access to classified information or adverse impact on the performance of classified contracts and the type of actions, if any, that would be necessary to mitigate or negate the associated risks to a level deemed acceptable to DSS. An analysis of some of the FOCI factors may clearly identify risk; while others may result in circumstances that would mitigate or negate risks. Therefore, these factors must be considered in the aggregate with regard to the foreign interest that is the source of the FOCI, the country or countries in which the foreign interest is domiciled and has its principal place of business (if not in the country of domicile), and any other foreign country that is identified by DSS because it is a substantial source of the revenue for, or otherwise has significant ties to, the foreign interest. DSS will consider the following FOCI factors and any other relevant information in the context of threat, vulnerability, and sensitivity of the classified information required for current or prospective contract performance when rendering a risk management assessment and determination of the acceptability of a company's FOCI action plan:

(A) Record of economic and government espionage against U.S. targets.

(B) Record of enforcement and/or engagement in unauthorized technology transfer.

(C) Record of compliance with pertinent U.S. laws, regulations, and contracts.

(D) The type and sensitivity of the information that will be accessed.

(E) The source, nature, and extent of FOCI, including, but not limited to, whether a foreign interest holds a majority or substantial minority position in the company, taking into consideration the immediate, intermediate, and ultimate parent companies of the company or prior relationships between the U.S. company and the foreign interest.

(F) The nature of any relevant bilateral and multilateral security and information exchange agreements, (e.g., the political and military relationship between the United States Government (USG) and the government of the foreign interest).

(G) Ownership or control, in whole or in part, by a foreign government.

(H) Any other factor that indicates or demonstrates a capability on the part of foreign interests to control or influence the operations or management of the business organization concerned.

(ii) As part of its FOCI assessment and evaluation of any FOCI action plan, DSS will also request and consider counterintelligence (CI) and technology transfer risk assessments and any available intelligence from all appropriate USG sources. DSS will request these assessments as soon as practicable, for the company itself and for all business entities in the company's ownership chain.

(iii) If a company disputes a DSS determination that the company is under FOCI, or disputes the DSS determination regarding the types of actions necessary to mitigate or negate the FOCI, the company may appeal in writing those determinations to the Director, DSS, for a final agency decision no later than 30 days after receipt of written notification of the DSS decision. The company must identify the specific relief sought and grounds for that relief in its appeal. In response, the Director, DSS, may request additional information from the company. At a minimum, DSS will respond to appeals within 30 days, either with a decision or an estimate as to when a decision will be rendered. DSS will not release pre-decisional information to the company, its legal counsel, or any of its representatives without the express written approval of the applicable GCAs who own the data and any other USG entities with an interest in the company's FOCI action plan.

(iv) DoD recognizes that FOCI concerns may arise in a variety of other circumstances, all of which cannot be listed in this subpart. In FOCI cases involving any foreign ownership or control, DSS will advise and consult with the appropriate GCAs, including those with special security needs, regarding the required FOCI mitigation or negation method and provide those GCAs with the details of the FOCI factors and any associated risk assessments. DSS and GCAs will meet to discuss the FOCI action plan, when determined necessary by either DSS or the applicable GCAs. When DSS determines that a company may be ineligible for an FCL by virtue of FOCI, or that additional action by the company may be necessary to mitigate the FOCI or associated risks, DSS will promptly notify the company and require it to submit a FOCI action plan to DSS within 30 calendar days of the notification. In addition, DSS will advise company management that failure to submit the requested plan within the prescribed period of time will result in termination of FCL processing or initiation of action to revoke an existing FCL, as applicable.

(v) In instances where the identification of a foreign owner or voting interest of five percent or more cannot be adequately ascertained (e.g., the participating investors in a foreign investment or hedge fund, owning five percent or more of the company, cannot be identified), DSS may determine that the company is not eligible for an FCL.

(vi) DSS will review and consider the FOCI action plan itself, the factors identified in paragraph (b)(3)(i) of this section, and any threat or risk assessments or other relevant information. If an action plan is determined to be unacceptable, DSS can recommend and negotiate an acceptable action plan including, but not limited to, the measures identified in paragraphs (b)(4)(ii) and (b)(4)(iii) of this section. In any event, DSS will provide written feedback to a company or the company's designated representative on the acceptability of the FOCI action plan within 30 calendar days of receipt.

(4) *Options To Address FOCI.* (i) Under all FOCI action plans, management positions requiring PCLs in conjunction with the FCL must be filled by eligible U.S. citizens residing in the United States in accordance with DoD 5220.22–M.

(ii) When factors related to foreign control or influence are present, but unrelated to ownership, the plan must provide positive measures that assure that the foreign interest can be effectively denied access to classified information and cannot otherwise adversely affect performance on classified contracts. Non-exclusive examples of such measures include:

(A) Adoption of special board resolutions.

(B) Assignment of specific oversight duties and responsibilities to independent board members.

(C) Formulation of special executive-level security committees to consider and oversee matters that affect the performance of classified contracts.

(D) The appointment of a technology control officer.

(E) Modification or termination of loan agreements, contracts, and other understandings with foreign interests.

(F) Diversification or reduction of foreign-source income.

(G) Demonstration of financial viability independent of foreign interests.

(H) Elimination or resolution of problem debt.

(I) Physical or organizational separation of the contractor component performing on classified contracts.

(J) Other actions that negate or mitigate foreign control or influence.

(iii) FOCI concerns related to foreign ownership of a company or corporate family arise when a foreign interest has the ability, either directly or indirectly, whether exercised or exercisable, to control or influence the election or appointment of one or more members to the company's governing board (e.g., Board of Directors, Board of Managers, or Board of Trustees) or its equivalent, by any means. Some methods that may be applied to mitigate the risk of foreign ownership are outlined in DoD 5220.22–M and further described in this section. While these methods are mentioned in relation to specific ownership and control thresholds, these descriptions should not be construed as DoD-sanctioned criteria mandating the selection or acceptance of a certain FOCI action plan. DSS retains the authority to reject or modify any proposed FOCI action plan in consultation with the affected GCAs.

(A) *Board Resolution.* This method is often used when a foreign interest does not own voting interests sufficient to elect, or otherwise is not entitled to representation on the company's governing board. In such circumstances, the effects of foreign ownership will generally be mitigated by a resolution of the board of directors stating the company recognizes the elements of FOCI and acknowledges its continuing obligations under DD Form 441, ''DoD Security Agreement'' (available at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd0441.pdf*). The resolution will identify the foreign shareholders and their representatives (if any) and note the extent of foreign ownership. The resolution will also include a certification that the foreign shareholders and their representatives will not require, will not have, and can be effectively excluded from access to all classified information in the possession of the contractor, and will not be permitted to occupy positions that may enable them to influence the organization's policies and practices in the performance of classified contracts. Copies of such resolutions will be furnished to all board members and principal management officials.

(B) *SCA.* The SCA is a tailored FOCI mitigation agreement often used when a foreign interest does not effectively own or control a company or corporate family (i.e., the company or corporate family are under U.S. control), but the foreign interest is entitled to representation on the company's board. When an SCA is implemented, a U.S. citizen serves as an outside director, as defined in DoD 5220.22–M. DSS may determine the need for more than one outside director based on the FOCI analysis and risk assessments.

(C) *SSA.* The SSA is a tailored FOCI mitigation agreement that preserves the foreign owner's right to be represented on the company's board (inside directors) with a direct voice in the business management of the company while denying the foreign owner unauthorized access to classified information. An SSA is based on the analysis of the FOCI factors set forth in paragraph (b)(3) and is often used when a foreign interest effectively owns or controls a company or corporate family. DSS assesses the implications of the FOCI factors in accordance with paragraphs (b)(3) and (b)(4)(iii) of this section. U.S. citizens serve as outside directors in accordance with DoD 5220.22–M.

(*1*) If a GCA requires a contractor cleared under an SSA to have access to proscribed information, the GCA will initiate action to consider a NID at the pre-contract phase to confirm that disclosure of such information is consistent with the national security interests of the United States.

(*2*) Proscribed information includes TS; COMSEC material, excluding controlled cryptographic items when unkeyed and utilized with unclassified keys; RD; SAP; and SCI.

(*3*) Contractor access to proscribed information will not be granted without the approval of the agency with control jurisdiction (i.e., National Security Agency (NSA) for COMSEC, whether the COMSEC is proscribed information or not; the Office of the Director of National Intelligence (ODNI) for SCI; and the Department of Energy (DOE) for RD in accordance with its policies).

(*4*) In accordance with 32 CFR, part 2004 and the procedures in paragraph (b)(5) of this section, GCAs will forward a request for concurrence to NSA, ODNI, or DOE when a proposed NID involves access to COMSEC, SCI, or RD, respectively, within 30 calendar days of DSS advisement of the NID requirement. NSA, ODNI, and DOE, as appropriate, will then have 30 calendar days to render a decision.

(D) *VTA or PA.* These FOCI negation agreements may be used when a foreign interest effectively owns or controls a company or corporate family. Under a VTA, PA and associated documentation, the foreign owner relinquishes most rights associated with ownership of the company to cleared U.S. citizens approved by DSS. Both FOCI agreements can effectively negate foreign ownership and control; therefore, neither agreement imposes any restrictions on the company's eligibility to have access to classified information or to compete for classified contracts including contracts with proscribed information. Both FOCI agreements can also effectively negate foreign government control (see paragraph (b)(11) of this section which provides guidance and requirements regarding foreign government ownership or control, including with respect to 10 U.S.C. 2536, ''Award of Certain Contracts to Entities Controlled by a Foreign Government Prohibition (available at *http://www.gpo.gov/fdsys/granule/USCODE-2010-title10/USCODE-2010-title10-subtitleA-partIV-chap148-subchapV-sec2536/content-detail.html*)). DSS retains the authority to deny a proposed VTA or PA.

(iv) When DSS implements a FOCI mitigation or negation agreement at a contractor, the agreement may specify that the entire agreement, or that particular provisions of the agreement (e.g., the provisions restricting unauthorized access to classified information and unclassified export-controlled information and the provisions of the visitation policy) will apply to and will be made binding upon all present and future subsidiaries of the company. If a subsidiary requires and is eligible for an FCL at the TS level, the company executing the FOCI mitigation agreement and any intermediate parents must be formally excluded from TS access unless they have their own requirement and are otherwise eligible for TS access.

(v) DSS will provide a copy of the DSS FOCI assessment, proposed FOCI action plan and any associated risk assessments to the GCAs with an interest in the company or corporate family. In the absence of written objections (signed at the Program Executive Office (PEO) level or higher) from GCAs with an interest in the company or corporate family, DSS may proceed with implementation of what DSS considers in its discretion to be an acceptable FOCI action plan based on available information. Unless other regulatory review processes for mergers or acquisitions have an earlier suspense date, DSS will provide a 30 calendar day period for the GCAs with an interest in the company or corporate family to provide their PEO level or higher written objections.

(vi) DSS will submit to the USD(I) for approval the DSS templates for those FOCI mitigation or negation agreements identified in paragraph (b)(4)(iii) of this

section as well as templates for any supplements thereto (e.g., the electronic communications plan (ECP) or technology control plan (TCP)). DSS may propose changes to the contents of these template FOCI mitigation or negation agreements. DSS may tailor non-substantive provisions of the template agreement for any particular FOCI case without further approval from the USD(I), provided DSS notifies the OUSD(I) Security Directorate of the deviation from the template. DSS may provide this notification through the electronic submission of an annotated copy of the modified agreement.

(5) *NID.* The requirement for a NID to authorize access to proscribed information applies only to those foreign-owned U.S. contractors or companies in process for an FCL under an SSA which is used as a mechanism for FOCI mitigation. A NID does not authorize disclosure of classified information to a foreign government, a non-U.S. citizen or a non-U.S. entity. Timelines for NID decisions are set forth in 32 CFR part 2004 and the provisions of this paragraph. NIDs can be program, project, or contract specific, subject to the concurrence of NSA for COMSEC, ODNI for SCI or DOE for RD. For program and project NIDs, a separate NID is not required for each contract. DSS will inform the DoD SAPCO of NID requirements to allow the SAPCO to advise of awareness of unacknowledged SAPs or any carve-out SAP activity.

(i) A NID is necessary when access to proscribed information is required for:

(A) Pre-contract activities in accordance with paragraph (b)(4)(iii)(C)(*1*) of this section.

(B) New contracts to be issued to a company in process for an FCL that DSS has determined to be under FOCI when an SSA is anticipated, or a contractor already cleared under an SSA.

(C) Existing contracts when a contractor is acquired by foreign interests and proposes an SSA as the FOCI action plan.

(ii) If a contractor is proposing to use an SSA to mitigate FOCI and requires access to proscribed information:

(A) DSS will:

(*1*) Request the contractor to provide information on all impacted contracts, both prime and subcontracts, unless the contractor is prohibited by contract from revealing their existence to DSS. In such instances, DSS will request that the contractor notify the government contracting officer and Program Security Officer of the need for a NID.

(*2*) Provide written notification to the individual designated by the Component, in accordance with paragraph (f) of § 117.55 within 30 calendar days of identifying the requirement for a NID.

(*3*) Provide to appropriate GCAs the contractor's proposed FOCI action plan, any associated risk assessments, and DSS' recommendation for FOCI mitigation.

(*4*) Ask the GCA to identify all of the GCA's contracts affected by the proposed SSA that require a NID decision, unless the activity is unacknowledged. The cognizant SAPCO will inform the DoD SAPCO of any unacknowledged SAPs affected by the proposed SSA and consequently the NID requirement.

(*5*) Provide OUSD(I) Security Directorate and the OUSD(AT&L), Deputy Assistant Secretary of Defense for Manufacturing and Industrial Base Policy, a monthly report of pending NID decisions that:

(*i*) Exceed 30 calendar days from the date of the DSS written notice to the applicable GCA.

(*ii*) Have been pending for NSA, ODNI, or DOE concurrence for more than 30 calendar days.

(B) OUSD(I) will intervene, as warranted, with GCAs regarding NID decisions pending beyond 30 calendar days from the date of the DSS written notice, as well as with NSA, ODNI, and DOE regarding concurrence decisions that remain pending beyond 30 days from the date of the GCA request.

(C) OUSD(AT&L) will confer, as warranted, with the applicable DoD Service Acquisition Executive or component equivalent about unresolved NID decisions.

(D) The GCA will, upon written notification by DSS of the need for a NID:

(*1*) Review the FOCI action plan proposed by the uncleared company, in addition to any associated risk assessments and the DSS analysis of the appropriate FOCI mitigation based on the existing FOCI factors.

(*2*) Consider the FOCI factors noted in paragraph (b)(3) of this section in the aggregate with any associated risk assessments and DSS' analysis to determine whether to issue a NID.

(*3*) Provide DSS, as appropriate, one of the following within 30 calendar days of the DSS written notification that a NID is required:

(*i*) A final, documented NID with a copy provided to the contractor. If the NID is not specific to a single program, project, or contract (e.g., a blanket NID), the GCA will also forward a copy of the NID to the OUSD(I) Security Directorate.

(*ii*) A copy of the GCA's request for NID concurrence sent to NSA, ODNI, or DOE, when access to COMSEC, SCI, or RD is involved. The GCA will request that NSA, ODNI, or DOE respond within 30 calendar days of the date of the GCA's written request directly to DSS with a copy to the GCA.

(*iii*) A GCA decision that it will not issue a NID.

(*4*) Contact DSS to determine an alternative method to the proposed SSA when the GCA chooses not to issue a NID (e.g., a contract modification, a contract novation, or a PA or VTA authorized by the Program Executive Officer).

(*5*) Notify DSS in writing when NSA, ODNI, or DOE renders a decision on a proposed NID involving access to COMSEC, SCI, or RD, respectively. A GCA's NID decision is not final until NSA, ODNI, or DOE, as applicable, respond regarding access to COMSEC, SCI, or RD.

(*6*) When denying a NID, retain documentation explaining the rationale for the decision.

(6) *Government Security Committee (GSC).* (i) Under a VTA, PA, SSA, or SCA, DSS will ensure that the contractor establishes a permanent committee of its Board of Directors or similar body known as the GSC.

(A) The members of the GSC are required in accordance with DoD 5220.22–M to ensure that the contractor maintains policies and procedures to safeguard classified and export controlled information entrusted to it, and that violations of those policies and procedures are promptly investigated and reported to the appropriate authority when it has been determined that a violation has occurred.

(B) The GSC will also take the necessary steps in accordance with DoD 5220.22–M to ensure that the contractor complies with U.S. export control laws and regulations and does not take action deemed adverse to performance on classified contracts. This will include the appointment of a Technology Control Officer and the establishment of Technology Control Plan (TCP).

(ii) DSS will provide oversight, advice, and assistance to GSCs. These measures are intended to ensure that GSCs:

(A) Maintain policies and procedures to safeguard classified information and export-controlled unclassified information in the possession of the contractor with no adverse impact on the performance of classified contracts.

(B) Verify contractor compliance with the DD Form 441 or its successor form, the FOCI mitigation agreement or negation agreement and related documents, contract security requirements, USG export control laws, and the NISP.

(iii) In the case of an SSA, DSS will ensure that the number of outside directors exceeds the number of inside directors, as defined in DoD 5220.22–M. DSS will determine if the outside directors should be a majority of the Board of Directors based on an assessment of security risk factors pertaining to the contractor's access to classified information. In the case of an SCA, DSS will require the contractor to have at least one outside director, but may require more than one outside director based on an assessment of security risk factors.

(iv) In the case where a contractor is cleared to the SECRET level under an SSA, and also has a subsidiary with a TS FCL based on an approved NID, some or all of the outside directors of the cleared parent contractor may be sponsored for eligibility for access to TS information with their TS PCLs held by the subsidiary. Access will be at the level necessary for the outside directors to carry out their security or business responsibilities for oversight of the subsidiary company in accordance with DoD 5220.22–M. If the subsidiary has an approved NID for access to SAP or SCI, the applicable GCA may determine that an outside director at the parent contractor requires approved access at the subsidiary.

(7) *Technology Control Plans (TCPs).* Under a VTA, PA, SSA, SCA, or Limited FCL, DSS will require the contractor to develop and implement a TCP as required in DoD 5220.22–M. DSS will evaluate and, if the plan is adequate, approve the TCP. The TCP must include a description of all security measures required to prevent the unauthorized disclosure of classified or export-controlled information. Although TCPs must be tailored to the specific circumstances of the contractor or corporate family to be effective, DSS may provide examples of TCPs to the contractor to assist plan creation.

(8) *Electronic Communication Plan (ECP).* Under a VTA, PA, or SSA, DSS will require the contractor to develop and implement an ECP tailored to the contractor's operations. DSS will determine the extent of the ECP and review the plan for adequacy. The ECP must include a detailed network description and configuration diagram that clearly delineates which networks will be shared and which will be protected from access by the foreign parent or its affiliates. The network description will address firewalls, remote administration, monitoring, maintenance, and separate email servers, as appropriate.

(9) *Administrative Support Agreement (ASA).* There may be circumstances when the parties to a transaction propose in the FOCI action plan that the U.S. contractor provides certain services to the foreign interest, or the foreign interest provides services to the U.S. contractor. The services to be provided must be such that there is no violation of the applicable FOCI mitigation or negation agreement. If approved, the extent of such support and limitations on the support will be fully documented in an ASA.

(10) *Annual Review and Certification*—(i) *Annual Meeting.* DSS will meet at least annually with the GSCs of contractor's operating under a VTA, PA, SSA, or SCA to review and discuss the purpose and effectiveness of the FOCI mitigation or negation agreement; establish a common understanding of the operating requirements and their implementation; answer questions from the GSC members; and provide guidance on matters related to FOCI mitigation and industrial security. These meetings will also include an examination by DSS, with the participation of the (FSO) and the GSC members, of:

(A) Compliance with the approved security arrangement, standard rules, and applicable laws and regulations.

(B) Problems regarding the practical application or utility of the security arrangement.

(C) Security controls, practices, or procedures and whether they warrant adjustment.

(ii) *Annual Certification.* For contractors operating under a VTA, PA, SSA, or SCA, DSS will obtain from the Chair of the GSC an implementation and compliance report one year from the effective date of the agreement and annually thereafter. DSS will review the annual report; address, resolve, or refer issues identified in the report; document the results of this review and any follow-up actions; and keep a copy of the report and documentation of related DSS actions on file for 15 years. The GSC's annual report must include:

(A) A detailed description stating how the contractor is carrying out its obligations under the agreement.

(B) Changes to security procedures, implemented or proposed, and the reasons for those changes.

(C) A detailed description of any acts of noncompliance with FOCI provisions and a discussion of steps taken to prevent such acts from recurring.

(D) Any changes or impending changes of senior management officials or key board members, including the reasons for the change.

(E) Any changes or impending changes in the organizational structure or ownership, including any acquisitions, mergers, or divestitures.

(F) Any other issues that could have a bearing on the effectiveness of the applicable agreement.

(11) *Foreign Government Ownership or Control.* (i) In accordance with 10 U.S.C. 2536, the DoD cannot award contracts involving access to proscribed information to a company effectively owned or controlled by a foreign government unless a waiver has been issued by the Secretary of Defense or designee.

(ii) A waiver is not required if the company is cleared under a PA or VTA because both agreements effectively negate foreign government control.

(iii) DSS will, after consultation with the GCA, determine if a waiver is needed in accordance with subpart 209.104–1 of the Defense Federal Acquisition Regulation Supplement ''Responsible Prospective Contractors, General Standards'' (available at *http://www.acq.osd.mil/dpap/dars/dfars/pdf/r20090115/209_1.pdf*. The GCA will request the waiver from the USD(I) and provide supporting information, to include a copy of the proposed NID.

(iv) Upon receipt of an approved waiver, the GCA will forward the waiver and the NID to DSS.

(v) If the USD(I) does not grant the waiver, the company may propose to DSS an appropriate PA or VTA. Otherwise, the company is not eligible for access to proscribed information.

(12) *Changed Conditions.* (i) DSS will require contractors to submit timely reports of changes to FOCI by DSS-designated means in accordance with DoD 5220.22–M.

(ii) Upon receipt of changes to the SF 328 from contractors, DSS will assess the changes to determine if they are material; if they require the imposition of new FOCI mitigation or modification of existing FOCI mitigation; or if they warrant the termination of existing FOCI mitigation. DSS will periodically review the definition of material change with regard to FOCI and publish updated guidance as to what constitutes a reportable material change in coordination with OUSD(I) Security Directorate.

(13) *Limited FCL.* (i) A Limited FCL may be an option for a single, narrowly defined purpose when there is foreign ownership or control of a U.S. company. In that respect, a Limited FCL is similar to an LAA for a non-U.S. citizen. Consideration of a Limited FCL includes a DSS determination that the company is under FOCI and that the company is either unable or unwilling to implement FOCI negation or mitigation. A GCA or a foreign government may sponsor a

Limited FCL consistent with the provisions of paragraphs (b)(13)(iii)(A) through (b)(13)(iii)(D) of this section.

(ii) DSS will:

(A) Document the requirements of each Limited FCL, including the limitations of access to classified information.

(B) Verify a Limited FCL only to the sponsoring GCA or foreign government.

(C) Ensure, in accordance with paragraph (b)(7) of this section, that the contractor has and implements a TCP consistent with DoD 5220.22–M.

(D) Process a home office along with a branch or division, when the GCA or foreign government sponsors the branch or division for a Limited FCL and ensure that the limitations of the Limited FCL are applied to the home office as well as the branch or division.

(E) Administratively terminate the Limited FCL when the FCL is no longer required.

(iii) There are four types of Limited FCLs:

(A) A GCA may sponsor a joint venture company established in the United States for the purpose of supporting a cooperative arms program involving DoD. An authorized GCA official, at the PEO level or higher, must certify in writing that the classified information to be provided to the company has been authorized for disclosure to the participating governments in compliance with U.S. National Disclosure Policy NDP–1, ''National Policy and Procedures for the Disclosure of Classified Military Information to Foreign Governments and International Organizations,'' (available to designated disclosure authorities on a need-to-know basis from the Office of the Deputy Under Secretary of Defense for Policy Integration and Chief of Staff to the Under Secretary of Defense for Policy). Key management personnel (KMPs) and employees may be citizens of the countries of ownership, if DSS is able to obtain security assurances. The non-U.S. citizens retain their foreign government issued personnel security clearances. The company FSO must be a cleared U.S. citizen as set forth in DoD 5220.22–M.

(B) A U.S. subsidiary of a foreign company may be sponsored for a Limited FCL by the government of the foreign parent company when the foreign government desires to award a contract to the U.S. subsidiary involving access to classified information for which the foreign government is the original classification authority (i.e., FGI), and there is no other need for the U.S, subsidiary to have an FCL. The KMPs must all be U.S. citizens. However, if the U.S. subsidiary is to have access to U.S. classified information in the performance of the contract, the U.S. subsidiary must be considered for one of the FOCI agreements set forth in paragraph (b)(4)(iii) of this section.

(C) A foreign owned freight forwarder may be sponsored for a Limited FCL by a foreign government for the purpose of providing services only to the sponsoring government. Access to U.S. classified information or material will be limited to information and material that has been authorized for export to the sponsoring government consistent with an approved direct commercial sale contract or foreign military sales letter of offer and acceptance. KMPs and employees may be citizens of the sponsoring government, if DSS is able to obtain security assurances on the individuals. As non-U.S. citizens, these individuals would not be eligible for a LAA; would be assigned under an extended visit authorization, and would retain their foreign government issued personnel security clearances. The FSO must be a U.S. citizen.

(D) A senior GCA official, consistent with paragraph (f)(3) of § 117.55, may sponsor a U.S. company, determined to be under FOCI by DSS, for a Limited FCL when the other FOCI agreements described in paragraph (b)(4)(iii) and paragraphs (b)(13)(iii)(A) through (b)(13)(iii)(D) of this section do not apply, and there is a compelling need for the FCL. The official must fully describe the compelling need and certify in writing that the sponsoring GCA accepts the risk inherent in not negating or mitigating the FOCI. The Limited FCL permits performance only on a classified contract issued by the sponsoring GCA.

(14) *Foreign Mergers, Acquisitions, Takeovers and CFIUS.* (i) CFIUS is a USG interagency committee chaired by the Treasury Department whose purpose is to review transactions that could result in the control of a U.S. business by a foreign person in order to determine the effect of such transactions on the national security of the United States. The regulations defining the CFIUS process are at 31 CFR part 800, ''Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons''.

(ii) DoD is a member of CFIUS. DoD procedures for reviewing and monitoring transactions filed with CFIUS are provided in DoD Instruction 2000.25.

(iii) The CFIUS review and the DSS industrial security review for FOCI are separate processes subject to independent authorities, with different time constraints and considerations. However, CFIUS may not mitigate national security risks that are adequately addressed by other provisions of law.

(iv) If the NISP process has not begun or has not been completed prior to the submission of a CFIUS notice, DSS will review, adjudicate, and mitigate FOCI on a priority basis. DSS will provide all relevant information to the OUSD(I) Security Directorate specifically, for any transaction undergoing concurrent CFIUS and DSS reviews.

(A) By the 10th calendar day after the CFIUS review period begins DSS will advise the OUSD (AT&L) Manufacturing and Industrial Base Policy (MIBP) CFIUS Team electronically, with a copy to the OUSD(I) Security Directorate, of the U.S. company's FCL status (e.g., no FCL, FCL in process, TS/S/C FCL).

(B) For contractors or U.S. companies in process for an FCL, DSS will provide the following input in a signed memorandum with rationale included to the Director, Security, OUSD(I) Security Directorate on or before the suspense date established by the MIBP CFIUS Team:

(*1*) Basic identification information about the contractor, to include name, address, and commercial and government entity code.

(*2*) FCL level.

(*3*) Identification of current classified contracts, to include identification of GCAs and any requirement for access to proscribed information.

(*4*) The nature and status of any discussions DSS has had with the contractor or the foreign interest regarding proposed FOCI mitigation measures.

(*5*) Whether DSS requires additional time beyond the established MIBP CFIUS team suspense date to determine and recommend to the OUSD(I) Security Directorate whether the proposed FOCI mitigation is sufficient to address risks within the scope of DSS's FOCI authorities.

(*6*) Identification of any known security issues (e.g., marginal or unsatisfactory security rating, unresolved counterintelligence concerns, alleged export violations).

(v) If it appears that an agreement cannot be reached on material terms of a FOCI action plan, or if the U.S. company subject to the proposed transaction fails to comply with the FOCI reporting requirements of DoD 5220.22–M, DSS may recommend additional time through the OUSD(I) Security Directorate to resolve any national security issues related to FOCI mitigation.

(vi) If the proposed transaction involves access to proscribed information and the contractor is contemplating the use of an SSA to mitigate FOCI, the GCA will provide DSS with a preliminary determination regarding the acceptability of the proposed FOCI mitigation. The determination must be provided to DSS one day prior to the suspense date established by the MIBP CFIUS Team and must include whether a favorable NID will be provided. If the GCA does not notify DSS, DSS will not delay implementation of a FOCI action plan pending completion of a GCA's NID process as long as there is no indication that the NID will be denied.

(vii) If DSS, under its FOCI authorities, is notified of a transaction with respect to which the parties thereto have not filed a notice with CFIUS, DSS will notify the MIBP CFIUS Team through the OUSD(I) Security Directorate.

(viii) When a merger, sale, or acquisition of a contractor is finalized prior to having an acceptable FOCI mitigation agreement in place, DSS will take actions consistent with paragraph (b)(2)(iv) of this section.

Dated: April 2, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–07826 Filed 4–8–14; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0096]

RIN 1625–AA08

Special Local Regulation; Charleston Race Week, Charleston Harbor; Charleston, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a special local regulation on the waters of Charleston Harbor in Charleston, South Carolina during Charleston Race Week, a series of sailboat races. The races are scheduled to take place on April 11, 2014 through April 13, 2014. Approximately 300 sailboats are anticipated to participate in the races. The special local regulation is necessary to provide for the safety of life on the navigable waters of the United States during the races. The special local regulation consists of three race areas. Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: This rule is effective on April 11, 2014 through April 13, 2014. This rule will be enforced daily from 9 a.m. until 4:30 p.m.

ADDRESSES: Documents indicated in this preamble are part of docket USCG–2014–0096. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''Search.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Christopher Ruleman, telephone (843) 740–3184, email *Christopher.L.Ruleman@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information about the event until February 4, 2014. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

Under *5 U.S.C. 553(d)(3),* the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date for this special local regulation is contrary to the public interest because immediate action is needed to minimize potential danger to the race participants, participant vessels, spectators, and the general public.

B. 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 insure safety of life on navigable waters of the United States during three Charleston Race Week sailboat races.

C. Discussion of the Final Rule

From April 11, 2014 through April 13, 2014, Charleston Ocean Racing Association will host three sailboat races on Charleston Harbor in Charleston, South Carolina during Charleston Race Week. Approximately 300 sailboats will be participating in the three races.

The rule establishes a special local regulation on certain waters of Charleston Harbor in Charleston, South Carolina. The special local regulation will be enforced daily from 9 a.m. until 4:30 p.m. on April 11, 2014 through April 13, 2014. The special local regulation consists of the following three race areas.

1. *Race Area #1.* All waters encompassed within an 800 yard radius of position 32°46′23″ N, 79°55′11″ W.
2. *Race Area #2.* All waters encompassed within a 900 yard radius of position 32°45′54″ N, 79°54′41″ W.
3. *Race Area #3.* All waters encompassed within a 900 yard radius of position 32°46′09″ N, 79°53′52″ W.

Except for those persons and vessels participating in the sailboat races, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the race areas unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the race areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated

representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the race areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The economic impact of this rule is not significant for the following reasons: (1) Although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated areas without authorization from the Captain of the Port Charleston or a designated representative, they may operate in the surrounding area during the enforcement periods; (2) persons and vessels may still enter, transit through, anchor in, or remain within the regulated areas if authorized by the Captain of the Port Charleston or a designated representative; and (3) the Coast Guard will provide advance notification of the special local regulation to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within the waters of Charleston Harbor encompassed within the three regulated areas between 9 a.m. and 4:30 p.m., from April 11, 2014 through April 13, 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.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a special local regulation 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. Because this regulation is substantially unchanged from the regulation issued when the prior determination was made and there have been no new developments relevant to that determination, we have not completed a new environmental analysis checklist and Categorical Exclusion Determination for this regulation. The previously completed environmental analysis checklist and Categorical Exclusion Determination can be found at docket number USCG–2013–0081 at *www.regulations.gov*. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 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 § 100.T07–0096 to read as follows:

§ 100.T07–0096 Special Local Regulation; Charleston Race Week, Charleston Harbor; Charleston, SC.

(a) *Regulated Areas.* The following regulated areas are established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area # 1.* All waters encompassed within an 800 yard radius of position 32°46′23″ N, 79°55′11″ W.

(2) *Race Area # 2.* All waters encompassed within a 900 yard radius of position 32°45′54″ N, 79°54′41″ W.

(3) *Race Area # 3.* All waters encompassed within a 900 yard radius of position 32°46′09″ N, 79°53′52″ W.

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

(c) *Regulations.* (1) Except for those persons and vessels participating in the sailboat races, all persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the three regulated areas unless authorized by the Captain of the Port Charleston or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the regulated areas may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within any of the regulated areas is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

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

(d) *Enforcement Period.* This rule will be enforced daily from 9 a.m. until 4:30 p.m. from April 11, 2014 through April 13, 2014.

Dated: March 19, 2014.

R.R. Rodriguez,

Captain, U.S. Coast Guard, Captain of the Port Charleston.

[FR Doc. 2014–07837 Filed 4–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0133]

RIN 1625–AA00

Safety Zone: Akadama Fireworks Display, Richmond Inner Harbor, Richmond, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the navigable waters of Richmond Inner Harbor near Richmond, CA in support of the Akadama Fireworks Display on April 19, 2014. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

DATES: This rule is effective on April 19, 2014. This rule will be enforced from 8:45 p.m. to 9:15 p.m. on April 19, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0133. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard received the information about the fireworks display on February 27, 2014, and the fireworks display would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

B. Basis and Purpose

The legal basis for the rule is 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish safety zones.

Akadama Incorporated will sponsor the Akadama Fireworks Display on April 19, 2014, at Barbara and Jay Vincent Park near Richmond, CA in approximate position 37°54′28″ N, 122°21′07″ W (NAD 83) as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18653. Upon the commencement of the fireworks display, the safety zone will encompass the navigable waters around the land based launch site at Barbara and Jay Vincent Park within a radius of 350 feet. The fireworks display is meant for entertainment purposes. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics.

C. Discussion of the Final Rule

The Coast Guard will enforce a safety zone in navigable waters around the land based launch site at Barbara and Jay Vincent Park near Richmond, CA. Upon the commencement of the 30 minute fireworks display, scheduled to take place from 8:45 p.m. to 9:15 p.m. on April 19, 2014, the safety zone will encompass the navigable waters around the fireworks launch site within a radius 350 feet from position 37°54′28″ N, 122°21′07″ W (NAD 83) for the Akadama Fireworks Display. At the conclusion of the fireworks display the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the launch site until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the launch site to ensure the safety of participants, spectators, and transiting vessels.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule will not rise to the level of necessitating a full Regulatory Evaluation. The safety zone is limited in duration, and is limited to a narrowly tailored geographic area. In addition, although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities.

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.

This rule may affect owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone would be activated, and thus subject to enforcement, for a limited duration. When the safety zone is activated, vessel traffic could pass safely around the safety zone. The maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of

power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3707; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T11–628 to read as follows:

§ 165.T11–628 Safety zone; Akadama Fireworks Display, Richmond Inner Harbor, Richmond, CA.

(a) *Location.* This temporary safety zone is established for the navigable waters of Richmond Inner Harbor at Barbara and Jay Vincent Park near Richmond, CA as depicted in National Oceanic and Atmospheric Administration (NOAA) Chart 18653. The temporary safety zone will encompass the navigable waters around the fireworks launch site in approximate position 37°54′28″ N, 122°21′07″ W (NAD 83) within a radius of 350 feet.

(b) *Enforcement Period.* The zone described in paragraph (a) of this section will be enforced from 8:45 p.m. through 9:15 p.m. on April 19, 2014. The Captain of the Port San Francisco (COTP) will notify the maritime community of periods during which this zone will be enforced via Broadcast Notice to Mariners in accordance with 33 CFR 165.7.

(c) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general regulations in 33 CFR Part 165, Subpart C, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or a designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

Dated: March 20, 2014.

Gregory G. Stump,

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

[FR Doc. 2014–07924 Filed 4–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0177]

RIN 1625–AA00

Safety Zone; Lake Havasu Gran Prix; Lake Havasu, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within the navigable waters of Lake Havasu for the Lake Havasu Gran Prix. The temporary safety zone is necessary to provide safety for the participants, crew, rescue personnel, and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective directly after the conclusion of the Desert Storm Shootout marine event boat race, from approximately 1:00 p.m. to 4:00 p.m. on April 26, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2014–0177]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Giacomo Terrizzi, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7656, email *d11marineeventssandiego@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
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because an NPRM would be impracticable and contrary to public interest. The logistical details for this event were not known to the Coast Guard until there was insufficient time remaining before the events to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable and contrary to public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime high speed boat race, which are discussed further below.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, waiting for a 30 day notice period to run would be impracticable and contrary to the public interest.

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The Lake Havasu Gran Prix will consist of 25 powerboats racing around a closed circuit course for a specified amount of laps on a portion of Lake Havasu located adjacent to and west of Thompson Bay, off of the peninsula of Pittsburg Point. This racing location in Lake Havasu is in a different location than past years. This annual event will also occur directly after the conclusion of the approved annual marine event Desert Storm Shootout.

The Lake Havasu Grand Prix requires a safety zone while the participants are on the course, thus restricting vessel traffic within a portion of Lake Havasu during the four hours scheduled for the race. There will be fifteen patrol vessels provided by the sponsor to patrol the boundaries of the safety zone.

C. Discussion of the Final Rule

The Coast Guard is establishing a safety zone that will be enforced between the hours of 1:00 p.m. to 4:00 p.m. on April 26, 2014 directly after the conclusion of the Desert Storm Shootout. The limits of the safety zone will include a portion of Lake Havasu with an eastern zone line from Algoma Pier Head Lighthouse southeast to the point just west of Grass Island encompassed by the following coordinates:

34°26′51″ N, 114°20′41″ W
34°27′17″ N, 114°20′51″ W

The western zone line is from Split Rock Lighthouse southwest to the closest peninsula on the California side illustrated by the following coordinates:

34°27′18″ N, 114°22′34″ W
34°26′55″ N, 114°22′59″ W

The coordinates for the Lake Havasu Grand Prix are the same coordinates for the Desert Storm shootout, held earlier in the day and restricting boating traffic. Both the Lake Havasu Grand Prix and the Desert Storm Shootout are reoccurring marine events listed in 33 CFR 100.1102 (Table 1). Use of a Safety Zone is established because a notice of enforcement of a marine event special local regulation would be inaccurate for the following reasons. First, 33 CFR 100.1102 Table 1 discussed the Lake Havasu Grand Prix occurring in a different location of the waterway. Second, the normally annual event did not occur the previous year. For these reasons, a safety zone is necessary to provide for the safety of participants, crew, rescue personnel, and other users of the waterway.

For the safety zone, persons and vessels will be prohibited from entering into, transiting through, or anchoring within the safety zone unless authorized by the Captain of the Port, or his designated representative. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the safety zone being of a limited duration of no more than four hours, limited to a relatively small geographic area of Lake Havasu, and occurring directly after the conclusion of Desert Storm Shootout.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the impacted portion of the Colorado River from 1:00 p.m. to 4:00 p.m. on April 26, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone impacts a relatively small area. Small entities can conduct their activities in areas not impacted by this event by transiting around the event or gaining permission by the Captain of the Port, or his designated representative for an escort through the race area. This event included planning with various stakeholders prior to the event permit request was submitted. Finally, before the effective period, the Coast Guard will publish a Local Notice to Mariners.

3. Assistance for Small Entities

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

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

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves

establishment of a safety zone on the navigable waters of Lake Havasu. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–631 to read as follows:

§ 165.T11–631 Safety zone; Lake Havasu Gran Prix, Lake Havasu, AZ

(a) *Location.* The limits of the safety zone will include a portion of Lake Havasu with an eastern zone line from Algoma Pier Head Lighthouse southeast to the point just west of Grass Island, illustrated by the following coordinates: 34°26′51″ N, 114°20′41″ W; 34°27′17″ N, 114°20′51″ W. The western zone line is from Split Rock Lighthouse southwest to the closest peninsula on the California side illustrated by the following coordinates: 34°27′18″ N, 114°22′34″ W; 34°26′55″ N, 114°22′59″ W.

(b) *Enforcement Period.* This rule is effective directly after the conclusion of the Desert Storm Shootout from 1:00 p.m. to 4:00 p.m. on April 26, 2014.

(c) *Definitions.* The following definition applies to this section: *designated representative* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) Mariners requesting permission to transit through the safety zone may initiate request authorization to do so from the event sponsor who may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard or designated patrol personnel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: March 26 2014.

S.M. Mahoney,

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

[FR Doc. 2014–07922 Filed 4–8–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0957; FRL–9907–82]

Imazapyr; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of imazapyr in or on soybean, meal at 4.5 ppm; and soybean, seed at 4.0 ppm. BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective April 9, 2014. Objections and requests for hearings must be received on or before June 9, 2014, and must be filed in accordance with the instructions provided in 40 CFR Part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0957, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Lois Rossi, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

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. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR Part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR Part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0957 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 9, 2014. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR Part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR Part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0957, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 4, 2011 (76 FR 6465) (FRL–8858–7), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E7793) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.500 be amended by establishing tolerances for residues of the herbicide, imazapyr, [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid], in or on soybean, meal at 4.5 ppm; and soybean, seed at 4.0 ppm. That document referenced a summary of the petition prepared by BASF Corporation, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for imazapyr including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with imazapyr follows.

In 2003, EPA quantitatively assessed the risk of imazapyr tolerances in connection with the final rule published in the **Federal Register** of September 26, 2003 (68 FR 55475) (FRL–7321–4) establishing tolerances for imazapyr in or on grass, forage; grass, hay; fish; shellfish; fats of cattle, sheep, goats, and horses; kidney of cattle, sheep, goats, and horses; meat byproducts (except kidney) of cattle, sheep, goats, and horses; meat of cattle, sheep, goats, and horses; and milk. At that time, EPA determined that the aggregate risks from exposure to imazapyr were minimal. In reviewing the current tolerance petition, EPA determined that the toxicity database for imazapyr is complete and no additional studies are needed. EPA also determined that the toxicity data identified no hazard from imazapyr regardless of the route of exposure or the species tested. In the absence of evidence of neurotoxicity, immunotoxicity, genotoxicity, carcinogenicity, or other acute or chronic toxicity in conjunction with no adverse developmental or reproductive effects, the Agency concluded that a quantitative risk assessment for imazapyr was no longer needed and that EPA could determine based on a qualitative assessment of the imazapyr database that the proposed import tolerances are safe. This conclusion is supported by the findings in the last risk assessment, which were based on conservative (protective) toxicity endpoints showing only negligible aggregate exposures and risks identified from dietary, residential, and swimming and occupational routes. As indicated in this unit, EPA has determined that this prior quantitative assessment overstated risk because the current toxicology database shows no evidence of adverse effects from exposure to imazapyr. Because EPA is not quantitatively assessing the risk of imazapyr based on a reliance on the use of safety factors, EPA has not retained the additional safety factor described in FFDCA section 408(b)(2)(C) for the protection of infants and children.

Therefore, based on EPA's qualitative assessment of the imazapyr risk and the prior quantitative risk assessment discussed in the final rule published in the **Federal Register** of September 26, 2003, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to imazapyr and its metabolites or degradates.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography with tandem mass spectrometric detection (LC/MS/MS) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established MRLs for imazapyr on soybean.

V. Conclusion

Therefore, tolerances are established for residues of imazapyr, [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1H-imidazol-2-yl]-3-pyridinecarboxylic acid], in or on soybean, meal at 4.5 ppm; and soybean, seed at 4.0 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 27, 2014.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.500, revise the introductory text of paragraph (a) and add alphabetically the following commodities to the table in paragraph (a) to read as follows:

§ 180.500 Imazapyr; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide, imazapyr, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only the residues of imazapyr [2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-pyridinecarboxylic acid].

Commodity	Parts per million
* * * * *	
Soybean, meal [1]	4.5
Soybean, seed [1]	4.0
* * * * *	

[1] There are no U.S. registrations.

* * * * *

[FR Doc. 2014–07694 Filed 4–8–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 130717632–4285–02]

RIN 0648–BD52

International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions in the Eastern Pacific Ocean

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

ACTION: Final rule.

SUMMARY: NMFS is issuing regulations under the Tuna Conventions Act of 1950, as amended, to implement decisions of the Inter-American Tropical Tuna Commission (IATTC). At its eighty-fifth meeting in June 2013, the IATTC adopted a number of resolutions, some of which require rulemaking to implement domestic regulations in the United States. This final rule implements one of these decisions: the Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean during 2014–2016 (Resolution C–13–01). This final rule extends the effective period of the regulations in the IATTC Convention Area that expired at the end of 2013 and provides purse seine owners with greater flexibility by allowing for an exemption during the closure periods due to force majeure. The expired regulations included a 500-metric ton bigeye tuna (*Thunnus obesus*) calendar year catch limit applicable to longline vessels greater than 24 meters in overall length and a 62-day closure period applicable each year to purse seine vessels of class size 4 to 6 (greater than 182 metric tons). The final rule also

includes an exemption to the purse seine closures due to force majeure. Implementation of Resolution C–13–01 is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: This final rule is effective May 9, 2014.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to (enter office name) and by email to *OIRA_Submission@omb.eop.gov*, or fax to (202) 395–7285. Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR), as well as the proposed rule, are available via the Federal e-Rulemaking Portal: *http://www.regulations.gov*, docket NOAA–NMFS–2014–0014 or contact with the Regional Administrator, William W. Stelle, Jr., NMFS West Coast Regional Office, 7600 Sand Point Way, NE., Bldg 1, Seattle, WA 98115–0070, or *RegionalAdministrator.WCRHMS@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Heidi Taylor, NMFS at 562–980–4039 or Celia Barroso, NOAA/NMFS Affiliate at 562–432–1850.

SUPPLEMENTARY INFORMATION:

Background

On February 5, 2014, NMFS published a proposed rule in the **Federal Register** (79 FR 6876) that would revise and add to regulations at 50 CFR part 300, subpart C. The purpose of the proposed rule was to implement IATTC Resolution C–13–01, Resolution on a Multiannual Program for the Conservation of Tuna in the Eastern Pacific Ocean during 2014–2016, and was open to public comment through February 25, 2014. One comment was received and it was in support of the proposed conservation and management measures. No changes have been made to the proposed rule.

This final rule is implemented under authority of the Tuna Conventions Act (16 U.S.C. 951–961), which authorizes the Secretary of Commerce with approval by the Secretary of State, to promulgate such regulations as may be necessary to carry out the obligations of the United States as a member of the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission (Convention), including the decisions of the IATTC. The authority to promulgate regulations has been delegated to NMFS.

The proposed rule included background information on the Convention and the IATTC, the international obligations of the United States under the Convention and the basis for the proposed regulations, which are not repeated here.

Tuna Conservation Measures for 2014 Through 2016

This final rule extends the effective period of the purse seine closure period of 62 days, which expired at the end of 2013, to the years 2014 through 2016. Therefore, this final rule prohibits purse seine vessels subject to these requirements from fishing in the Convention Area for a period of 62 days in each fishing year for 2014, 2015, and 2016. This rule also continues to give applicable purse seine vessel owners the ability to choose between the two possible closure periods for each fishing year in 2014 through 2016. These closures would be in one of two periods in each year as follows:

2014: 29 July to 28 September, or from 18 November to 18 January 2015.
2015: 29 July to 28 September, or from 18 November to 18 January 2016.
2016: 29 July to 28 September, or from 18 November to 18 January 2017.

A vessel's owner, manager, or association representative is required to provide the West Coast Regional Administrator, via fax to (562) 980–4047 or email to *RegionalAdministrator.WCRHMS@noaa.gov*, by July 1 of each fishing year (2014, 2015, and 2016) with the following information: (1) Name and official number of fishing vessel; (2) the closure period the vessel will adhere to in that year; and, (3) the vessel owner or managing owner's name and signature. If a vessel owner fails to notify the Regional Administrator of his or her choice by the July 1 deadline, the vessel is subject to the later closure period (November 18 to January 18 of the following calendar year) by default.

A purse seine vessel owner may request an exemption to the 62-day closure described in the paragraph above due to force majeure, in which a vessel is rendered unable to return to sea for a period of at least 62 days. Force majeure is defined as a situation in which a vessel is disabled due to mechanical and/or structural failure, fire, or explosion. To place a request for exemption due to force majeure, the vessel operator is required to contact the NMFS West Coast Region Sustainable Fisheries Division Assistant Regional Administrator, via email or fax, and provide evidence necessary to demonstrate that the vessel did not proceed to sea for at least 62 days and that the facts on which the request for exemption is based were due to force majeure. If an exemption is initially denied, a request for reconsideration may be made within 10 days to the West Coast Regional Administrator. If the request is accepted, the purse seine vessel owner may observe a reduced closure period of 30 consecutive days.

This final rule also extends the effective period of the high seas time/area closure for tuna purse seine vessels in class sizes 4 to 6, which expired at the end of 2013, to 2014 through 2016. The area is bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude. In addition, this rule extends, from 2014 through 2016, the annual bigeye tuna catch limit of 500 metric tons in the Convention Area for U.S. longline vessels over 24 meters in overall length.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Tuna Conventions Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a Final Regulatory Flexibility Analysis was not required and none was prepared.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0387. Public reporting burden for the request for exemption due to force majeure is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov*, or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to 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.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: April 3, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300, subpart C is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, subpart C, continues to read as follows:

Authority: 16 U.S.C. 951–961 *et seq.*

■ 2. In § 300.21, revise the definition for ''Regional Administrator'', and add the definitions for ''Force majeure'', ''Overall length'', and ''Sustainable Fisheries Division (SFD) '' in alphabetical order to read as follows:

§ 300.21 Definitions.

* * * * *

Force majeure means, for the purpose of § 300.25, a situation in which a vessel is disabled by mechanical and/or structural failure, fire or explosion.

* * * * *

Overall length means registered length, or the horizontal distance between the outboard side of the foremost part of the stem and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments for a single-hull vessel; for a multi-hull vessel, it is the horizontal distance between the outboard side of the foremost part of the stem of the foremost hull and the outboard side of the aftermost part of the stern of the aftermost hull, excluding fittings or attachments (See 46 CFR 69.203).

Regional Administrator means the Regional Administrator for the West Coast Region, National Marine Fisheries Service, or a designee.

* * * * *

Sustainable Fisheries Division (SFD) means the Assistant Regional Administrator for the Sustainable Fisheries Division, West Coast Region, National Marine Fisheries Service, or a designee.

* * * * *

■ 3. In § 300.25, the heading of paragraph (b) and paragraphs (b)(2) and (f) are revised to read as follows:

§ 300.25 Eastern Pacific fisheries management.

* * * * *

(b) *Tuna catch limits in the longline fishery in the Convention Area. (1)*

* * *

(2) For each of the calendar years 2014, 2015, and 2016, there is a limit of 500 metric tons of bigeye tuna that may be captured and landed by longline gear in the Convention Area by fishing vessels of the United States that are over 24 meters in overall length.

* * * * *

(f) *Purse seine closures in the Convention Area.* (1) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used to fish with purse seine gear in the Convention Area for 62 days in each of the years 2014, 2015, and 2016 during one of the following two periods:

(i) From 0000 hours UTC on July 29 to 2400 hours UTC on September 28, or

(ii) From 0000 hours UTC on November 18 to 2400 hours UTC on January 18 of the following year.

(2) A vessel owner, manager, or association representative of a vessel that is subject to the requirements of paragraph (f)(1) of this section must in 2014, 2015, and 2016 provide written notification to the Regional Administrator declaring to which one of the two closure periods identified in paragraph (f)(1) of this section his or her vessel will adhere in that year. This written notification must be submitted by fax at (562) 980–4047 or email at R*egionalAdministrator.WCRHMS@noaa.gov* and must be received no later than July 1 in each of the years 2014, 2015, and 2016. The written notification must include the vessel name and registration number, the closure dates that will be adhered to by that vessel, and the vessel owner or managing owner's name, signature, business address, and business telephone number.

(3) If written notification is not submitted per paragraph (f)(2) of this section for a vessel subject to the requirements under paragraph (f)(1) of this section, that vessel must adhere to the closure period under paragraph (f)(1)(ii) of this section.

(4) *Request for exemption due to force majeure.* A request for exemption due to force majeure must be made to the Sustainable Fisheries Division by fax at (562) 980–4047 or emailed to *RegionalAdministrator.WCRHMS@noaa.gov.* The request must include the name and official number of the vessel, vessel owner or manager's name and signature, and evidence to support the request, which may include but is not limited to photographs, repair bills, certificates of departure from port, and in the case of a marine casualty, a completed copy of the U.S. Coast Guard Form CG–2692A (See 46 CFR 4.05–10).

(i) If accepted by the Sustainable Fisheries Division, the request for exemption due to force majeure will be forwarded to the IATTC Director. If declined by the Sustainable Fisheries Division, within 10 days of the date that rejection, the applicant may give additional information or documentation to the Regional Administrator with a request that the initial decision be reconsidered by fax at (562) 980–4047 or email to *RegionalAdministrator.WCRHMS@noaa.gov;* the Regional Administrator shall respond within 14 business days.

(ii) If the request for an exemption due to force majeure is accepted by the IATTC, the vessel must observe a closure period of 30 consecutive days in the same year during which the force majeure event occurred, in one of the two closure periods described in paragraph (f)(1) of this section.

(5) A vessel of class size 4 (182 to 272 metric tons carrying capacity) may make one fishing trip of up to 30 days duration during the specified closure period in paragraph (f)(1) of this section, provided that the vessel carries an observer of the On-Board Observer Program of the Agreement on the International Dolphin Conservation Program during the entire fishing trip.

(6) A fishing vessel of the United States of class size 4–6 (more than 182 metric tons carrying capacity) may not be used from 0000 hours on September 29 to 2400 hours on October 29 in the years 2014, 2015, and 2016 to fish with purse seine gear within the area bounded at the east and west by 96° and 110° W. longitude and bounded at the north and south by 4° N. and 3° S. latitude.

(7) At all times while a vessel is in a time/area closed period established under paragraphs (f)(1) or (f)(6) of this section, unless fishing under exceptions established under paragraphs (f)(4) or (f)(5) of this section, the fishing gear of the vessel must be stowed in a manner as not to be readily available for fishing. In particular, the boom must be lowered as far as possible so that the vessel cannot be used for fishing, but so that the skiff is accessible for use in emergency situations; the helicopter, if

any must be tied down; and launches must be secured.

* * * * *

[FR Doc. 2014–07905 Filed 4–8–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120405260–4258–02]

RIN 0648–BC12

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Revisions to Dealer Permitting and Reporting Requirements for Species Managed by the Gulf of Mexico and South Atlantic Fishery Management Councils

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a Generic Amendment to the Fishery Management Plans (FMPs) in the Gulf of Mexico (Gulf) and South Atlantic Regions (Generic Dealer Amendment). The Generic Dealer Amendment amends the following FMPs: Reef Fish Resources of the Gulf, Red Drum Fishery of the Gulf, Snapper-Grouper Fishery (including wreckfish) of the South Atlantic Region, Golden Crab Fishery of the South Atlantic Region, Shrimp Fishery (excluding penaeid shrimp) of the South Atlantic Region, Dolphin and Wahoo Fishery of the Atlantic, Coastal Migratory Pelagic (CMP) Resources of the Gulf and South Atlantic, and Spiny Lobster Fishery of the Gulf and South Atlantic, as prepared by the Gulf and South Atlantic Fishery Management Councils (Councils). This final rule modifies the permitting and reporting requirements for seafood dealers who first receive species managed by the Councils through the previously mentioned FMPs. These revisions create a single dealer permit for dealers who first receive fish managed by the Councils, require both purchase and non-purchase reports to be submitted online on a weekly basis, prohibit dealers from first receiving fish from federally permitted vessels if they are delinquent in submitting reports, and change the sale and purchase provisions based on the new dealer permitting requirements. This rule also adds regulatory language to clarify the bag limit for private recreational vessels when a trip exceeds one calendar day. The purpose of this rule is to obtain timelier purchase information from dealers to better monitor annual catch limits (ACLs) and achieve optimum yield (OY) in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective August 7, 2014.

ADDRESSES: Electronic copies of the Generic Dealer Amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and OMB, by email at *OIRA Submission@omb.eop.gov*, or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *rich.malinowski@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Councils manage the fisheries for Gulf Reef Fish Resources, Gulf Red Drum, South Atlantic Snapper-Grouper (including wreckfish), South Atlantic Golden Crab, South Atlantic Rock Shrimp, Atlantic Dolphin and Wahoo, Gulf and South Atlantic CMP, and Gulf and South Atlantic Spiny Lobster under their respective FMPs. The FMPs were prepared by the Councils and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act.

On December 19, 2013, NMFS published a notice of availability for the Generic Dealer Amendment and requested public comment (78 FR 76807). On January 2, 2014, NMFS published a proposed rule for the Generic Dealer Amendment and requested public comment (79 FR 81). The proposed rule and the Generic Dealer Amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

This final rule modifies the current permitting and reporting requirements for seafood dealers who first receive fish managed by the Councils through eight FMPs. This final rule creates one universal dealer permit (a Gulf and South Atlantic dealer permit), increases the frequency of dealer reporting, requires dealers to report purchases and non-purchases electronically, prohibits dealers from continuing to receive fish from federally permitted vessels if they are delinquent in submitting their reports, and revises the sale and purchase provisions for certain federally managed species. Management Measures Contained in this Final Rule

Gulf and South Atlantic Dealer Permits

This final rule creates a single dealer permit (a Gulf and South Atlantic dealer permit) that is required to first receive the species currently covered by the six dealer permits (Atlantic Dolphin-Wahoo, Gulf Reef Fish, South Atlantic Golden Crab, South Atlantic Rock Shrimp, South Atlantic Snapper-Grouper and South Atlantic Wreckfish), as well as Gulf and South Atlantic CMP, Gulf and South Atlantic spiny lobster, and Gulf red drum. A Gulf and South Atlantic dealer permit is not required to first receive South Atlantic coral, South Atlantic pelagic *Sargassum,* Gulf coral and coral reef species, and Gulf and South Atlantic penaeid shrimp species.

The Councils exempted penaeid shrimp species from the Gulf and South Atlantic dealer permit because ACLs have not been established for these species (because they have annual life cycles). Thus, the current reporting system is adequate for determining catch and effort for these species and the administrative burden of issuing such a large number of shrimp dealer permits outweighs the benefits of more timely shrimp dealer reports. The Councils did not include corals or pelagic *Sargassum* because coral harvest is limited to octocoral harvest off Florida and does not require a Federal harvest permit if landed in Florida, and there is no recorded harvest of pelagic *Sargassum* from Federal waters.

Frequency and Method of Dealer Reporting

This final rule requires federally permitted dealers to submit a detailed electronic report of all fish first received for a commercial purpose via the dealer electronic trip ticket reporting system. These electronic reports must be submitted on a weekly basis and are due by 11:59 p.m., local time, the Tuesday following a reporting week. A reporting week is defined as beginning at 12:01 a.m., local time, on Sunday and ending at 11:59 p.m., local time, the following Saturday. Dealers who first receive Gulf migratory king mackerel harvested by the run-around gillnet sector in the southern Florida west coast subzone must submit their dealer reports for these species on a daily basis. These reports must be submitted through the

dealer electronic trip ticket reporting system by 6 a.m., local time, for the previous day's harvest. In addition to reporting purchases, federally permitted dealers are also required to submit records of no purchases via the dealer electronic trip ticket reporting system at the same frequency and via the same process as records for purchases. The Councils and NMFS allow non-purchases to be reported up to 90 days in advance, if such an option exists in the state reporting system. If, after submitting an advance no purchase report, the dealer does receive fish, then a purchase report must be submitted for those fish.

Every state, except South Carolina, requires dealers to submit reports electronically through the dealer electronic trip ticket reporting system. South Carolina requires paper-based reporting, but does allow electronic reporting in addition to filing paper reports. Therefore, under this final rule dealers in South Carolina would be required to report both by paper (according to state regulations) and electronically (according to Federal regulations). These electronic trip ticket reports would still go first to the state trip ticket reporting system and subsequently to NMFS. The Science and Research Director (SRD), Southeast Fisheries Science Center, NMFS, or the alternate SRD, Northeast Fisheries Science Center, NMFS (for species harvested from Virginia through Maine) receives all of the electronic dealer reports within approximately 3 days of data entry, and uses the data for ACL monitoring. Under this final rule dealers will continue to use their state trip ticket reporting system.

The data elements currently reported through the state trip ticket systems include the trip ticket number, dealer or processor's name, Federal permit number and state dealer license number, vessel name, U.S. Coast Guard documentation number and state registration number, vessel trip report number, date the vessel leaves the dock, date the vessel offloads the catch, date of purchase, species, amount landed, price per unit, port and state of landing, gear used, area fished, size category, and condition and disposition of the catch.

During catastrophic conditions only, this final rule allows dealers to use a paper-based system for submitting dealer reports. The Regional Administrator (RA) will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants are affected. The RA will provide notice of a paper-based system via notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the use of the paper-based system for the duration of the catastrophic conditions. The paper forms will be available from NMFS.

Non-Reporting

This final rule stipulates that dealers who are delinquent on submitting their reports are prohibited from receiving fish from federally permitted vessels until they have submitted all required reports. This provision will aid in enforcement efforts to ensure dealer reports are submitted in a timely manner.

Revisions to Sale and Purchase Provisions

This final rule revises the sale and purchase requirements for federally managed species based on changes to the dealer permitting requirements. This final rule allows federally managed species harvested on board a federally permitted vessel to be sold or transferred to any dealer with a Gulf and South Atlantic dealer permit, instead of just a dealer for a specific fishery (except for individual fishing quota (IFQ) species which are still required to be sold to a dealer with an IFQ dealer endorsement). This final rule also allows dealers with a Gulf and South Atlantic dealer permit to first receive all federally managed species harvested in or from the EEZ by federally permitted vessels (except for IFQ species, in which case the dealer is also required to have an IFQ dealer endorsement).

This final rule also clarifies that federally permitted vessels may sell federally managed species harvested in either Federal waters or adjoining state waters only to a dealer who has a valid Gulf and South Atlantic dealer permit. This provision places restrictions on certain federally permitted vessels that currently are able to sell their catch to non-federally permitted dealers. Through this rulemaking, vessels with commercial or charter vessel/headboat permits for CMP and vessels with Federal commercial permits for spiny lobster, including the Federal tail-separation permit, are allowed to sell federally managed species (including bag-limit caught CMP) that are harvested in either Federal waters or adjoining state waters only to a dealer who has a valid Gulf and South Atlantic dealer permit. In addition, all federally permitted vessels that harvest CMP species under the bag limit in Federal waters or adjoining state waters are required to sell those CMP species only to a dealer who has a valid Gulf and South Atlantic dealer permit.

Other Changes Contained in This Final Rule

This final rule adds the following sentence to 50 CFR 622.11(a): ''Unless specified otherwise, a person is limited to a single bag limit for a trip lasting longer than one calendar day,'' to clarify the regulations regarding how the bag limit is determined for private recreational vessels when a trip exceeds one calendar day. This clarification reflects the original intent of the Councils. This change is not related to the Generic Dealer Amendment.

Implementation and Compliance Timeline for This Final Rule

In an effort to minimize the burden on currently permitted dealers, and provide for a smooth transition to the new Gulf and South Atlantic dealer permit, this final rule is effective 4 months after the date of publication, on August 7, 2014. Upon publication of the final rule, on April 9, 2014, dealers that currently do not have a valid Federal dealer permit for any Gulf or South Atlantic fishery may submit an application for a Gulf and South Atlantic dealer permit. Gulf and South Atlantic dealer permits will be issued within 30 days of receipt of a completed dealer permit application, so applicants should submit their application at least 30 days prior to the date upon which they need the permit to be effective. However, the Gulf and South Atlantic dealer permit requirement, and the associated reporting and recordkeeping requirements contained in this final rule, are not effective until August 7, 2014. Therefore, dealers issued Gulf and South Atlantic dealer permits before August 7, 2014 will be required to continue to purchase Gulf and South Atlantic species under existing Federal permitting requirements and are not allowed to operate under the Gulf and South Atlantic permit until August 7, 2014. Likewise, these dealers will not be required to report until August 7, 2014.

For those dealers who already have a valid Federal dealer permit for any Gulf or South Atlantic fishery, NMFS will treat their current permit as a Gulf and South Atlantic dealer permit as of August 7, 2014. These dealers will not be required to apply for a new Gulf and South Atlantic dealer permit until their existing permit(s) expire at some point after August 7, 2014. This means that dealers who currently have a valid Federal dealer permit for any Gulf or South Atlantic fishery may begin to first receive all species covered under the Gulf and South Atlantic dealer permit on August 7, 2014, and must comply with all reporting and recordkeeping

requirements contained in this rule as of August 7, 2014. Therefore, all federally permitted dealers (those with a current valid Federal dealer permit for any Gulf or South Atlantic fishery, and those with a new Gulf and South Atlantic dealer permit), must comply with the dealer reporting and recordkeeping requirements contained in this final rule as of August 7, 2014.

Comments and Responses

NMFS received five comment submissions on the Generic Dealer Amendment and the proposed rule; two from seafood dealers, one from a non-profit environmental organization, and two from fishing organizations. The non-profit environmental organization expressed general support for the actions contained in the Generic Dealer Amendment and the proposed rule, including the timely transmission of accurate dealer purchase information (including both reports of fish landings and/or of a no landing reports) to monitor ACLs. A summary of the comments and NMFS' responses to those comments appears below.

Comment 1: NMFS should send an automated response and time stamp to dealers when a purchase form is received.

Response: All data are initially submitted to the states via the trip ticket reporting systems in place. A time stamp is generated by the trip ticket software to indicate when the data were submitted by the dealer. This time stamp is accessible to the dealer if the dealer requests it from the state trip ticket reporting system. NMFS does not have authority over the state trip ticket reporting system, and therefore cannot send automated responses to dealers after they submit information to state-controlled reporting systems; however, dealers may work with the states to get the information they need for their businesses.

Comment 2: NMFS should contact dealers if a dealer is out of compliance with the reporting deadline (for both purchase and non-purchase reports) before suspending the dealer's ability to purchase product.

Response: It is the dealer's responsibility to ensure compliance with all Federal reporting deadlines. Nonetheless, NMFS is investigating the creation of an email notification system to let dealers know when they become out of compliance with the reporting requirements implemented in this final rule. If NMFS implements such a system in the future, NMFS will notify dealers of this capability.

Comment 3: There is no provision in this amendment or rule in the event a computer hardware, software, or internet access problem occurs. The rule would shut down a business for not submitting electronic reports on time.

Response: In the event of technical issues with a dealer's computer equipment or internet access, the dealer will need to utilize other computer resources for timely submission of the electronic reports, such as a mobile device or public access computer. NMFS will allow paper based reporting in the event of catastrophic conditions only. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants are affected. The RA will provide notice of a paper-based system via notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the use of the paper-based system for the duration of the catastrophic conditions. The paper forms will be available from NMFS.

Comment 4: Increasing regulations and reporting frequencies are economically detrimental to smaller businesses. The impacts of reporting were not thoroughly considered, such as the additional cost of computer maintenance. In addition, the assessment understated the significance of the economic effects of the proposed rule on small entities.

Response: NMFS agrees that increasing regulations may have adverse economic effects on businesses and the significance of these effects may be greater for smaller businesses; however, NMFS disagrees that the economic effects of the proposed rule on small entities were understated. As stated in the analysis provided in the proposed rule, none of the requirements contained in this final rule require special professional skills and all affected small entities are expected to already have staff with the appropriate skills to meet these requirements. The analysis also provided an estimate of the permitting requirement for entities that do not currently have a Federal permit ($74.42 per entity), the expected cost of a computer (less than $750), and the expected cost of internet access (less than $100 per month) for any entities that do not currently have a computer or internet service. The average annual computer maintenance cost is unknown, but is not expected to increase as a result of the requirements in this rule. Although these expenses may be burdensome to some dealers, overall the requirements are not expected to adversely affect a substantial number of small entities because the use of computers and the internet has become commonplace and a vital tool in business management and, according to the SBA, in 2010, approximately 94 percent of businesses used computers and 95 percent of these had internet service. Additionally, all affected entities currently operate in states that require electronic reporting, except South Carolina, and South Carolina allows electronic reporting. The estimated number of entities in South Carolina that will be affected by this rule is 38, or approximately 4 percent of the total number of small businesses expected to be affected. Thus, even if none of the small businesses in South Carolina have elected to report electronically, only approximately 4 percent of the affected entities would incur any of the additional reporting costs associated with computer purchase, maintenance, and internet access. For all affected entities, satisfying the reporting frequency requirements of this final rule will only require more frequent submission of the same quantity and quality of data that is already being reported. As a result, because at least 96 percent of the small businesses affected by this rule are expected to already have the required skill, hardware, and internet access to meet state and common general business operational requirements, this final rule will not have a significant impact on a substantial number of small entities.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined that this final rule is necessary for the management of Gulf reef fish, Gulf red drum, South Atlantic snapper-grouper (including wreckfish), South Atlantic golden crab, South Atlantic rock shrimp, Atlantic dolphin and wahoo, Gulf and South Atlantic CMP, and Gulf and South Atlantic spiny lobster and is consistent with the Generic Dealer Amendment, the FMP, the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. Comments on the economic analysis are addressed in the comments and responses section of this final rule. No changes to the final rule were made in

response to these comments. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the requirements of the Paperwork Reduction Act (PRA), which have been approved by OMB under control numbers 0648–0013 and 0648–0205. NMFS estimates the requirement for dealers to report electronically will decrease the overall dealer reporting burden under OMB control number 0648–0013, because dealers will report all species through the electronic dealer trip ticket reporting system offered in each state, and NMFS will receive these data from the states. This eliminates a duplication of effort on the dealers who were reporting similar information to the states and to NMFS (except for South Carolina, which still requires paper reporting).

NMFS estimates the requirement for dealers to report more frequently (weekly instead of semi-monthly or monthly) will not create more burden on dealers, because the dealers will still be reporting the same amount of information, they will just be submitting the same quantity of data more frequently.

NMFS estimates the reporting burden under OMB control number 0648–0205 will increase because more dealers will be required to apply for a Federal dealer permit through this rulemaking (approximately 1,000 entities, including 300 current dealers and 700 new dealers). NMFS estimates the requirement for dealers to complete the Federal Permit Application for an Annual Dealer Permit to obtain a Gulf and South Atlantic Dealer Permit will average 20 minutes per response (for new permits and renewals). NMFS estimates the requirement to complete ''doing business as'' (DBA) names and check a box indicating whether or not a business is active with respect to its secretary of state on the Federal Permit Application for an Annual Dealer Permit under OMB control number 0648–0205 will average 1 minute per response.

Finally, NMFS estimates the requirement for dealers to complete their email address on the Federal Permit Application for an Annual Dealer Permit under OMB control number 0648–0205 will average 1 minute per response. These estimates of the public reporting burden include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Notwithstanding any other provision of law, no person is required to respond to, nor shall a 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.

List of Subjects in 50 CFR Part 622

Dealer, Fisheries, Fishing, Gulf of Mexico, Reporting and recordkeeping requirements, South Atlantic.

Dated: April 4, 2014.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.2, the definition ''reporting week'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Reporting week means the period of time beginning at 12:01 a.m., local time, on Sunday and ending at 11:59 p.m., local time, the following Saturday.

* * * * *

■ 3. In § 622.4, the third sentence in paragraph (h) is revised to read as follows:

§ 622.4 Permits and fees—general.

* * * * *

(h) * * * In addition, a copy of the dealer's permit must accompany each vehicle that is used to pick up from a fishing vessel fish harvested from the EEZ. * * *

* * * * *

■ 4. In § 622.5, paragraph (c) is added to read as follows:

§ 622.5 Recordkeeping and reporting—general.

* * * * *

(c) *Dealers*—(1) *Permitted Gulf and South Atlantic dealers.* (i) A person issued a Gulf and South Atlantic dealer permit must submit a detailed electronic report of all fish first received for a commercial purpose within the time period specified in this paragraph, via the dealer electronic trip ticket reporting system. These electronic reports must be submitted at weekly intervals via the dealer electronic trip ticket reporting system by 11:59 p.m., local time, the Tuesday following a reporting week. If no fish were received during a reporting week, an electronic report so stating must be submitted for that reporting week. Dealers must submit electronic reports for Gulf migratory group king mackerel harvested by the run-around gillnet sector in the southern Florida west coast subzone daily via the dealer electronic trip ticket reporting system by 6 a.m., local time, for the previous day's harvest. Until the commercial ACL (commercial quota) for the run-around gillnet sector for Gulf migratory group king mackerel is reached, if no king mackerel were received, an electronic report so stating must be submitted for that day.

(ii) Dealers must retain either the paper forms or electronic reports for at least 1 year after the submittal date and must provide such records for inspection upon the request of an authorized officer or the SRD.

(iii) During catastrophic conditions only, the ACL monitoring program provides for use of paper-based components for basic required functions as a backup. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, NOAA weather radio, fishery bulletins, and other appropriate means and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(iv) Gulf and South Atlantic dealers are not authorized to first receive Gulf reef fish, Gulf red drum, South Atlantic golden crab, South Atlantic snapper-grouper, South Atlantic wreckfish, South Atlantic rock shrimp, coastal migratory pelagic fish, spiny lobster, or Atlantic dolphin or wahoo from a federally permitted vessel if the required reports have not been submitted and received by NMFS according to the reporting requirements under this section. Delinquent reports automatically result in a Gulf and South Atlantic dealer becoming ineligible to first receive such fish, regardless of any notification to dealers by NMFS. Gulf and South Atlantic dealers who become ineligible to receive such fish due to delinquent reports are authorized to first receive such fish only after all required and delinquent reports have been submitted and received by NMFS

according to the reporting requirements under this section.

(2) *Non-permitted dealers.* See § 622.51 for a person who purchases Gulf shrimp from a vessel, or person, that fishes for shrimp in the Gulf EEZ or in adjoining state waters, or that lands shrimp in an adjoining state.

■ 5. In § 622.11, a sentence is added after the second sentence in paragraph (a)(1) to read as follows:

§ 622.11 Bag and possession limits—general applicability.

* * * * *

(a) * * *

(1) * * * Unless specified otherwise, a person is limited to a single bag limit for a trip lasting longer than one calendar day. * * *

* * * * *

■ 6. In § 622.13, paragraph (h) is added to read as follows:

§ 622.13 Prohibitions—general.

* * * * *

(h) First receive fish from federally permitted vessels if the required reports have not been submitted in accordance with § 622.5(c).

* * * * *

■ 7. In § 622.20, paragraph (c)(1) is revised to read as follows:

§ 622.20 Permits and endorsements.

* * * * *

(c) * * *

(1) *Permits.* For a dealer to first receive Gulf reef fish harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

* * * * *

■ 8. In § 622.21, paragraph (b)(2) is revised to read as follows:

§ 622.21 Individual fishing quota (IFQ program) for Gulf red snapper.

* * * * *

(b) * * *

(2) *Gulf IFQ dealer endorsements.* In addition to the requirement for a Gulf and South Atlantic dealer permit as specified in § 622.20(c)(1), for a dealer to first receive red snapper subject to the IFQ program for Gulf red snapper, as specified in paragraph (a)(1) of this section, or for a person aboard a vessel with a Gulf IFQ vessel account to sell such red snapper directly to an entity other than a dealer, such persons must also have a Gulf IFQ dealer endorsement. A dealer with a Gulf and South Atlantic dealer permit can download a Gulf IFQ dealer endorsement from the NMFS IFQ Web site at *ifq.sero.nmfs.noaa.gov.* If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ Web site and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf and South Atlantic dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all IFQ fees required, and is not subject to any sanctions under 15 CFR part 904. The endorsement is not transferable.

* * * * *

■ 9. In § 622.22, paragraph (b)(2) is revised to read as follows:

§ 622.22 Individual fishing quota (IFQ program) for Gulf groupers and tilefishes.

* * * * *

(b) * * *

(2) *Gulf IFQ dealer endorsements.* In addition to the requirement for a Gulf and South Atlantic dealer permit as specified in § 622.20(c)(1), for a dealer to first receive groupers and tilefishes subject to the IFQ program for groupers and tilefishes, as specified in paragraph (a)(1) of this section, or for a person aboard a vessel with a Gulf IFQ vessel account to sell such groupers and tilefishes directly to an entity other than a dealer, such persons must also have a Gulf IFQ dealer endorsement. A dealer with a Gulf and South Atlantic dealer permit can download a Gulf IFQ dealer endorsement from the NMFS IFQ Web site at *ifq.sero.nmfs.noaa.gov.* If such persons do not have an IFQ online account, they must first contact IFQ Customer Service at 1–866–425–7627 to obtain information necessary to access the IFQ Web site and establish an IFQ online account. There is no fee for obtaining this endorsement. The endorsement remains valid as long as the Gulf and South Atlantic dealer permit remains valid and the dealer is in compliance with all Gulf reef fish and IFQ reporting requirements, has paid all IFQ fees required, and is not subject to any sanctions under 15 CFR part 904. The endorsement is not transferable.

* * * * *

■ 10. Section 622.25 is revised to read as follows:

§ 622.25 Exemptions for Gulf groundfish trawling.

Gulf groundfish trawling means fishing in the Gulf EEZ by a vessel that uses a bottom trawl, the unsorted catch of which is ground up for animal feed or industrial products.

(a) Other provisions of this part notwithstanding, the owner or operator of a vessel trawling for Gulf groundfish is exempt from the following requirements and limitations for the vessel's unsorted catch of Gulf reef fish:

(1) The requirement for a valid commercial vessel permit for Gulf reef fish in order to sell Gulf reef fish.

(2) Minimum size limits for Gulf reef fish.

(3) Bag limits for Gulf reef fish.

(4) The prohibition on sale of Gulf reef fish after a quota or ACL closure.

(b) Other provisions of this part notwithstanding, a dealer in a Gulf state is exempt from the requirement for a Gulf and South Atlantic dealer permit to receive Gulf reef fish harvested from the Gulf EEZ by a vessel trawling for Gulf groundfish.

■ 11. In § 622.26, paragraph (c) is revised to read as follows:

§ 622.26 Recordkeeping and reporting.

* * * * *

(c) *Dealers.* (1) A dealer who first receives Gulf reef fish must maintain records and submit information as specified in § 622.5(c).

(2) The operator of a vehicle that is used to pick up from a fishing vessel Gulf reef fish must maintain a record containing the name of each fishing vessel from which reef fish on the vehicle have been received. The vehicle operator must provide such record for inspection upon the request of an authorized officer.

■ 12. In § 622.40, paragraphs (b) and (c) are revised to read as follows:

§ 622.40 Restrictions on sale/purchase.

* * * * *

(b) A Gulf reef fish harvested in or from the EEZ or adjoining state waters by a vessel that has a valid commercial vessel permit for Gulf reef fish may be sold or transferred only to a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.20(c)(1).

(c) A Gulf reef fish harvested in or from the EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.20(c)(1), only from a vessel that has a valid commercial vessel permit for Gulf reef fish.

■ 13. Subpart E is revised to read as follows:

Subpart E—Red Drum Fishery of the Gulf of Mexico

Sec.

622.90 Permits.
622.91 Recordkeeping and reporting.
622.92 Prohibited species.
622.93 Adjustment of management measures.

Subpart E—Red Drum Fishery of the Gulf of Mexico

§ 622.90 Permits.

(a) *Dealer permits and conditions*—(1) *Permits.* For a dealer to first receive Gulf red drum harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(b) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

§ 622.91 Recordkeeping and reporting.

(a) *Dealers.* A dealer who first receives Gulf red drum must maintain records and submit information as specified in § 622.5(c).

(b) [Reserved]

§ 622.92 Prohibited species.

(a) *General.* The harvest and possession restrictions of this section apply without regard to whether the species is harvested by a vessel operating under a commercial vessel permit. The operator of a vessel that fishes in the EEZ is responsible for the limit applicable to that vessel.

(b) *Red drum.* Red drum may not be harvested or possessed in or from the Gulf EEZ. Such fish caught in the Gulf EEZ must be released immediately with a minimum of harm.

§ 622.93 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Red Drum Fishery of the Gulf of Mexico, the RA may establish or modify the following items:

(a) Reporting and monitoring requirements, permitting requirements, bag and possession limits (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, annual catch limits (ACLs), annual catch targets (ACTs), quotas (including a quota of zero), accountability measures (AMs), MSY (or proxy), OY, TAC, management parameters such as overfished and overfishing definitions, gear restrictions (ranging from regulation to complete prohibition), gear markings and identification, vessel markings and identification, ABC and ABC control rules, rebuilding plans, sale and purchase restrictions, transfer at sea provisions, and restrictions relative to conditions of harvested fish (maintaining fish in whole condition, use as bait).

(b) [Reserved]

■ 14. In § 622.170, paragraph (c)(1) is revised to read as follows:

§ 622.170 Permits and endorsements.

* * * * *

(c) * * *

(1) *Permits.* For a dealer to first receive South Atlantic snapper-grouper (including wreckfish) harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

* * * * *

■ 15. In § 622.172, paragraphs (b), (c)(6), (c)(7), and (d)(4) are revised to read as follows:

§ 622.172 Wreckfish individual transferable quota (ITQ) system.

* * * * *

(b) *List of wreckfish shareholders.* Annually, on or about March 1, the RA will provide each wreckfish shareholder with a list of all wreckfish shareholders and their percentage shares, reflecting share transactions on forms received through February 15.

(c) * * *

(6) The ''Fish House'' part of each such coupon must be given to the dealer to whom the wreckfish are transferred in amounts totaling the eviscerated weight of the wreckfish transferred to that dealer. Wreckfish may be transferred only to a Gulf and South Atlantic dealer permit holder, as required under § 622.170(c)(1).

(7) A dealer may first receive wreckfish only from a vessel for which a commercial permit for wreckfish has been issued, as required under § 622.170(a)(2). A dealer must receive the ''Fish House'' part of ITQ coupons in amounts totaling the eviscerated weight of the wreckfish received; enter the permit number of the vessel from which the wreckfish were received, enter the date the wreckfish were received, enter the dealer's permit number, and sign each such ''Fish House'' part; and submit all such parts with the electronic dealer reports required by § 622.5(c).

* * * * *

(d) * * *

(4) If a wreckfish harvested by a vessel that has been issued a commercial vessel permit for South Atlantic snapper-grouper and a commercial vessel permit for wreckfish is to be offloaded at a location other than a fixed facility of a dealer who holds a Gulf and South Atlantic dealer permit, as required under § 622.170(c)(1), the wreckfish shareholder or the vessel operator must advise the NMFS Office for Law Enforcement, Southeast Region, St. Petersburg, FL, by telephone (727–824–5344), of the location not less than 24 hours prior to offloading.

■ 16. In § 622.176, paragraph (c) is revised to read as follows:

§ 622.176 Recordkeeping and reporting.

* * * * *

(c) *Dealers.* (1) A dealer who first receives South Atlantic snapper-grouper (including wreckfish) must maintain records and submit information as specified in § 622.5(c).

(2) On demand, a dealer who has been issued a Gulf and South Atlantic dealer permit, as required under § 622.170(c)(1), must make available to an authorized officer all records of offloadings, purchases, or sales of South Atlantic snapper-grouper (including wreckfish).

* * * * *

■ 17. In § 622.192, paragraphs (b) and (c) are revised to read as follows:

§ 622.192 Restrictions on sale/purchase.

* * * * *

(b) South Atlantic snapper-grouper harvested in or from the EEZ or adjoining state waters by a vessel that has a valid commercial vessel permit for South Atlantic snapper-grouper may be sold or transferred only to a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.170(c)(1).

(c) South Atlantic snapper-grouper harvested in or from the EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.170(a), only from a vessel that has a valid commercial permit for South Atlantic snapper-grouper.

* * * * *

■ 18. In § 622.200, the heading of paragraph (c) and paragraph (c)(1) are revised to read as follows:

§ 622.200 Permits.

* * * * *

(c) *Dealer permits and conditions*—(1) *Permits.* For a dealer to first receive South Atlantic rock shrimp harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

* * * * *

■ 19. In § 622.203, paragraph (b) is revised to read as follows:

§ 622.203 Recordkeeping and reporting.

* * * * *

(b) *South Atlantic rock shrimp dealers.* (1) A dealer who first receives South Atlantic rock shrimp must maintain records and submit information as specified in § 622.5(c).

(2) On demand, a dealer who has been issued a Gulf and South Atlantic dealer permit, as required under § 622.200(c)(1), must make available to an authorized officer all records of offloadings, purchases, or sales of rock shrimp.

■ 20. In § 622.209, paragraphs (a)(2) and (3) are revised to read as follows:

§ 622.209 Restrictions on sale/purchase.

(a) * * *

(2) Rock shrimp harvested in or from the EEZ or adjoining state waters by a vessel that has a valid commercial vessel permit for South Atlantic rock shrimp may be sold or transferred only to a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.200(c)(1).

(3) Rock shrimp harvested in or from the EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.200(c)(1), only from a vessel that has a valid commercial vessel permit for rock shrimp.

* * * * *

■ 21. In § 622.240, paragraph (b)(1) is revised to read as follows:

§ 622.240 Permits.

* * * * *

(b) * * *

(1) *Permits.* For a dealer to first receive South Atlantic golden crab harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

* * * * *

■ 22. In § 622.242, paragraph (b) is revised to read as follows:

§ 622.242 Recordkeeping and reporting.

* * * * *

(b) *Dealers.* A dealer who first receives South Atlantic golden crab must maintain records and submit information as specified in § 622.5(c).

■ 23. In § 622.250, paragraphs (c) and (d) are revised to read as follows:

§ 622.250 Restrictions on sale/purchase.

* * * * *

(c) A golden crab harvested in or from the EEZ or adjoining state waters by a vessel that has a valid commercial vessel permit for South Atlantic golden crab may be sold or transferred only to a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.240(b)(1).

(d) A golden crab harvested in or from the EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.240(b)(1), only from a vessel that has a valid commercial vessel permit for golden crab.

■ 24. In § 622.270, the heading of paragraph (d) and paragraph (d)(1) are revised to read as follows:

§ 622.270 Permits.

* * * * *

(d) *Dealer permits and conditions*—(1) *Permits.* For a dealer to first receive Atlantic dolphin or wahoo harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

* * * * *

■ 25. In § 622.271, paragraph (c) is revised to read as follows:

§ 622.271 Recordkeeping and reporting.

* * * * *

(c) *Dealers.* (1) A dealer who first receives Atlantic dolphin or wahoo must maintain records and submit information as specified in § 622.5(c).

(2) *Alternate SRD.* For the purpose of § 622.5(c), in the states from Maine through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS, or a designee.

(3) On demand, a dealer who has been issued a Gulf and South Atlantic dealer permit, as required under § 622.270(d)(1), must make available to an authorized officer all records of offloadings, purchases, or sales of Atlantic dolphin or wahoo.

■ 26. Section 622.279 is revised to read as follows:

§ 622.279 Restrictions on sale/purchase.

(a) Dolphin or wahoo harvested in or from the Atlantic EEZ or adjoining state waters by a vessel that has a valid commercial vessel permit for Atlantic dolphin and wahoo, as required under § 622.270(a)(1), or by a vessel authorized a 200-lb (91-kg) trip limit for dolphin or wahoo, as specified in § 622.278(a)(2), may be sold or transferred only to a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.270(d)(1).

(b) In addition to the provisions of paragraph (a)(1) of this section, a person may not sell dolphin or wahoo possessed under the recreational bag limit harvested in the Atlantic EEZ or adjoining state waters by a vessel while it is operating as a charter vessel or headboat. A dolphin or wahoo harvested or possessed by a vessel that is operating as a charter vessel or headboat with a Federal charter vessel/headboat permit for Atlantic dolphin and wahoo may not be purchased or sold if harvested in or from the Atlantic EEZ or adjoining state waters.

(c) Dolphin or wahoo harvested in or from the Atlantic EEZ may be first received only by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.270(d)(1), and only from a vessel authorized to sell dolphin and wahoo under paragraph (a)(1) of this section.

■ 27. In § 622.370, paragraph (c) is revised and paragraph (d) is added to read as follows:

§ 622.370 Permits.

* * * * *

(c) *Dealer permits and conditions*—(1) *Permits.* For a dealer to first receive Gulf or South Atlantic coastal migratory pelagic fish harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

(2) *State license and facility requirements.* To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

(d) *Permit procedures.* See § 622.4 for information regarding general permit procedures including, but not limited to application, fees, duration, transfer, renewal, display, sanctions and denials, and replacement.

■ 28. In § 622.374, paragraph (c) is revised to read as follows:

§ 622.374 Recordkeeping and reporting.

* * * * *

(c) *Dealers.* (1) A dealer who first receives Gulf or South Atlantic coastal migratory pelagic fish must maintain records and submit information as specified in § 622.5(c).

(2) *Alternate SRD.* For the purpose of § 622.5(c), in the states from New York through Virginia, or in the waters off those states, ''SRD'' means the Science and Research Director, Northeast Fisheries Science Center, NMFS, or a designee.

■ 29. In § 622.386, paragraphs (b) and (c) are added to read as follows:

§ 622.386 Restrictions on sale/purchase.

* * * * *

(b) Coastal migratory pelagic fish harvested in or from the EEZ or adjoining state waters by a vessel that has a valid Federal commercial vessel permit or a charter vessel/headboat permit may be sold or transferred only to a dealer who has a valid Gulf and

South Atlantic dealer permit, as required under § 622.370(c)(1).

(c) Coastal migratory pelagic fish harvested in or from the Gulf or South Atlantic EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.370(c)(1), only from a vessel that has a valid Federal commercial vessel permit, as required under § 622.370(a), or a charter vessel/headboat permit for coastal migratory pelagic fish, as required under § 622.370(b).

■ 30. In § 622.400, paragraph (a)(5) is added to read as follows:

§ 622.400 Permits and fees.

(a) * * *

(5) *Dealer permits and conditions*—(i) *Permits.* For a dealer to first receive Gulf or South Atlantic spiny lobster harvested in or from the EEZ, a Gulf and South Atlantic dealer permit must be issued to the dealer.

(ii) *State license and facility requirements.* To obtain a dealer permit, the applicant must have a valid state wholesaler's license in the state(s) where the dealer operates, if required by such state(s), and must have a physical facility at a fixed location in such state(s).

* * * * *

■ 31. Add § 622.401 to read as follows:

§ 622.401 Recordkeeping and reporting.

(a) *Dealers.* A dealer who first receives Gulf or South Atlantic spiny lobster must maintain records and submit information as specified in § 622.5(c).

(b) [Reserved]

■ 32. Add § 622.416 to subpart R to read as follows:

§ 622.416 Restrictions on sale/purchase.

(a) Spiny lobster harvested in or from the EEZ or adjoining state waters by a vessel that has a valid Federal commercial vessel permit for spiny lobster, as required under § 622.400(a)(1), or a valid Federal tail-separation permit for spiny lobster, as required under § 622.400(a)(2), may be sold or transferred only to a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.400(a)(5).

(b) Spiny lobster harvested in or from the EEZ may be first received by a dealer who has a valid Gulf and South Atlantic dealer permit, as required under § 622.400(a)(5), only from a vessel that has a valid Federal commercial vessel permit for spiny lobster or a valid Federal tail-separation permit for spiny lobster.

[FR Doc. 2014–07983 Filed 4–8–14; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120109034–2171–01]

RIN 0648–XD212

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Trimester Closure and Trip Limit Adjustments for the Common Pool Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: We are closing the Georges Bank cod Trimester Total Allowable Catch Area for the remainder of Trimester 3, through April 30, 2014. Based on our projection, the common pool fishery has caught 97 percent of its Georges Bank cod Trimester 3 total allowable catch, triggering the regulatory requirement to close that area for the remainder of the trimester. This action is intended to prevent an overage of the common pool's Georges Bank cod quota. Because the common pool catch of Georges Bank cod is not limited to the Georges Bank cod Trimester Total Allowable Catch Area, we are reducing the common pool possession and trip limit for the Georges Bank cod stock to zero, in order to prevent the overharvest of the common pool's fishing year 2013 allocation of Georges Bank cod. We are also increasing the common pool possession and trip limit for Southern New England/Mid-Atlantic winter flounder to allow the common pool fishery to catch more of its quota for that stock.

DATES: This action is effective April 9, 2014, through April 30, 2014.

FOR FURTHER INFORMATION CONTACT: Liz Sullivan, Fishery Management Specialist, 978–282–8493.

SUPPLEMENTARY INFORMATION: The regulations at § 648.82(n)(2)(ii) require the Regional Administrator to close the Trimester Total Allowable Catch (TAC) Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The fishing year (FY) 2013 common pool quota for Georges Bank (GB) cod is 32 mt, which is divided into Trimester TACs. The Trimester 3 TAC is 18.2 mt (revised due to underages from Trimesters 1 and 2). Based on the most recent data, which include vessel trip reports (VTRs), dealer-reported landings, and vessel monitoring system (VMS) information, we estimate that 97 percent of the Trimester 3 TAC for GB cod has been caught. Therefore, effective April 9, 2014, the GB cod Trimester TAC Area is closed for the remainder of Trimester 3, through April 30, 2014, to all owners or operators of common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear. The GB cod Trimester TAC Area includes statistical areas 521, 522, 525, and 561. The GB cod Trimester TAC Area will reopen to common pool vessels fishing with trawl, sink gillnet, or longline/hook gear at the beginning of FY 2014, on May 1, 2014.

The regulations at § 648.86(o) authorize the Regional Administrator to adjust the possession and trip limits for common pool vessels to prevent the overharvest or underharvest of the common pool quotas. Based on data reported through March 25, 2014, the common pool fishery has caught approximately 98 percent of its GB cod sub-annual catch limit (sub-ACL) for FY 2013. Despite the GB cod Trimester TAC Area closure described above, recent analysis shows that catch from outside the Trimester TAC Area would likely cause the common pool to exceed its allocation for GB cod if further action is not taken. Therefore, the possession and trip limit for GB cod, defined as cod caught outside the Gulf of Maine Regulated Mesh Area (as defined in § 648.80(a)(1)), is set to zero for all common pool vessels, effective April 9, 2014, through April 30, 2014.

Common pool groundfish vessels that have declared their trip through the VMS or IVR system, and crossed the VMS demarcation line prior to April 9, 2014, may complete their trip in part, or all, in the GB cod Trimester TAC Area. Additionally, such vessels will not be subject to the new possession and trip limit for that trip.

The regulations at § 648.86(o) authorize the Regional Administrator to adjust the possession limits for common pool vessels in order to prevent the overharvest or underharvest of the common pool quotas. As of March 25, 2014, the common pool has caught 81 percent of its sub-ACL of Southern New England/Mid-Atlantic (SNE/MA) winter flounder. To allow the common pool fishery to catch more of its quota for that stock, effective April 9, 2014, the possession and trip limit of SNE/MA winter flounder, defined as winter flounder caught within the Inshore GB and SNE/MA Broad Stock Areas (as defined in § 648.10(k)(3)(ii) and (iv)) for all common pool vessels, per day-at-sea, is increased from 300 lb (0.14 mt) to 1,000 lb (0.45 mt), with a maximum trip limit of 2,000 lb (0.9 mt). We estimate

that if the possession and trip limit is raised, the common pool fleet will reach approximately 88 percent of its quota by the end of the fishing year.

At the end of FY 2013, we will evaluate total common pool catch, and if the common pool fishery has exceeded its annual quota for any stock for FY 2013, we are required to deduct the overage from the respective common pool quota for FY 2014. Uncaught portions of the common pool's annual quota may not be carried over to the next FY. Weekly quota monitoring reports for the common pool fishery can be found on our Web site at: *http://www.nero.noaa.gov/ro/fso/MultiMonReports.htm.* We will continue to monitor common pool catch through VTRs, dealer-reported landings, VMS catch reports, and other available information and, if necessary, we will make additional adjustments to common pool management measures.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations require the Regional Administrator to close a trimester TAC area to the common pool fishery when 90 percent of the Trimester TAC for a stock has been caught. Updated catch information only recently became available indicating that the common pool fishery has caught over 90 percent of its Trimester 3 TAC for GB cod. The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent the immediate closure of the GB cod Trimester 3 TAC area and reduction of trip limits, and would increase the likelihood that the common pool fishery would exceed its quota of GB cod, to the detriment of this stock.

Further, an overage of the Trimester 3 TAC would cause the common pool fishery to exceed its total annual quota for GB cod, which would trigger accountability measures in FY 2014. Overages would not only have negative economic impacts on the common pool fishery, but would also undermine the conservation objectives of the Northeast Multispecies Fishery Management Plan. As a result, immediate implementation of this action is necessary to help ensure that the common pool fishery does not exceed its GB cod quota.

There is additional good cause to waive the delayed effective period because part of this action relieves restrictions on fishing vessels by increasing this possession and trip limit. The possession and trip limit increase for SNE/MA winter flounder reduces the probability of underharvesting for this stock. The time necessary to provide for prior notice and comment, and a 30-day delay in effectiveness, would prevent NMFS from implementing the necessary possession and trip limit adjustment for SNE/MA winter flounder in a timely manner, which could undermine management objectives of the NE Multispecies Fishery Management Plan, and cause negative economic impacts to the common pool fishery.

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

Dated: April 4, 2014.

James P. Burgess,

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

[FR Doc. 2014–07944 Filed 4–4–14; 4:15 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120814338–2711–02]

RIN 0648–BE10

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Biennial Specifications and Management Measures; Inseason Adjustments

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

ACTION: Final rule; inseason adjustments to biennial groundfish management measures.

SUMMARY: This final rule announces an inseason change to management measures in the Pacific Coast groundfish fishery. This action, which is authorized by the Pacific Coast Groundfish Fishery Management Plan (PCFMP) and the Northern Pacific Halibut Act, implements changes to the incidental retention allowance for halibut in the limited entry fixed gear sablefish primary fishery.

DATES: Effective 1200 hours (local time) April 8, 2014.

FOR FURTHER INFORMATION CONTACT: Gretchen Hanshew (West Coast Region, NMFS), phone: 206–526–6147, *gretchen.hanshew@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpo.gov/fdsys/search/home.action.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

The PCGFMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS.

The International Pacific Halibut Commission (IPHC) establishes total allowable catch (TAC) amounts for Pacific halibut each year in January. Under the authority of the Northern Pacific Halibut Act, and implementing regulations at 50 CFR 300.63, a catch sharing plan, developed by the Council and implemented by the Secretary, allocates portions of the annual TAC among fisheries off Washington, Oregon, and California.

Pacific halibut is generally a prohibited species for vessels fishing in Pacific coast groundfish fisheries, unless explicitly allowed in groundfish regulations and authorized by the Pacific halibut catch sharing plan.

In years where the Pacific halibut TAC is above 900,000 lb (408.2 mt), the catch sharing plan for Pacific halibut fisheries in Area 2A (waters off the U.S. West coast) allows the limited entry fixed gear sablefish primary fishery an incidental total catch allowance for Pacific halibut north of Pt. Chehalis, WA (46°53.30′ N. lat.). The 2014 Pacific halibut Area 2A TAC is 960,000 lb (435.45 mt). Therefore, consistent with the provisions of the catch sharing plan, the limited entry fixed gear sablefish primary fishery is allowed an incidental total catch limit of 14,274 lb (6,474 kg) for 2014.

Historically, incidental halibut retention in the primary sablefish fishery has started in May. In the fall of 2012, the Council expressed interest in changing the starting date for halibut retention to the beginning of April, to reduce the amount of incidentally

caught halibut that would be discarded prior to May. This change could not be implemented in 2013 because it required a change to the IPHC's regulations regarding the application date for submitting license applications. At its annual meeting in January 2014, the IPHC changed its license application deadlines so that individuals wishing to retain halibut in the sablefish primary fishery could receive their IPHC licenses prior to the commencement of the fishery (March 12, 2014, 79 FR 13906). Therefore, NMFS is now issuing this inseason change to the groundfish regulations to allow for incidental halibut retention starting in April.

Changing the starting date of halibut retention is expected to result in improved access to the halibut quota for this fishery. Total catches in 2012 and 2013 were well below the allocations for those years. The 2014 total catch limit is lower than what has been available to the sablefish primary fishery in recent years (2012–13). However, total catches in 2012 and 2013 were well below the new, lower, 2014 allocation. In 2012 total catch of Pacific halibut in the sablefish primary fishery was only 4,400 lb (1,996 kg) and the 2013 total catch was 12,000 lb (5,443 kg). NMFS notes that, given the recent total catch levels, liberalizing the incidental catch restrictions is anticipated to allow total catch of Pacific halibut to approach, but not exceed, the 2014 allocation for the sablefish primary fishery.

The Council considered the dates and catch ratio established in the groundfish regulations at 50 CFR 660.231 at its first opportunity following the IPHC's decision to change its license application deadline and its decision on the 2014 TAC, the March 2014 meeting. The Council considered options to: Increase the amount of time the incidental catch ratio in the sablefish primary fishery is in effect; and whether or not to revise the catch ratio. These options were developed to allow incidentally caught halibut to be retained, while keeping total catch below the 2014 Pacific halibut allocation. Because catches in 2012 (4,400 lbs) and 2013 (12,000 lbs) were below the allocation for 2014 (14,274 lbs), the Council recommended maintaining the 2013 catch ratio in 2014 with a one month earlier start date, (April 1 rather than May 1).

In order to allow incidental halibut catch in the sablefish primary fishery to begin on April 1, rather than May 1, the Council recommended and NMFS is implementing incidental halibut retention regulations at 50 CFR 660.231 (b)(3)(iv) to allow the catch ratio of ''75 lb (34 kg) dressed weight of halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional halibut in excess of the 75-pounds-per-1,000-pound ratio per landing'' to be in effect ''From April 1 through October 31.''

The retention limits for halibut were not revised as part of the 2013–2014 harvest specifications and management measures because the Pacific halibut TAC is developed each year based on the most current scientific information, and the TAC for 2014 was not determined until the IPHC meeting in January, 2014.

Classification

This final rule makes routine inseason adjustments to groundfish fishery management measures, based on the best available information, consistent with the PCGFMP and its implementing regulations. The adjustment to the halibut incidental catch restrictions in the limited entry fixed gear sablefish primary fishery is taken under the authority of the Magnuson Stevens Act, based on actions taken under the Northern Pacific Halibut Act and implementing regulations, and is consistent with the approved catch sharing plan.

This action is taken under the authority of 50 CFR 660.60(c) and is exempt from review under Executive Order 12866.

The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, West Coast Region, NMFS, during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to groundfish management measures under 5 U.S.C. 553(b) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective April 8, 2014.

As described above, this inseason action is based on information that became available very recently. The changes to the incidental halibut retention in the sablefish primary fishery north of Pt. Chehalis, WA (46°53.30′ N. lat.), and the subsequent proposed management measure changes are based in part on decisions made by the IPHC at its January 2014 meeting. At that meeting, the IPHC determined the 2014 halibut TAC based on the most current scientific information regarding the status of the halibut stock, and changed its licensing deadline to accommodate an earlier start date for retention of incidentally caught halibut in the sablefish primary fishery. Based on those actions, the Council made its final recommendations at its March 8–13, 2014 meeting. The Council considered the public comments on this matter and recommended that these changes be implemented by April 1, 2014. There was not sufficient time after that meeting to complete notice and comment rulemaking before these changes need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent NMFS from managing fisheries using the best available science to approach, without exceeding, allocations accordance with the PCGFMP, the Northern Pacific Halibut Act, and other applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington State. These adjustments to management measures must be implemented in a timely manner, by April 1, 2014 or as quickly as possible thereafter, to allow incidental catch of halibut in the sablefish primary fishery, reducing regulatory discards, while keeping total catch below the 2014 halibut Area 2A allocation.

No aspect of this action is controversial, and changes of this nature were anticipated in the biennial harvest specifications and management measures established for 2013–2014.

Accordingly, for the reasons stated above, NMFS finds good cause to waive prior notice and comment and to waive the delay in effectiveness.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Indian fisheries.

Dated: April 4, 2014.

James P. Burgess,

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

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. In § 660.231, paragraph (b)(3)(iv) is revised to read as follows:

§ 660.231 Limited entry fixed gear sablefish primary fishery.

* * * * *

(b) * * *

(3) * * *

(iv) *Incidental halibut retention north of Pt. Chehalis, WA (46°53.30′ N. lat.).* From April 1 through October 31, vessels authorized to participate in the sablefish primary fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53.30′ N. lat.) may possess and land up to the following cumulative limits: 75 lb (34 kg) dressed weight of halibut for every 1,000 pounds (454 kg) dressed weight of sablefish landed and up to 2 additional halibut in excess of the 75-pounds-per-1,000-pound ratio per landing. ''Dressed'' halibut in this area means halibut landed eviscerated with their heads on. Halibut taken and retained in the sablefish primary fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be possessed or landed south of Pt. Chehalis.

* * * * *

[FR Doc. 2014–07982 Filed 4–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130925836–4174–02]

RIN 0648–XD182

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2014 Pacific cod total allowable catch apportioned to catcher/processors using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 4, 2014, through 1200 hours, A.l.t., September 1, 2014.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2014 Pacific cod total allowable catch (TAC) apportioned to catcher/processors using hook-and-line gear in the Central Regulatory Area of the GOA is 1,603 metric tons (mt), as established by the final 2014 and 2015 harvest specifications for groundfish of the GOA (79 FR 12890, March 6, 2014).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2014 Pacific cod TAC apportioned to catcher/processors using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,573 mt and is setting aside the remaining 30 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher/processors using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher/processors using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 3, 2014.

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

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

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

Dated: April 4, 2014.

James P. Burgess,

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

[FR Doc. 2014–07948 Filed 4–4–14; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 79, No. 68

Wednesday, April 9, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Doc. No. AMS–FV–14–0020; FV14–920–1 CR]

Kiwifruit Grown in California; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible California kiwifruit growers to determine whether they favor continuance of the marketing order regulating the handling of kiwifruit grown in California.

DATES: The referendum will be conducted from May 15 through May 30, 2014. To vote in this referendum, growers must have produced kiwifruit in California during the period August 1, 2012, through July 31, 2013.

ADDRESSES: Copies of the marketing order may be obtained from the California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721–3129, or the Office of the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237, or Internet: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathie Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@ams.usda.gov,* respectively.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 920, as amended (7 CFR part 920), hereinafter referred to as the ''order,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted from May 15 through May 30, 2014, among eligible California kiwifruit growers. Only current growers that were also engaged in the production of kiwifruit in California during the period of August 1, 2012, through July 31, 2013, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor the continuation of marketing order programs. USDA would consider termination of the order if more than fifty percent of the growers voting in the referendum and growers of more than fifty percent of the volume of California kiwifruit represented in the referendum favor termination of their program. In evaluating the merits of continuance versus termination, USDA will consider the results of the continuance referendum and other relevant information regarding operation of the order. USDA will also consider the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials used in the referendum herein ordered have been approved by the Office of Management and Budget (OMB), under OMB No. 0581–0189, Generic Fruit Crops. It has been estimated that it will take an average of 20 minutes for each of the approximately 173 growers of California kiwifruit to cast a ballot. Participation is voluntary. Ballots postmarked after May 30, 2014, will not be included in the vote tabulation.

Kathie Notoro and Rose Aguayo of the California Marketing Field Office, Fruit and Vegetable Program, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400–900.407).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents or from their appointees.

List of Subjects in 7 CFR Part 920

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Kiwifruit.

Authority: 7 U.S.C. 601–674.

Dated: April 4, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–07980 Filed 4–8–14; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket Nos. PRM–50–104; NRC–2012–0046]

Emergency Planning Zones

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), dated February 15, 2012, which was filed with the NRC by Michael Mariotte on behalf of the Nuclear Information and Resource Service (NIRS or the petitioner) and 37 co-petitioners. The petitioner requested that the NRC amend its regulations that govern domestic licensing of production and utilization facilities to expand existing emergency planning zones (EPZ) around nuclear power plants, create a new EPZ, and require the incorporation of concurrent natural disasters in the required periodic emergency plan drills. The NRC is denying the petition because the NRC concludes that the current size of the emergency planning zones is appropriate for existing reactors and that emergency plans will provide an adequate level of protection of the public health and safety in the event of an accident at a nuclear power plant.

The current EPZs provide for a comprehensive emergency planning framework that would allow expansion of the response efforts beyond the designated distances should events warrant such an expansion.

DATES: The docket for the petition for rulemaking, PRM–50–104, is closed on April 9, 2014.

ADDRESSES: Please refer to Docket ID NRC–2012–0046 when contacting the NRC about the availability of information for this petition. You may access publicly-available information related to this petition by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search on Docket ID NRC–2012–0046. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- The 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.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 *pdf.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. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in Section IV of this document, Availability of Documents.
- The NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Doyle, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3748; email: *Daniel.Doyle@nrc.gov*.

SUPPLEMENTARY INFORMATION:

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I. The Petition
II. Public Comments on the Petition
III. Determination of the Petition
IV. Availability of Documents

I. The Petition

On February 15, 2012, the NIRS filed a petition for rulemaking. The petition was docketed by the NRC and assigned Docket No. PRM–50–104 (ADAMS Accession No. ML12048B004). On April 30, 2012, the NRC published in the **Federal Register** a notice of receipt and request for public comment for PRM–50–104 (77 FR 25375). The public comment period closed on July 16, 2012. For more information regarding the public comments received, see Section II, Public Comments on the Petition, of this document.

The petitioner requested that the NRC amend § 50.47, ''Emergency Plans,'' of Title 10 of the *Code of Federal Regulations* (10 CFR) and appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' to 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' and include the modifications in 10 CFR part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.'' Specifically, the petitioner requested that the NRC: (1) expand the plume exposure pathway EPZ radius from a 10-mile radius to a 25-mile radius; (2) establish a new 50-mile radius emergency response zone, with more limited requirements than the plume exposure pathway EPZ; (3) expand the ingestion pathway EPZ radius from a 50-mile radius to a 100-mile radius; and (4) require nuclear power plant licensees' emergency plans be ''tested to encompass initiating and/or concurrent natural disasters that may affect both accident progression and evacuation conduct.'' The petitioner asserted that ''the requested amendments are essential for the protection of public health and safety in light of the real-world experience of the Chernobyl and Fukushima disasters, which were more severe and affected a much larger geographical area than provided for in NRC regulations.''

The petitioner stated that ''[t]he NRC should amend 10 C.F.R. 50.47(c)(2) to create a three-tiered emergency planning zone. . . .'' The petitioner's three-tiered EPZ included a 25-mile plume exposure pathway EPZ, 50-mile emergency response zone, and 100-mile ingestion exposure pathway zone. The following paragraphs provide the petitioner's proposed revisions to 10 CFR 50.47(c)(2).

25-Mile Plume Exposure Pathway EPZ

The petitioner proposed the following revision to 10 CFR 50.47(c)(2) with regard to the plume exposure pathway EPZ:

> A Plume Exposure Pathway zone shall consist of an area about 25 miles (40 km) in radius. Within this zone, detailed plans must be developed to provide prompt and effective evacuation and other appropriate protective measures, including conducting of biannual full-scale emergency evacuation drills. Sirens will be installed within this zone to alert the population of the need for evacuation. Transportation for elderly, prison and school populations shall be provided within this zone. Emergency shelters shall be located outside of the 25-mile zone.

The petitioner asserted that the expansion of the plume exposure pathway EPZ from a 10-mile radius to a 25-mile radius ''would provide no new requirements other than expansion of the EPZ.''

50-Mile Emergency Response Zone

The petitioner proposed the following revision to 10 CFR 50.47(c)(2) to establish an ''emergency response zone'':

> The [emergency response zone] shall be about 50 miles in radius. Within this 50 mile zone, the licensee must identify evacuation routes for all residents within this zone and annually provide information to all residents within this zone about these routes and which they are supposed to take in the event of an emergency. The licensee must make basic pre-arrangements for potential transport of disabled/hospital/prison populations. Emergency centers for the public currently located less than 25 miles out shall be relocated to 25 miles or further out. Information shall be made available to the public within this zone through television, internet and radio alerts, text message notices, and other appropriate means of public communication.

The petitioner noted that this revision ''would require measures be carried out between the new 25 mile Plume Exposure Pathway EPZ and a new Emergency Response Zone of about a 50 mile radius.'' The petitioner stated that the plume exposure pathway EPZ emergency evacuation requirements and biannual exercises are not required in the emergency response zone. The petitioner further stated ''this new zone would provide a modest level of pre-planning that would enable rapid expansion of the 25 mile zone when necessary. Information regarding evacuation such as identification of evacuation routes and locations of emergency shelters in the event of a large-scale disaster would be identified and would be provided to members of the public annually, and a limited number of other pre-arrangements would be made.''

100-Mile Ingestion Exposure Pathway Zone

The petitioner proposed the following revision to 10 CFR 50.47(c)(2) with regard to the ingestion pathway EPZ:

> The ingestion pathway EPZ shall be about 100 miles in radius. In the event of a radioactive release, the deposition of radionuclides on crops, other vegetation, bodies of surface water and ground surfaces can occur. Measures will be implemented to protect the public from eating and drinking food and water that may be contaminated. Information shall be made available to the public within this zone through television and radio alerts, text message notices, and other appropriate means of public communication.

The petitioner stated that ''[t]he current Ingestion Exposure Pathway Zone exists to protect food, water and anything intended for human consumption within 50 miles of a nuclear power plant.'' The petitioner further stated, ''[g]iven that radiation can, and does, have far-reaching effects on food on a large radius, the Ingestion Pathway EPZ should be expanded.''

Drills and Exercises

The petitioner proposed amending 10 CFR 50.47(b)(14) with regard to drills and exercises by adding:

> Within the emergency evacuation zone full scale drills and exercises will be conducted on a biannual basis. Every other exercise and drill shall include a scenario involving an initiating or concurrent regionally-appropriate natural disaster.

II. Public Comments on the Petition

The NRC received a total of 5,993 comment submissions, 5,953 in support of the petition and 40 opposing it. There were 5,942 submissions from individuals of whom 5,940 supported the petition and 2 opposed it. Of the 5,942 submissions from individuals, 5,702 were form letters. Of the 5,702 form letters, 2,421 expressed support for the petition and 3,281 requested co-petitioner status. One of the form letters requesting co-petitioner status had 1,839 signatures. Ten submissions were from environmental, nuclear, or energy oriented citizen activist groups. All 10 supported the petition. Two submissions were received from organizations associated with the nuclear power industry. Both submissions opposed the petition. Thirty-six submissions were received from State or local government emergency management agencies or radiation control organizations. All 36 submissions opposed the petition. Three submissions were received from local governments. All 3 supported the petition.

The NRC has prepared a comment response document to demonstrate how all comments were considered and to respond to the issues identified in the comments. The NRC's comment response document is available in ADAMS under Accession No. ML14042A227.

The NRC identified 14 separate issues raised by the petition and public comments. Issues 1 through 12 contain arguments for expanding the EPZs. Issues 13 and 14 concern requirements for exercises that include a regionally-relevant initiating or concurrent natural disaster. Each issue and accompanying rationale is fully discussed and evaluated in this document, followed by NRC's response.

Many comments were considered to be out-of-scope because they did not address the merits of the petition for rulemaking. These comments are not discussed in this document but are addressed in the NRC's comment response document.

Issue 1. Expand EPZs because, in the event of a nuclear accident, the need for protective actions beyond 10 miles and 50 miles is highly likely.

One rationale used to support the petitioner's argument that EPZs must be expanded is that protective actions beyond 10 miles and 50 miles are highly likely in the event of a nuclear accident as demonstrated by the real-world experience from the accidents at the Chernobyl Nuclear Power Station (Chernobyl) and the Fukushima Dai-ichi Nuclear Power Plant (Fukushima Dai-ichi). The petitioner stated that these accidents ''were more severe and affected a much larger geographical area than provided for in NRC regulations.''

Some commenters agreed and called for the NRC to make the emergency planning (EP) regulations more realistic given that actual evacuations beyond 10 miles and food interdiction efforts beyond 50 miles took place after the accidents at Chernobyl and Fukushima Dai-ichi.

Two emergency management agencies stated that Chernobyl should not be used as an example to justify revising EP regulations because the design of the Chernobyl facility is not used in the United States.

The Nuclear Energy Institute disagreed that Chernobyl should be used as an example to justify revising the EP regulations because ''the [p]etition presents no new insights into the Chernobyl accident that should cause the Commission to modify the conclusions reached in the [*Citizens Task Force of Chapel Hill, et al.,* 32 NRC 281 (1990)] decision or NUREG–1251 ['Implications of the Accident at Chernobyl for Safety Regulation of Commercial Nuclear Power Plants in the United States,' dated April 30, 1989 (ADAMS Accession Nos. ML082030501 and ML082030502)].''

NRC Response to Issue 1

The NRC disagrees with the petitioner's assertions on this issue. The current EPZs provide a comprehensive EP framework that would allow for expansion of the response efforts beyond the designated distances should the events warrant such an expansion.

As specified in 10 CFR 50.47(c)(2), two EPZs are established around each nuclear power plant. The technical basis for the EPZs is provided in NUREG–0396, EPA–520/1–78–016, ''Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants,'' dated December 1978 (ADAMS Accession No. ML051390356). The first zone, the plume exposure pathway EPZ, establishes an area of approximately 10 miles in radius. Within the plume exposure pathway EPZ, detailed planning is required for the recommendation and implementation of protective actions such as sheltering in place or evacuation. The ingestion pathway EPZ has a radius of approximately 50 miles from the plant. Within this EPZ, detailed planning is required to address the potential need to interdict foodstuffs to prevent human exposure from ingestion of contaminated food and surface water.

The NRC remains confident that the emergency preparedness programs in support of nuclear power plants provide an adequate level of protection of the public health and safety and that appropriate protective actions can and will be taken in the event of a radiological event at an existing nuclear power plant. The NRC routinely inspects nuclear power plant licensees' EP programs to ensure compliance with regulations and biennially inspects a demonstration exercise that integrates the response of offsite and onsite organizations, including the licensee and State and local authorities. The Federal Emergency Management Agency (FEMA) evaluates the offsite response in these exercises to ensure the State and local responders (i.e., offsite response organizations (ORO)) are capable of timely protective action decisionmaking and implementation. Public meetings are held at the conclusion of biennial exercises to discuss the adequacy of response with stakeholders. This oversight process includes additional inspection activities and reporting of

performance indicator data for onsite EP that provide the NRC with oversight of EP programs between biennial exercises.

The NRC has studied the efficacy of evacuations implemented by OROs within the United States (NUREG/CR–6864, ''Identification and Analysis of Factors Affecting Emergency Evacuations,'' dated January 2005 (ADAMS Accession Nos. ML050250245 and ML050250219) and NUREG/CR–6981, ''Assessment of Emergency Response Planning and Implementation for Large Scale Evacuations,'' dated October 31, 2008 (ADAMS Accession No. ML082960499)). A key finding of the latter study was that existing emergency planning requirements for nuclear power plants substantially anticipate and address issues identified in the large-scale evacuations researched. The review of NRC and FEMA emergency preparedness regulatory, programmatic, and guidance documentation also demonstrated that existing criteria, plans, and procedures were already in place to address most of the issues that were experienced in the large-scale evacuations studied. The assessment of emergency response planning and implementation for large-scale evacuations affirmed that most of the lessons learned in the evacuations studied were anticipated by NRC and FEMA and were already addressed in existing planning and procedures within the NRC and FEMA framework. Therefore, information available to the NRC supports the conclusion that OROs are well able to protect the public they are responsible for with the existing regulatory framework.

The required planning within the plume exposure pathway EPZ is found in 10 CFR 50.47 and appendix E to 10 CFR part 50. This planning is designed to provide effective response to a radiological emergency that has the potential to develop rapidly. The need for protective actions beyond the 10-mile EPZ would generally develop more slowly. Protective actions to provide adequate protection beyond the plume exposure pathway EPZ can be implemented using ORO normal and robust response processes (as demonstrated by the previously mentioned studies). Moreover, the NRC emergency classification scheme required by 10 CFR 50.47(b)(4) is anticipatory, and thus is designed for offsite protective action to begin before a radiological release. This would cause protective actions to begin rapidly within the 10-mile EPZ and provide time for consideration of actions beyond this EPZ should the accident progression indicate the need. Although accidents that include rapid releases are very unlikely, as demonstrated by the accidents at Three Mile Island Nuclear Station, Unit 2 (Three Mile Island) and Fukushima Dai-ichi, protective action guidance has been provided to address such scenarios (Supplement 3 to NUREG–0654, ''Guidance for Protective Action Strategies,'' dated November 20, 2011 (ADAMS Accession No. ML113010596)).

The NRC disagrees with the petition's contention that the accident at Fukushima Dai-ichi is a basis for expansion of the EPZ. The development of protective action recommendations by the Japanese Government, including expansion of evacuations out to 20 km (12 miles) from the plant, supported effective and timely evacuation to minimize the impact of the radiological releases on public health and safety. Subsequent decisions by the Japanese Government to evacuate selected areas based on potential long-term exposures are also similar to the U.S. strategy to expand protective actions during an event when conditions warrant an expansion.

The NRC is studying the accident to identify improvement areas applicable to the United States. Following the earthquake and tsunami at Fukushima Dai-ichi in March 2011, the NRC established a task force referred to as the Near-Term Task Force (NTTF). The NTTF conducted a systematic and methodical review of the NRC's regulations and processes to determine if the agency should make safety improvements in light of the events in Japan. The NTTF issued its report (the NTTF report) on July 12, 2011, ''Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (ADAMS Accession No. ML111861807). On July 19, 2011, the NTTF presented its findings to the five Commissioners (the Commission) of the NRC and proposed improvements in multiple areas, including emergency preparedness. The NTTF considered the existing planning structure, including the 10-mile plume exposure pathway and 50-mile ingestion pathway emergency planning zones, and found no basis to recommend a change to the size of the EPZs.

However, as information emerged about the events surrounding the protective actions implemented following the accident at Fukushima Dai-ichi, the NRC staff determined that the insights from the accident response should be evaluated to identify potential enhancements to NRC regulations and guidance. In SECY–11–0137, ''Prioritization of Recommended Actions to Be Taken in Response to Fukushima Lessons Learned,'' dated October 3, 2011 (ADAMS Accession No. ML11272A111), the NRC staff recommended that evaluating the basis of the EPZ size warranted further consideration. In response to the Commission's Staff Requirements Memorandum (SRM) for SECY–11–0137, the NRC staff produced SECY–12–0095, ''Tier 3 Program Plans and 6-Month Update in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Subsequent Tsunami,'' dated July 13, 2012 (ADAMS Accession No. ML12208A210), in which the NRC staff determined that the existing basis for the EPZ size remains valid (including for multi-unit events).

The Commission concludes that the current size of EPZs helps to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at an existing nuclear power plant. In addition, as part of previously-approved research efforts, the NRC plans a long-term action involving EPZs. The NRC staff will use insights from the current full-scope site Level 3 Probabilistic Risk Assessment (PRA) project as well as information obtained from the United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) assessment to inform the evaluation of the potential impacts that a multi-unit event may have on an EPZ. The UNSCEAR is preparing a scientific report to assess the radiation doses and associated effects on health and the environment. Also, the Fukushima Prefecture launched the Fukushima Health Management Survey to investigate long-term low-dose radiation exposure caused by the accident. The survey attempts to estimate radiation exposure from the accident and more detailed dose assessments by recreating the whereabouts of every Fukushima prefecture resident for the four month period beginning with the March 11th nuclear accident. The stated primary purposes of this survey are to monitor the long-term health of residents, promote their future well-being, and confirm whether long-term low-dose radiation exposure has health effects. If these research activities indicate that changes need to be made to the existing EP regulations, the NRC will commence a rulemaking effort to make those changes.

Issue 2. Expand EPZs because the basis for the 10-mile EPZ is flawed.

Another reason given in the petition in support of expanding the EPZs is that

the basis for the 10-mile EPZ is flawed. The petitioner stated that ''[t]he NRC's existing emergency planning regulations . . . are based primarily on experience gained by the Three Mile Island accident and on NRC reactor safety studies conducted from the 1950s through the 1970s (for example, WASH–1400 and NUREG–1150) and are encapsulated in NUREG–0396.'' The petitioner stated that these studies are now outdated.

The petitioner stated that ''[s]tudies currently and previously relied upon to justify the existing 10-mile [EPZ] . . . are based on assumptions of reactor and fuel pool accident risk and accident progression and consequences that are significantly underestimated based on real-world experience and more recent understanding of the risks of radiation. . . .''

The petitioner stated that computer models, simulations, and evaluations of projected scenarios are not a substitute for actual, ''real-world experience.''

The Nuclear Energy Institute and the Conference of Radiation Control Program Directors disagreed with the petitioner that the basis for the 10-mile EPZ is flawed and asserted that, on the contrary, the current EPZs provide a substantial margin of conservatism. They argued that this view is supported by the events at Fukushima Dai-ichi, the State-of-the-Art Reactor Consequence Analyses (SOARCA) study, and an American Society of Mechanical Engineers Task Force report. The Nuclear Energy Institute stated that EPZs are pragmatic tools intended to provide dose savings and reduce early severe health effects, and they are still appropriate. The Nuclear Energy Institute noted that in NUREG–0396, the sizes of EPZs were based on a consideration of a full spectrum of postulated accidents and accident consequences including very severe accidents, such as the Fukushima Dai-ichi accident. The Nuclear Energy Institute argued that the petitioner mischaracterized the EPZ assumptions, the SOARCA study, the damage to the spent fuel pools at Fukushima Dai-ichi, and U.S. nuclear power plant performance. The Nuclear Energy Institute disagreed with the premises in the petition that the Fukushima Dai-ichi accident demonstrated that severe accidents are more likely than any government previously estimated and that their effects are more widespread than previously understood.

One State Department of Environment recommended denying the petition because ''the Petition provides no new information that suggests the need to change the current planning basis, or warrants a change to the size of the existing Emergency Planning Zones.''

NRC Response to Issue 2

The NRC disagrees, in large part, with the petitioner's assertions on this issue. The NRC agrees that the technical basis for the EPZ dates from studies conducted in the 1970s, but the petition brought forward no technical issues to substantiate flaws in the technical basis. The NRC would tend to agree that there is real-world experience that contributes information relevant to EPZ efficacy, as will be discussed. Studies have been conducted that contribute to NRC confidence in the current EPZ basis to ensure adequate protection of public health and safety. The original basis and studies that support the current EPZ basis are described in this section.

The technical basis for the plume exposure pathway EPZ and ingestion exposure pathway EPZ are provided in NUREG–0396. This NUREG–0396 analyzes a spectrum of potential nuclear plant accidents and determines the size of EPZs in which detailed planning would be appropriate for the protection of public health and safety. The task force that developed NUREG–0396 considered several possible rationales for establishing the size of the EPZs, including risk, cost effectiveness, and the accident consequence spectrum. After reviewing these alternatives, the task force concluded that the objective of emergency response plans should be to provide dose savings for a spectrum of accidents that could produce offsite doses in excess of the U.S. Environmental Protection Agency (EPA) Protective Action Guides (PAG), EPA–400–R–92–001, ''Manual of Protective Action Guides and Protective Actions for Nuclear Incidents,'' dated May 1992 (*http://www.epa.gov/radiation/docs/er/400-r-92–001.pdf*). This rationale established bounds for the area in which detailed planning would be required as a defense-in-depth measure. In a 1979 policy statement (44 FR 61123; October 23, 1979), the Commission endorsed NUREG–0396, including an assumption that the planning conducted for 10 miles would provide a substantial basis for expansion of protective actions beyond the EPZ should it ever be necessary. All U.S. nuclear power plants currently have approved emergency plans that include EPZs in compliance with the regulations found in 10 CFR 50.47(c)(2).

The accidents considered in developing guidance and subsequent requirements for the EPZ included rapidly progressing severe accidents that were more threatening to public health than the Fukushima Dai-ichi accident. The WASH–1400 (NUREG–75/014), ''Reactor Safety Study: An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants,'' dated October 1975 (ADAMS Accession No. ML072350618), estimated that a severe accident could progress to a large radiological release in as little as 2 hours (in the boiling water reactor (BWR) case). Such accidents were considered unlikely, but emergency preparedness is a defense-in-depth measure required due to the potential of severe but unlikely accidents. The accident at Fukushima Dai-ichi developed much more slowly than the rapidly developing accidents that form the basis for the current size of the EPZ. In Japan, adequate time was available to evacuate the public at risk and to expand beyond the planning zone as necessary before large radiological releases occurred. The study used to develop the EPZ is more conservative than the Fukushima Dai-ichi accident with regard to the time available to evacuate within the EPZ and beyond.

The NRC has conducted more recent studies that are useful for evaluating the adequacy of the plume exposure pathway EPZ. In NUREG/CR–6864, the NRC examined large evacuations in the United States between 1990 and 2003 to gain a fuller understanding of the dynamics involved in those types of events. This project found that large-scale evacuations of greater than 1,000 people from 1997 to 2003 occurred approximately every two weeks in the United States. The study concluded that these evacuations proceeded efficiently and effectively in terms of evacuee health and safety, security, and issues related to coordination, decisionmaking, and emergency response. The study showed that State and local authorities have a robust capability to effectively evacuate the public in response to life-threatening emergencies. Many of the evacuations studied were implemented in an ad hoc manner by competent local officials without the need for Federal assistance or pre-conceived lines on a map.

In NUREG–1935, ''State-of-the-Art Reactor Consequence Analyses (SOARCA) Report,'' dated November 30, 2012 (ADAMS Accession Nos. ML12332A057 and ML12332A058), hypothetical evacuations within EPZs and beyond were evaluated in response to a series of selected accident scenarios for two U.S. nuclear power plants: the Peach Bottom Atomic Power Station in Pennsylvania (Peach Bottom) and the Surry Power Station in Virginia (Surry). Peach Bottom is generally representative of U.S. operating reactors using the General Electric BWR design with a

Mark I containment. Surry is generally representative of U.S. operating reactors using the Westinghouse pressurized water reactor (PWR) design with a large, dry (subatmospheric) containment.

The SOARCA project evaluated plant improvements and changes not reflected in earlier NRC publications. The project included system improvements, improvements in training and emergency procedures, offsite emergency response, and security-related improvements, as well as plant changes such as power uprates and higher core burnup. The project used state-of-the-art computer modeling with the MELCOR code for accident progression analyses and the MELCOR Accident Consequence Code System, Version 2 (MACCS2), for offsite consequence analyses.

There were several BWR accident scenarios analyzed in SOARCA, but most of the analyses did not involve a 20-mile evacuation. One analysis was performed modeling immediate 16- and 20-mile evacuations. It showed no significant difference in risk to individuals when compared to analysis using the 10-mile EPZ. The weather patterns for the SOARCA analyses were neither advantageous nor disadvantageous in terms of risk to individuals. This was done to support the best estimate of the risk to the public. If worst-case weather or worst-case accidents had been chosen, it would have reduced the probability of the event; SOARCA attempted to identify the more important accident scenarios based on a frequency-of-occurrence perspective. This boundary condition allowed the study to analyze in detail the phenomena of these accidents. (A full scope probabilistic risk analysis is underway at the NRC to address a full range of accidents, including those less likely than the accidents analyzed in SOARCA.) The SOARCA analyses showed no early fatalities due to the slower-developing accidents and lower source terms than in previous analyses and illustrated the effectiveness of emergency preparedness when plans are implemented as written, approved, practiced and inspected. In fact, SOARCA analyzed accidents very similar to those at Fukushima Dai-ichi and estimated a much quicker core melt and containment failure than what happened at the real-world accident. Further, the latent cancer fatalities estimated in SOARCA are based upon a worst-case assumption that all exposure, no matter how small, results in health effects. The majority of the latent cancer fatalities are due to the public being allowed to return to homes that are contaminated at levels below the EPA guidance. In effect, this exposure and the postulated health consequences have nothing to do with the evacuation of the public, the size of the EPZ, or the Fukushima Dai-ichi accident.

The NRC will monitor the results of the UNSCEAR efforts and their potential implications regarding the U.S. regulatory approach to emergency planning around nuclear power plants, including the EPZ size. In addition, the NRC is conducting a full-scope site Level 3 PRA to gain a better understanding of potential radiological effects of postulated accident sequences including multi-unit sites. The NRC will use information obtained from the UNSCEAR assessment and insights from the full-scope site Level 3 PRA project to inform the evaluation of the potential impacts that a multi-unit event may have on the EPZ.

Issue 3. Expand EPZs because the NRC urged U.S. citizens within 50 miles of the Fukushima Dai-ichi Nuclear Power Plant to evacuate.

The petitioner noted that former NRC Chairman Gregory Jaczko urged Americans within 50 miles of Fukushima Dai-ichi to evacuate and that this recommendation was followed by a similar statement from the U.S. Department of State.

Several commenters stated that the call for evacuation out to 50 miles showed that the current 10-mile EPZ is outdated, inadequate, and not realistic.

One commenter called for the NRC to take into account the realities learned in Japan. The commenter pointed out that there are several major U.S. cities within 50 miles of reactors with containment designs that are similar to those at Fukushima Dai-ichi. Those cities include Chicago, Boston, Philadelphia, and Baltimore. The commenter asked if it would be possible to evacuate those cities.

One State emergency management agency disagreed with the petitioner and stated that the NRC order to evacuate U.S. citizens within 50 miles of Fukushima Dai-ichi has yet to be justified scientifically.

NRC Response to Issue 3

The NRC does not agree that the EPZ for U.S. nuclear power plants should be expanded based on the travel advisory issued to U.S. citizens in Japan as a result of the events at Fukushima Dai-ichi. Following the events at Fukushima Dai-ichi, the U.S. Department of State, in coordination with the then-Chairman of the NRC, the U.S. Department of Energy, and other technical experts in the U.S. Government, issued a travel warning, or advisory, to U.S. citizens within 50 miles of Fukushima Dai-ichi to evacuate the area or take shelter indoors if safe evacuation was not possible. The 50-mile travel advisory was based on the limited information available at that time and the rapidly evolving situation (U.S. Department of State Travel Warning, March 17, 2011, *http://japan.usembassy.gov/e/acs/tacs-travel20110317.html*). The U.S. Department of State routinely issues such recommendations (known as Travel Warnings) for many different types of events, including civil unrest, terrorism, natural disasters, and technological accidents.

The decisionmaking environment that existed at the time was one in which the U.S. Government had limited and often conflicting information about the exact conditions of the reactors and spent fuel pools at Fukushima Dai-ichi. In its evaluation of the rapidly changing and unprecedented event, the NRC performed a series of dose calculations. These calculations were worst case, hypothetical computer model analyses of consequences of releases from the Fukushima site. The assumptions used in these calculations were discussed in detail in a letter from former NRC Chairman Jaczko to Senator James Webb on June 17, 2011 (ADAMS Accession No. ML11143A033). As a result of these calculations, the lack of information available at that time, the progression of events, and the uncertainty regarding the plans to bring the situation under control, on March 16, 2011, the U.S. Department of State issued a travel advisory for American citizens within a 50-mile range of Fukushima Dai-ichi. This was not an evacuation order in the sense of expected protective action decisionmaking within a U.S. nuclear power plant EPZ, but rather a warning to U.S. citizens that the local conditions were uncertain, the government authorities may not be able to assure their safety, and that they should leave.

Regulatory requirements of 10 CFR part 50, NRC inspection practices, and data channels available to the NRC would provide a robust information stream regarding plant status and radiological releases during a reactor accident in the United States. The NRC maintains two resident inspectors at each plant who have unfettered access to the site. The NRC inspectors have direct access to the plant site, including the control room and any and all vital plant areas. Inspectors from other sites and regional offices can be deployed if needed. The NRC requires that direct communication links between the NRC Incident Response Center and each plant be installed, tested, and routinely exercised. These links provide the NRC

with up-to-date and reliable information about plant conditions, radioactivity release rates, and meteorological conditions at the plant. The availability of this information, in addition to the information gathered by inspectors, would enable NRC staff to perform an informed, realistic assessment instead of relying on unknowns and worst-case scenarios. In addition, the NRC can order the plant to take actions to mitigate the event if the NRC concludes that the appropriate actions are not being taken by the plant operators.

The NRC concludes that the EPZs surrounding nuclear power plants in the United States should not be expanded based on the travel advisory issued by the U.S. Government. That advisory was based on limited information obtained by the U.S. Government about an event in a foreign nation. As previously explained, the NRC would have access to relevant information during an event at one of its licensees' plants. As a result, the NRC's response to an accident in the United States would not resemble the U.S. Government's response to the events at Fukushima Dai-ichi, so the fact that the U.S. Government issued a 50-mile travel advisory should not be the basis for expanding the size of EPZs.

Issue 4. There has been little change to emergency planning regulations in 30 years.

The petitioner claimed that the emergency planning regulations established by the NRC in 1980 remain essentially the same today. The petitioner stated that ''[w]ith the exception of a 2011 rule requiring licensees to use current U.S. census data to prepare evacuation time estimates (ETEs) and update them every 10 years, the NRC has made few significant improvements to its offsite emergency response regulations since they were promulgated in 1980.''

A State emergency management agency and the Nuclear Energy Institute disagreed and stated that there have been several significant changes to emergency planning regulations since 1980, including the consideration of emergency preparedness exercises during the licensing process, the frequency of participation by State and local authorities in emergency preparedness exercises, and other topics. The Nuclear Energy Institute also argued that the 2011 rule was broader than the petitioner implied.

NRC Response to Issue 4

The NRC disagrees with the petitioner's comments. The statement that emergency planning has changed little in the past 30 years conflicts with the fact that the NRC has made numerous revisions to its EP regulatory program over the years; in fact, the NRC's EP regulations have been revised more than 10 times since 1980. The NRC has continually evaluated and revised, as necessary, the requirements associated with emergency planning, such as the following: The consideration of emergency preparedness exercises as part of the licensing process (50 FR 19323; May 8, 1985), the frequency of State and local agency participation in licensee emergency preparedness exercises (49 FR 27733; July 6, 1984), the criteria for the evaluation of utility-prepared emergency plans in situations in which State or local governments decline to participate further in emergency planning (52 FR 42078; November 3, 1987), the requirements for emergency preparedness training activities between biennial full-participation exercises (61 FR 30129; June 14, 1996), and the requirement to consider including potassium iodide as a protective measure for the general public as a supplement to sheltering and evacuation (66 FR 5427; January 19, 2001).

The most recent change was the revision to the emergency preparedness regulations in a final rule, ''Enhancements to Emergency Preparedness Regulations,'' published in the **Federal Register** on November 23, 2011 (76 FR 72560). The areas that were addressed in this amendment included both security-related and non-security-related emergency preparedness issues. A total of 12 regulatory areas were revised: On-shift staffing; emergency action levels for hostile action; emergency response organization (ERO) augmentation and alternate facilities during hostile action; licensee coordination with offsite response organizations during hostile action; protection for onsite personnel; challenging drills and exercises; backup means for alert and notification systems; emergency declaration timeliness; Emergency Operations Facility-performance based approach; evacuation time estimate updating; amended emergency plan change process; and removal of completed one-time requirements. This process took several years to complete and involved numerous public meetings, workshops, and comment periods that involved external stakeholders throughout the process.

The following are examples of changes to the emergency preparedness regulations that will directly enhance the coordination between onsite and offsite response organizations.

Licensee Coordination With Offsite Response Organizations

Licensees are required to establish relations with offsite response organizations to coordinate emergency response efforts should they ever be needed. The scope of offsite response organization support includes the implementation of State and local response plans to protect public health and safety in the event of a severe reactor accident and to provide fire, medical, and Local Law Enforcement Agency (LLEA) support to the nuclear power plant site. All nuclear power plants have established such relations, and their response in integrated exercises is tested biennially. However, demands on offsite response organization resources have changed in the post-September 11, 2001, threat environment. In the unlikely event that a hostile action event takes place at a plant, LLEA resources will have multiple duties in addition to supporting implementation of the emergency plan. For example, police officers designated to staff evacuation traffic control points may instead be responding to hostile actions at the plant, or firefighters designated to perform route alerting may instead be responding to major fires at the plant resulting from hostile actions. This situation could detract from offsite response organization emergency plan implementation if plans have not been revised to address this contingency. For a nuclear power plant to be licensed and maintain its license, existing NRC regulations require the NRC to find that reasonable assurance exists that a plant's emergency plans can and will be implemented to protect public health and safety during a radiological emergency.

The 2011 EP final rule requires licensees to ensure that adequate planning exists for the resources necessary to implement emergency plans during hostile action events. Licensees must verify that offsite response organizations have plan and procedure elements to address the need for emergency plan implementation support during all contingencies, including hostile action events. Routine evaluation of offsite response organization performance during biennial exercises also addresses offsite response organizations' abilities to implement plans during reactor accidents not involving hostile action.

Challenging Drills and Exercises

A basic principle of emergency preparedness is that licensees conduct drills and exercises to develop and

maintain key skills in order to protect public health and safety in the unlikely event of a radiological emergency. Licensees demonstrate their ability to implement emergency plans and critique response actions during evaluated biennial exercises. The NRC inspects licensee response in biennial exercises, and FEMA evaluates offsite response organizations. These programs have been in effect for many years, and the agencies have determined that there is reasonable assurance that protective actions can and will be implemented should they be necessary. The 2011 EP final rule added the requirement to § IV.F.2.i of appendix E to 10 CFR part 50 to require that drill and exercise scenarios encompass a wide spectrum of events and conditions to avoid anticipatory responses from preconditioning of participants. Such scenarios must include a wide spectrum of radiological releases and events, including hostile action. These drills and exercises must emphasize coordination among onsite and offsite response organizations, as appropriate.

Backup Means for Alert and Notification Systems

An alert and notification system (ANS) provides the capability to promptly alert the populace within the plume exposure pathway EPZ of a nuclear power plant emergency event and to inform the public of protective actions that need to be taken. The predominant method used around U.S. nuclear power plants for alerting the public is an ANS based on sirens to provide an acoustic warning signal. Some sites employ other means, such as tone alert radios and route alerting, as either primary or supplemental alerting methods. The public typically receives information about an event and offsite protective actions via emergency alert system (EAS) broadcasts or other means, such as mobile loudspeakers.

An ANS has two distinct functions. The alert function provides a warning signal to the population indicating the need to seek additional information regarding an event in progress. By itself, this function provides no information about the type of event or any protective actions that need to be taken. The notification function informs the public about the nature of the event and any protective actions. These functions may be performed by separate means, such as sirens for alerting and EAS broadcasts for notification, or by one method, such as tone alert radios and electronic hailers, that can provide both a warning signal and an instructional message.

Nuclear power plant licensees are required by § IV.D.3 of appendix E to 10 CFR part 50 to demonstrate that the ANS capability exists. Alerting and notifying the public is a function assigned to the State and local governments and evaluated by FEMA. The 2011 EP final rule provides the requirement that the ANS include administrative and physical means for a backup method of public alerting and notification. The methods of alerting the public using either the primary or backup means is a process that involves coordination between the onsite and offsite response organizations, and the responsibility for activation of these systems must remain with the appropriate governmental authorities.

Evacuation Time Estimate Updating

The implementation of protective actions, including the evacuation of the public from the affected area surrounding a nuclear power plant, can mitigate the consequences of a radiological emergency at the plant. During the licensing process, applicants for a nuclear power reactor operating license under 10 CFR part 50, or for an early site permit (as applicable) or combined license under 10 CFR part 52, are required to provide estimates of the time required to evacuate the public from the various sectors and distances of the plume exposure pathway EPZ. These ETEs are used in the planning process to identify potential challenges to efficient evacuation, such as traffic constraints, and, in the event of an accident, to assist the onsite and offsite emergency response managers in making appropriate decisions regarding the protection of the public.

The 2011 EP final rule requires that at any time during the decennial period between national censuses, if the EPZ permanent resident population increases such that it causes the longest ETE value for the 2-mile zone or the 5-mile zone, including all affected Emergency Response Planning Areas,[1] or the entire 10-mile EPZ to increase by 25 percent or 30 minutes, whichever is less, from the licensee's currently NRC approved or updated ETE, the licensee shall update the ETE analysis to reflect the impact of the population increases. These ETEs would be used by both the licensee and the State and local governments for development of protective action guidelines in the event of an accident at a nuclear power facility.

[1] An Emergency Response Planning Area is a local area within the EPZ for which emergency response information is provided; the EPZ is typically divided into Emergency Response Planning Areas along geographic or political boundaries.

In contrast to the statement in the petition that emergency planning regulations have changed little in the last 30 years, the NRC has made numerous revisions to its EP regulatory program during this time period. However, the NRC does not base the need to enhance regulations upon the age of the regulation. The NRC remains open to specific input from stakeholders that identifies inadequate EP regulations. When the NRC staff or stakeholders identify a deficiency in the regulations that could result in a lack of reasonable assurance of adequate protection of public health and safety, the NRC will consider the need to revise the regulations.

Issue 5. Expand EPZs because ad hoc expansion beyond 10 miles will not be adequate.

The petitioner argued that ad hoc expansion of an evacuation beyond the 10-mile EPZ will not be adequate. The petitioner stated that ''[w]aiting to see how bad an emergency gets before expanding evacuation beyond a planned radius is not a plan of action, it is a recipe for disaster and an abdication of responsibility.''

The petitioner stated that there were delays in detecting radioactive contamination after the accidents at Chernobyl and Fukushima Dai-ichi and that this ''was a failure of emergency planning and radiation monitoring, not evidence that relocation may be taken at a leisurely pace.''

The petitioner stated that natural disasters such as hurricanes, tornadoes, wildfires, and floods may cause or occur concurrently with accidents at nuclear power plants and that ''natural disasters can greatly complicate the ability to evacuate a given area. . . .''

The petitioner stated that ''the wind blew the vast majority of the radiation released during the first week of the Fukushima Dai-ichi accident over the ocean and away from land.'' The petitioner stated, ''[H]ad the wind been blowing in a different direction, could Japan have evacuated a large enough area fast enough? Would the U.S. be able to do so in a similar scenario? The answer to both questions is almost certainly no. And yet, this is real world data—the NRC cannot rely upon favorable wind patterns as an emergency response measure.''

Some commenters agreed that an ad hoc expansion may not be adequate.

Several State agencies and the Nuclear Energy Institute disagreed and stated that EPZs are large enough to facilitate protective actions over larger areas, if necessary. Several State and county emergency management agencies

stated that Federal policies after the September 11, 2001, attacks and Hurricane Katrina, such as the National Incident Management System (NIMS) and Incident Command System (ICS) all-hazards approach, have strengthened the ability to expand the response effort beyond the existing EPZs, if necessary.

NRC Response to Issue 5

The NRC disagrees with the petitioner's assertions on this issue. As specified in 10 CFR 50.47(c)(2), two EPZs are established around each nuclear power plant. The technical basis for the EPZs is provided in NUREG–0396. The first zone, the plume exposure pathway EPZ, establishes an area of approximately 10 miles in radius. Within the plume exposure pathway EPZ, detailed planning is required for the recommendation and implementation of protective actions such as sheltering in place or evacuation. The ingestion pathway EPZ has a radius of approximately 50 miles from the plant. Within this EPZ, detailed planning is required to address the potential need to interdict foodstuffs to prevent human exposure from ingestion of contaminated food and surface water. The NRC remains confident that the emergency preparedness programs in support of nuclear power plants provide an adequate level of protection of the public health and safety and that appropriate protective actions can and will be taken in the event of a radiological event at an existing nuclear power plant.

As stated previously, the NRC has studied evacuations within the United States (NUREG/CR–6864) and found that State and local governments are capable of protecting public health and safety through implementation of protective actions up to and including evacuations using both preplanned and ad hoc protective action decisionmaking.

Several large-scale evacuations were studied in NUREG/CR–6981, many of which were conducted in an ad hoc manner. The assessment of emergency response planning and implementation for large-scale evacuations affirmed that most of the lessons learned in the evacuations studied were anticipated by NRC and FEMA and were already addressed in existing planning and procedures within the NRC and FEMA framework.

Emergency preparedness within the EPZ is required to provide immediate response capability. This response would address those people most at risk (i.e., those closest to the nuclear power plant). Immediate protection of the EPZ population allows additional time for implementation of ad hoc actions beyond the EPZ. As stated in NUREG–0396:

> [I]t was the consensus of the [NRC–EPA] Task Force that emergency plans could be based upon a generic distance out to which predetermined actions would provide dose savings for any such accidents. Beyond this generic distance it was concluded that actions could be taken on an ad hoc basis using the same considerations that went into the initial action determinations.

Additionally, emergency actions could be successfully carried out beyond the 10-mile EPZ for the following reasons:

- The 10-mile emergency planning basis establishes an infrastructure similar to that used by other offsite response organizations, such as police and fire departments. The infrastructure consists of emergency organizations, communications capabilities, training, and equipment that can be used in the event of an accident at a facility.
- Coordination is enhanced by the practice of having offsite response organizations, which include local, State, and Federal responders, participate in training exercises with the licensee. The studies cited previously noted a valuable contributor to effective evacuation implementation was participation in training and drills.
- The emergency notification equipment required by the NRC (10 CFR 50.47(b)(5)) for prompt notification of the public within the EPZ reaches beyond the plume exposure EPZ and current communications technology enhances this process.

In addition, State and local response agencies have improved their incident response plans and guidance following the events of September 11, 2001. The U.S. Department of Homeland Security (DHS) has issued guidance for Federal, State, and local response to emergencies which includes the National Response Framework, NIMS, and ICS. These guidance documents present a framework for use during an emergency that is scalable, is flexible, and allows for an adaptable coordinating structure.

The DHS policy and initiatives have provided another basis for implementing protective actions for nuclear power plant emergencies beyond the EPZ should they ever be necessary. State and local response organizations have recognized the possibility that actions may be warranted beyond the established EPZs and these issues have been included in drills and exercises. The development and implementation of NIMS and ICS under the National Response Framework enhances State and local response capabilities through uniform and logical management of response resources to facilitate prompt and effective protective measures for all populations that may be affected. The NIMS and ICS programs are a comprehensive approach to incident management that provides a common operating picture and interoperability for communications and management of events. These programs are scalable, so the response can be expanded or contracted as dictated by the event, such as an expansion of protective actions beyond the EPZ during an event if warranted. This allows for all levels of government response organizations to work together efficiently for responding to emergencies, including an event involving a nuclear power reactor.

Every nuclear power plant licensee has an approved emergency plan that includes procedures for the necessary interactions with State and local authorities. These emergency plans are drilled and exercised on a regular basis and inspected during a biennial exercise (i.e., every 2 years) and include the integrated response of licensees, State and local responders, and decisionmakers. The licensee is required by 10 CFR 50.47(b)(5) to notify State and local authorities of the emergency status and by 10 CFR 50.47(b)(10) to make protective action recommendations. This requirement includes the need to evacuate areas beyond the EPZ should it be necessary. During biennial exercises, FEMA evaluates the ability of ORO decisionmakers to identify the need for protective actions.

The NRC notes that the requirement for a classification scheme for identification of emergencies in 10 CFR 50.47(b)(4) is anticipatory, which means that emergencies are declared before a radiological release takes place. Licensees must rapidly activate emergency organizations in response to emergency conditions and recommend protective actions in a timely manner. The NRC's regulations at 10 CFR 50.47(b)(9) also require timely assessment of radiological conditions in response to an accident. Additionally, State and local emergency response programs have radiological assessment capabilities independent of licensees' assessment resources. During a nuclear power plant emergency, the NRC expects that radiological assessment information would be obtained by licensees and OROs and made available to the NRC and to State and local response organizations.

The petition did not provide examples of evacuations within the U.S. that were unsuccessful and would cause

the NRC to lose confidence in the ability of State and local authorities to implement protective actions for the public when necessary. The NRC studies show that State and local authorities are quite capable of protecting their citizens.

Issue 6. Expand EPZs because current planning is inadequate for increased populations around many U.S. nuclear power plants.

The petition included ''significantly larger populations near many existing reactor sites'' in a list of several factors that have changed since the existing emergency planning regulations were promulgated.

The petitioner stated, ''Imagine the difficulties of using a 10 mile planning zone as the basis for a rapid expansion of the zone to 25 miles or more in a heavily urban area such as near Indian Point in New York, Limerick in Pennsylvania or many other existing reactor sites.''

Several commenters stated that populations living near some U.S. nuclear power plants have increased significantly since the plants were originally licensed, and stated that this is one of the reasons why current evacuation plans are insufficient.

NRC Response to Issue 6

The NRC disagrees that current EP planning requirements are inadequate. The petition and commenters did not provide any evidence that an increase in a population is a reason to expand the EPZ. The Commission has previously stated that ''[t]hrough its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of any plant even in the face of changing demographics and other site-related factors'' (Denial of Petitions for Rulemaking, PRM–54–02 and PRM–54–03 (71 FR 74852; December 13, 2006)).

In the 2011 EP final rule, the NRC amended 10 CFR 50.47(b)(10) and § IV, ''Content of Emergency Plans,'' of appendix E to 10 CFR part 50 to require the periodic review and updating of ETEs. The NRC also published guidance (NUREG/CR–7002, ''Criteria for Development of Evacuation Time Estimate Studies,'' dated November 2011 (ADAMS Accession No. ML113010515)) to enhance the quality of ETEs. The population within EPZs varies broadly from a few thousand to over 270,000 people. However, even sites with large populations can achieve general public evacuation within about 10 hours. The data available from the ETEs show that large populations can be effectively evacuated. A review of the evacuations studied in NUREG/CR–6864 shows that effective evacuations of large numbers of people were routinely accomplished, including:

- Hurricane Floyd, 373,000 people (1999)
- Hurricane Andrew, 650,000 people (1992)
- Hurricane Georges, 1,500,000 people (1998)
- Centennial Olympic Park, 60,000 people (1996)
- World Trade Center, 300,000 people (2001)
- World Trade Center, 150,000 people (1993)
- The East Bay Hills Wildfire, 30,000 people (1991)

The NRC is not aware of data that would indicate that evacuation of larger populations cannot be accomplished in an effective manner. The data shows that OROs can accomplish large evacuations and this process is generally viewed as successful.

Issue 7. Expand EPZs because the U.S. reactor fleet is aging and more vulnerable to the occurrence of accidents.

The petition included ''increasing age and vulnerability of operating reactors'' in a list of several factors that have changed since the existing emergency planning regulations were promulgated to conclude that aging U.S. reactors have a greater risk of an accident and require an expansion of EPZs.

Commenters claimed that aging reactors are more vulnerable to damage from earthquakes, aging concrete, human error, and Alloy 600 embrittlement.

One commenter specifically identified Indian Point Energy Center, Diablo Canyon Power Plant, and Vermont Yankee Nuclear Power Plant as reactors that are ''more antiquated or dangerously sited.''

NRC Response to Issue 7

The NRC disagrees with the petitioner's assertion that aging U.S. reactors have a greater risk of an accident. Neither the petitioner nor the commenters provided support for their conclusions that aging reactors have a greater risk of an accident and are more vulnerable to damage from earthquakes, aging concrete, human error, and Alloy 600 embrittlement. Because the NRC's regulatory framework provides reasonable assurance of adequate protection of public health and safety over the lifetime of the reactors, EPZs do not need to be expanded due to the age of the reactors.

Each operating power reactor licensee is required to maintain its facility to ensure that the safety-related functions of preventing and mitigating accidents are not compromised. The regulatory objective of the Maintenance Rule, found in 10 CFR 50.65, is to require licensee monitoring of the overall continuing effectiveness of its maintenance programs to ensure the following:

- Safety-related structures, systems, and components (SSC) and certain SSCs that are not safety-related are capable of performing their intended functions.
- For equipment that is not safety-related, failures will not occur that prevent the fulfillment of safety-related functions.
- Failures resulting in scrams and unnecessary actuations of safety-related systems are minimized.

The NRC provides reasonable assurance of adequate protection of public health and safety, in part, through the NRC's Reactor Oversight Process (ROP), in which the NRC ensures that an acceptable level of licensee performance is maintained. The ROP involves inspecting licensees, reviewing performance indicators (PI), evaluating PIs, assessing licensee performance, and taking appropriate regulatory actions to ensure compliance with the NRC's regulations. The ROP continuously assesses licensee performance using performance-based risk-informed baseline inspections and performance indicators reported by licensees. The ROP inspections seek to evaluate licensee performance by identifying degraded conditions and the deficient licensee performance that led to those degraded conditions. When risk-significant aging management performance issues are identified, the NRC will perform additional supplemental inspections to verify that appropriate corrective actions are taken to address recurrence of the issues and restore compliance with aging management programs. Less risk-significant licensee performance issues would typically be entered into the licensee's corrective action program and corrected by the licensee. In addition to inspection under the ROP, the NRC evaluates operating experience and trends regarding those issues important to safety, such as those associated with aging SSCs. Negative trends and significant inspection findings impacting safety would be addressed through enforcement, backfit, or rulemaking as appropriate.

The license renewal regulatory process requires that for SSCs that are safety-related, that could affect the performance of a safety-related function, or that are necessary to respond to specific events regulated by the NRC,

aging management programs must be in place to manage the effects of aging. The implementation of the aging management programs ensures that SSCs retain the ability to perform their intended functions and that the licensee's current licensing basis, which has been shown to provide an acceptable level of safety, will be maintained in the renewal period.

The NRC's regulations in 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' require that each license renewal application contain technical information and evaluations about the different types of plant aging that might be encountered in the plant and how the licensee will manage or mitigate those aging effects. This information must be sufficiently detailed to permit the NRC to determine whether the effects of aging will be managed such that the plant can be operated during the period of extended operation without undue risk to the health and safety of the public. If the NRC can make this determination, it will renew the licensee's operating license and continue monitoring the licensee's operational performance throughout the renewal period.

Issue 8. Expand EPZs because risk from spent fuel pools is too high.

The petitioner argued that the risk of accidents at spent fuel pools is too high to ignore and, therefore, the plume exposure pathway EPZ must be expanded to adequately protect the public. According to the petitioner, ''real-world experience,'' improved understanding of severe accident risks at nuclear spent fuel pools, and the fact that accidents could cause widespread contamination with highly radioactive materials prove that the 10-mile EPZ is inadequate. The petitioner referred to several papers to raise issues that describe the improved understanding of spent fuel pool severe accidents and their risks, including:

- The NRC has permitted high-density storage in spent fuel pools in the absence of a geologic repository. Under accident conditions, including a loss of water in the pool, cooling of the spent fuel could be difficult or ineffective in the densely packed pool, which could result in a zirconium fire in the pool.
- Spent fuel pools contain a large amount of radioactive material with much more long-lived radioisotopes than in a reactor core. Therefore, spent fuel pool accidents could lead to larger releases of radioactive materials than accidents in a reactor core.
- Spent fuel pools are located outside of containment. Therefore, they are more vulnerable than the reactor to natural disasters and terrorist attacks and have little to prevent a release to the environment.

The petitioner further stated that the Commission previously did not consider the effects of spent fuel pool failure as a source of severe accident consequences, but only considered containment and core failure in the previous denial of three similar petitions for rulemaking (*Citizens Task Force of Chapel Hill, et al.,* 32 NRC 281 (1990)). The petitioner stated that, given the information on how serious a threat spent fuel pool accidents are, continued failure to address the risks of spent fuel pool accidents is flawed.

Several commenters agreed with the petitioner and called for spent fuel to be moved as quickly as possible into hardened dry cask storage.

One State agency stated that the petitioner has some valid points regarding spent fuel, but that the utilities were forced into this situation due to inaction by various levels of government. The primary concern is that the health and safety of citizens is protected in the event of a release, regardless of the source.

The Nuclear Energy Institute stated that the petitioner's description of the damage to the Unit 3 spent fuel pool at Fukushima Dai-ichi is inaccurate. The Nuclear Energy Institute disagreed with the petitioner's arguments and stated that spent fuel pools are robust structures designed to withstand severe external events. The zirconium fire scenario has been studied extensively by the NRC for decades, according to the Nuclear Energy Institute, and the NRC has consistently concluded that the risk of such fires is extremely low. The Nuclear Energy Institute pointed out that the NRC issued an Order to further ensure that reliable spent fuel pool water level indications can be identified by trained personnel.

NRC Response to Issue 8

The NRC disagrees with the petitioner's assertions on this issue. The NRC has previously evaluated one of the papers referenced by the petitioner, ''Reducing the Hazards from Stored Spent Power-Reactor Fuel in the United States,'' dated April 21, 2003, Robert Alvarez, et al., (published in the Science and Global Security, Spring 2003) and concluded that it fails to make the case for its central recommendation (''Fact Sheet: NRC Review of Paper on Reducing Hazards from Stored Spent Nuclear Fuel,'' dated August 20, 2003 (ADAMS Accession No. ML032320620)).

The NRC concludes that both spent fuel pools and dry casks provide adequate protection of public health and safety and the environment. After the September 11, 2001, terrorist attacks, the NRC issued Orders to plant operators requiring several measures aimed at mitigating the effects of a large fire, explosion, or accident that damages a spent fuel pool. These measures were intended to deal with the aftermath of a terrorist attack or plane crash; however, they would also be effective in responding to natural phenomena such as tornadoes, earthquakes, or tsunamis.

These mitigating measures include:

- Controlling the configuration of fuel assemblies in the pool to enhance the ability to keep the fuel cool and recover from damage to the pool.
- Establishing emergency spent fuel cooling capability.
- Staging emergency response equipment nearby so that it can be deployed quickly.

As an example of the ''real-world experience'' of spent fuel pool accidents, page 28 of the petition refers to a video uploaded to YouTube on October 18, 2011, that shows an underwater camera inspection by the Tokyo Electric Power Company (TEPCO). The petitioner speculated that the spent fuel pool at Fukushima Dai-ichi Unit 3 was essentially destroyed by the explosion of the Unit's reactor building, based on the video not showing intact fuel rods. Since the posting of that video, TEPCO has performed additional investigations and has confirmed that the spent fuel in the Fukushima Dai-ichi Unit 3 spent fuel pool remains intact and within the racks, as far as what could be seen by the underwater camera. See images from an underwater camera taken on October 11 and 12, 2012, as discussed in a TEPCO press conference on October 15, 2012. A handout from the press conference including the images is available at *http://www.tepco.co.jp/en/nu/fukushima-np/images/handouts_121015_01-e.pdf*.

During the events at Fukushima Dai-ichi, responders did not have reliable instrumentation to determine the water levels in the spent fuel pools. This caused concerns that the pools may have boiled dry and damaged the fuel. Numerous attempts were made to refill the spent fuel pools, which diverted resources and attention from other efforts to respond to the event. Subsequent analysis determined that the water level in the Unit 4 spent fuel pool did not drop below the top of the stored fuel and no significant fuel damage occurred. The lack of information on the condition of spent fuel pools

contributed to a poor understanding of possible radiation releases and adversely impacted effective prioritization of emergency response actions by decisionmakers.

In the agency's review of the Fukushima Dai-ichi accident in the NTTF report, the NRC staff noted that the low likelihood of such events and the current mitigation capabilities at U.S. nuclear power plants allow the NRC to conclude that a sequence of events such as the Fukushima Dai-ichi accident is unlikely to occur in the United States. These events have not undermined the emergency preparedness assumptions or the basis for the size of the EPZs. Therefore, continued operation and continued licensing activities do not pose an imminent threat to public health and safety.

Current activities being undertaken by the NRC staff for the NTTF recommendations resulting from the Fukushima Dai-ichi event are addressing the issue of additional requirements, including developing, implementing, and maintaining guidance and strategies to maintain or restore spent fuel pool cooling in the event of a beyond-design-basis external event such as a natural disaster (Order EA–12–049, ''Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events,'' dated March 12, 2012 (ADAMS Accession No. ML12054A736)).

The NRC issued Order EA–12–051, ''Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation,'' dated March 12, 2012 (ADAMS Accession No. ML12054A682), which required all power reactor licensees and holders of construction permits, in active or deferred status, to implement measures to ensure that reliable spent fuel pool water level indications can be identified by trained personnel. Specifically, personnel must be capable of identifying: (1) The level that is adequate to support operation of the normal fuel pool cooling system, (2) the level that is adequate to provide substantial radiation shielding for a person standing on the spent fuel pool operating deck, and (3) the level where fuel remains covered and at which actions to implement make-up water addition should no longer be deferred. As noted in the Order, full implementation must be completed no later than two refueling cycles after the licensee's submittal of an overall integrated plan or December 31, 2016, whichever comes first. Construction permit holders must complete full implementation prior to issuance of an operating license and combined operating license holders must complete full implementation prior to initial fuel load.

The NRC staff completed a spent fuel pool risk study in 2001 (NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,'' dated February 28, 2001 (ADAMS Accession No. ML010430066)) in which the risk of spent fuel severe accidents was evaluated and found to be low and well within the Commission's safety goals outlined in its Policy Statement on Safety Goals for the Operation of Nuclear Power Plants (51 FR 28044; August 4, 1986. Correction published on August 21, 1986 (51 FR 30028)). The NRC staff published a report in October 2013 with a similar conclusion that storage of spent fuel in a high-density configuration in spent fuel pools is safe and that the risk of an accident resulting from the beyond-design-basis seismic event analyzed is low (''Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor,'' dated October 2013 (ADAMS Accession No. ML13256A342)). In addition, the NRC staff is embarking on a full-scope site Level 3 PRA project, which will evaluate the severe accident risks at a currently operating multi-unit reactor site, including the risk from a spent fuel pool accident. The insights from this study may be a useful input to inform or enhance regulatory decisionmaking, potentially including emergency preparedness requirements, as described in SECY–12–0123, ''Update on Staff Plans to Apply the Full-Scope Site Level 3 PRA Project Results to the NRC's Regulatory Framework,'' dated September 13, 2012 (ADAMS Accession No. ML12202B170).

The NRC has concluded that the risk from spent fuel pools is low and this petition presented no new information related to spent fuel pools for a basis to expand EPZs.

Issue 9. Emergency planning regulations must be strengthened because there are significant concerns related to pressure suppression containments.

The petitioner argued that there are significant concerns related to pressure suppression containments, such as the General Electric (GE) Mark I containment that was used at five of the units at Fukushima Dai-ichi, and, therefore, emergency planning regulations must be strengthened to adequately protect the public. The petitioner cited the accidents at Three Mile Island, Chernobyl, and Fukushima Dai-ichi to show that hydrogen explosions, pressure spikes, and containment failures have occurred, resulting in releases of radioactive materials. The petitioner pointed out that there are 23 operational nuclear power reactors with GE Mark I containments in the United States. The petitioner claimed that they are susceptible to failure in the event of a hydrogen explosion and that there has been much scrutiny and criticism of their design flaws. The petitioner stated that the ''NRC can no longer dismiss the reality of devastating nuclear accidents based on supposedly superior U.S. reactor designs.'' The petitioner stated that, given the history of nuclear power, the NRC must assume, at least for emergency planning purposes, that devastating nuclear accidents will occur in the United States.

One commenter stated that the Mark I containment is a flawed design. Specifically, the commenter stated that the problem of overpressure in the torus must be addressed and that valves to allow manual release of pressure are not sufficient.

NRC Response to Issue 9

The NRC disagrees with the petitioner's assertions on this issue. The petitioner is correct that there were lessons to be learned from the accident at Fukushima Dai-ichi related to pressure suppression containments. These lessons and NRC follow-up actions are summarized in the following paragraphs. In light of these actions, the NRC disagrees that concerns related to pressure suppression containments support the petitioner's position that the NRC's EP regulations need to be revised or its overall conclusion that EPZs must be expanded. The petitioner asked that the NRC *assume* that a radiological release from containment will occur. Instead, the NRC has taken steps to enhance the performance of these containments in response to the Fukushima Dai-ichi accident, as noted in the following paragraphs.

The events at Fukushima Dai-ichi highlight the possibility that extreme natural phenomena could challenge the defense-in-depth layers for accident prevention, mitigation, and emergency preparedness. At Fukushima Dai-ichi, a variety of challenges significantly hindered attempts by the responders to preclude core damage and containment failure. The operators were unable to successfully operate the containment venting system early in the event. The inability to reduce containment pressure inhibited efforts to cool the reactor core. If additional backup or alternate sources of power had been available to operate the containment venting system

remotely, or if certain valves had been more accessible for manual operation, the operators at Fukushima Dai-ichi may have been able to depressurize the containment earlier. This, in turn, could have allowed operators to implement strategies using low-pressure water sources that may have limited or prevented damage to the reactor core. Thus, the events at Fukushima Dai-ichi demonstrate that reliable hardened vents at BWR facilities with Mark I and Mark II containment designs are important to maintain core and containment cooling.

Based on these lessons learned, the NRC issued Order EA–13–109, ''Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation under Severe Accident Conditions,'' dated June 6, 2013 (ADAMS Accession No. ML13143A334), which required all BWR licensees with Mark I and Mark II containment designs to have a reliable, severe accident capable hardened vent to assist in the removal of decay heat and maintain control of containment pressure within acceptable limits following an event that results in the loss of active containment heat removal capability such as an extended loss of electrical power. The hardened vent system must be accessible and functional under a range of plant conditions, including severe accident conditions, extended loss of electrical power, and inadequate containment cooling. As noted in the Order, full implementation must be completed no later than startup from the first refueling outage that begins after June 30, 2017, or June 30, 2019, whichever comes first.

The events at Fukushima Dai-ichi have not undermined the emergency preparedness assumptions or the basis for the size of the EPZs. Therefore, continued operation and continued licensing activities do not pose an imminent threat to public health and safety.

Issue 10. Expand EPZs because expansion is supported by the current improved understanding of the health effects of radiation.

The petitioner claimed that improved understanding of the health effects of radiation indicates that greater consideration should be given to the effects of the release of radiation. In particular, the petitioner referred to the National Academies Biological Effects of Ionizing Radiation VII report, ''Health Risks from Exposure to Low Levels of Ionizing Radiation'' (2006) (BEIR VII report), as ''confirming that any exposure to radiation—including background radiation—increases a person's risk of developing cancer.'' The BEIR VII report is available online from the National Academies Press at *http://www.nap.edu*.

The petitioner took issue with the emergency response goal of preventing exposure above 5 rem/year as the basis for the EPA Protective Action Guides, as cited in the NRC's denial of a petition for rulemaking for emergency preparedness submitted previously by the Citizens Task Force of Chapel Hill (55 FR 5603; February 16, 1990). The petitioner stated that according to the BEIR VII report, this level of exposure would cause cancer in more than 1 in 50 female children and that this is a hopelessly outdated and politically indefensible policy.

The petitioner stated that the BEIR VII report clarifies that women and children are much more susceptible to radiation exposure than the ''average man'' [2] and regulations should protect the most vulnerable members of the population.

The petitioner also stated that emergency response programs should be designed such that exposure limits during an emergency should not be higher than the annual exposure limits under non-emergency conditions.

The petitioner's discussion on the improved understanding of the health effects of radiation was provided as support to the proposed upgrades to emergency planning standards, which requested changes to the areas for the plume exposure EPZ and ingestion exposure pathway EPZ and to the emergency exercise requirements. No changes were proposed to the EPA PAGs themselves.

Many commenters agreed with the opinion expressed in the petition that the improved understanding of the health effects of radiation support expanding the EPZs.

NRC Response to Issue 10

The NRC disagrees that these studies warrant expansion of the EPZs. The NRC agrees that it is appropriate to continually review these and other studies of radiation effects to ensure continued adequate protection of public health and safety. The NRC staff reviewed the BEIR VII report and provided an information paper, SECY–05–0202, ''Staff Review of the National Academies Study of the Health Risks from Exposure to Low Levels of Ionizing Radiation (BEIR VII),'' dated October 29, 2005 (ADAMS Accession No. ML052640532), to the Commission regarding the potential implications of the report for NRC regulations. The NRC staff concluded that ''none of the findings in the BEIR VII report warrant initiating immediate change to NRC regulations or Federal Guidance.'' In the BEIR VII report, the National Academies concluded that current scientific evidence is consistent with the hypothesis that there is a linear, no-threshold dose response relationship between exposure to ionizing radiation and the development of cancer in humans. The Commission's regulations regarding radiation protection are based on this linear, no-threshold assumption. As stated in SECY–12–0064, ''Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance,'' dated April 25, 2012 (ADAMS Accession No. ML121020108), the NRC staff found that the International Commission on Radiological Protection (ICRP) concluded that a linear, no-threshold approach remained a prudent basis for practical purposes of radiation protection. The same conclusion has been drawn by the National Academy of Sciences in the BEIR VII report, the UNSCEAR, and the National Council on Radiation Protection and Measurements report.

The ICRP Publication 103, ''The 2007 Recommendations of the International Commission on Radiological Protection'' (December 2007), contained the revised recommendations for a system of radiological protection, which reflect an evolution from the previous recommendations contained in ICRP Publication 60 in 1990 and in ICRP Publication 26 in 1977. These publications are available for purchase online through the publisher at *http://www.icrp.org/publications.asp.* The ICRP makes recommendations on such topics as the quantities used in radiological protection, biological effects of radiation, principles of radiation protection, dose limits, and optimization. The ICRP recommendations are generally used to inform radiation protection policy or regulations by pertinent governmental or international agencies, and their development has been discussed with many international and national organizations with an interest in radiological protection. In SECY–12–0064, the NRC staff provided the Commission with a notation vote paper that discusses the history of radiation

[2] The petition's use of the term ''average man'' is interpreted to refer to ''reference man,'' which is defined as a person with the anatomical and physiological characteristics of an average individual that is used in calculations assessing internal dose (also may be called ''standard man''). See also the International Commission on Radiological Protection Publication 23 (1975). This publication is available for purchase online through the publisher at *http://www.icrp.org/publications.asp.*

protection recommendations and regulations and the ICRP's 2007 recommendations and their impact on evaluating radiation risk. The paper also discusses the NRC staff's evaluation of information in the BEIR VII report, referenced by the petitioner. SECY–12–0064 provided the Commission with options on whether to revise the dosimetry basis of appendix I to 10 CFR part 50 design objective and guidance and 10 CFR part 20 based on the ICRP 2007 recommendations. The NRC staff recommended the option of developing the regulatory basis for a revision of certain provisions of 10 CFR part 20 occupational dose limits and initiating the parallel development of the regulatory basis for revision of appendix I to 10 CFR part 50 to align with the update of 10 CFR part 20 and to address the unique set of issues that are not directly connected with 10 CFR part 20.

The Commission issued its SRM for SECY–12–0064 on December 17, 2012 (SRM–SECY–12–0064, ''Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance'' (ADAMS Accession No. ML12352A133)). In the SRM, the Commission approved in part the NRC staff's recommendations for development of the regulatory basis for a revision to 10 CFR part 20 and parallel alignment of appendix I to 10 CFR part 50 with the most recent methodology and terminology for dose assessment. The Commission also directed the NRC staff to continue discussions with stakeholders on alternative approaches to deal with individual protection at or near the current dose limit.

In SECY–05–0202, the NRC staff also discussed the potential influence of gender on radiation sensitivity as an issue that may warrant additional consideration, and stated that the NRC staff will continue to monitor the issue as the ICRP finalizes its new radiation protection recommendations. The 2007 recommendations in ICRP Publication 103 considered gender- and age-related sensitivity to radiation (e.g., in the development of revised age-averaged and sex-averaged tissue weighting factors) and will be one source of information that the NRC staff considers in development of the regulatory basis for rulemaking, as discussed in SECY–12–0064.

The petitioner stated that the emergency response goal is to prevent exposures to 5 rem/year. This is a misinterpretation of the basis for emergency response planning requirements, including the PAGs. It states on page III–3 of NUREG–0396 that for a very large release of radioactive material, the principal emergency response planning basis goal is to prevent serious adverse health effects to individuals. To accomplish this goal, the longer term objective of the PAGs, as stated in Section 4.2.1 of the 1992 EPA PAG Manual (EPA–400–R092–001, ''Manual of Protective Action Guides and Protective Actions for Nuclear Incidents,'' U.S. Environmental Protection Agency, dated May 1992 (*http://www.epa.gov/radiation/docs/er/400-r-92-001.pdf*)), is that the cumulative dose to an individual over 50 years will not exceed 5 rem. In March 2013, the EPA published a draft revised PAG Manual for interim use and public comment (*http://www.epa.gov/radiation/docs/er/pag-manual-interim-public-comment-4-2-2013.pdf*). In the 2013 EPA PAG Manual, the EPA proposes to remove the intermediate phase PAG of 5 rem over 50 years to avoid confusion with long-term cleanup. The longer-term objective of the PAGs to ensure that doses in any single year after the first will not exceed 0.5 rem remains the same as previously in the 1992 EPA PAG Manual.

It should be noted that a PAG is not a regulatory limit or an acceptable dose, but is instead, ''the projected dose to reference man, or other defined individual, from an unplanned release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended'' (1992 EPA PAG Manual, Section 1.0). The petitioner questioned the Commission's previous denial of petitions for rulemaking, under dockets PRM–50–31, PRM–50–45, and PRM–50–46, to make changes to the emergency preparedness regulations (55 FR 5603; February 16, 1990). As a basis for its denial, the Commission referred to NUREG–0396, which clarifies that PAGs represent trigger or initiation levels proposed as guidance to be used as the basis for taking action to minimize impact on individuals. In other words, a PAG is ''the projected dose . . . from an unplanned release of radioactive material at which a specific protective action to reduce or avoid that dose is recommended'' (1992 EPA PAG Manual, Section 1.0). It states on page III–11 of NUREG–0396:

> This does not mean, however, that doses above PAG levels can be prevented or that emergency response plans should have as their objective preventing doses above PAG levels. Furthermore, PAGs represent only trigger levels and are not intended to represent acceptable dose levels. PAGs are tools to be used as a decision aid in the actual response situation.

The currently used PAGs for the early phase of the incident recommend evacuation (or sheltering in certain cases) at a projected dose of 1 rem total effective dose equivalent (TEDE) and administration of stable iodine (e.g., potassium iodide (KI)) at a projected dose of 25 rem committed dose equivalent to the thyroid. The dose is calculated from the estimated atmospheric release. These values are taken from the 1992 EPA PAG Manual. In the 2013 EPA PAG Manual, the EPA proposes to change the early phase PAG for supplementary administration of KI to a projected dose of 5 rem to the child thyroid. In planning, the ''early phase'' of a nuclear incident is usually assumed to last for four days for dose projection purposes. This definition of the early phase is intended to coincide with the event initiation and primary release when evacuation or KI administration may be warranted. Exposure to deposited materials after four days can be addressed through other protective measures, such as relocation, if warranted.

The ''intermediate phase'' is defined as the period beginning after the source and releases have been brought under control and environmental measurements are available for use as a basis for protective actions decisions. The intermediate phase ends when the protective actions are terminated. The intermediate phase may overlap both the early and the late (or ''recovery'') phases. For the intermediate phase, there are EPA PAGs for deposited radioactive materials, where the major relevant protective action is relocation. Dose to persons not relocated and in lesser contaminated areas may be reduced by decontamination and spending more time in low exposure rate areas, such as indoors. There are also PAGs published by the U.S. Food and Drug Administration for food and water. The 1992 EPA PAG Manual states that the intermediate phase PAGs for deposited radioactive materials should be considered mandatory only for use in planning. During an incident, responsible officials will need to exercise their professional judgment in the implementation of protective actions because of unanticipated local conditions.

As explained in the 1992 EPA PAG Manual, the PAGs for the intermediate phase of the incident recommend relocation of the general population at a projected dose greater than or equal to 2 rem TEDE and application of simple dose reduction techniques at a projected dose less than 2 rem TEDE. The projected dose is due to inhalation of resuspended materials, from exposure or intake during the first year, and is the dose that would be received without

shielding from structures or application of dose reduction techniques. The 1992 EPA PAG Manual states that the objective of these PAGs is to assure that doses in any single year after the first year will not exceed 0.5 rem and that the cumulative dose over 50 years (including the first and second years) will not exceed 5 rem. In the 2013 EPA PAG Manual, the EPA proposes to remove the intermediate phase PAG of 5 rem over 50 years to avoid confusion with long-term cleanup. The longer-term objective of the PAGs to ensure that doses in any single year after the first will not exceed 0.5 rem remains.

The petitioner stated that emergency response programs should be designed to protect against radiation levels that would exceed annual exposure limits. The NRC disagrees with the petitioner's assertions on this issue. The PAGs are established for implementing public protective actions to minimize health effects following a low probability severe accident that releases radioactive material to the environment in an uncontrolled, acute manner. The considerations that establish such PAGs differ significantly from the considerations associated with establishing radiation protection standards for routine (i.e., high probability) controlled releases of radioactive material to the environment. In establishing the PAGs for emergency conditions, the EPA followed the principle that the risk to health from a protective action should not itself exceed the risk to health from the dose that would be averted. Using a PAG based on the lower magnitude radiation protection standards could place the public in the situations where the risk of the protective action is greater than the benefit obtained from taking the action. Appendix B, ''Risks to Health from Radiation Doses That May Result from Nuclear Incidents,'' and Appendix C, ''Protective Action Guides for the Early Phase: Supporting Information,'' of the 1992 EPA PAG Manual describe in detail the EPA's bases and rationale for the PAGs.

The rationale for the 10-mile distance for the plume exposure EPZ and the 50-mile ingestion exposure pathway EPZ is provided in NUREG–0396, which was based on a full spectrum of accidents and corresponding consequences, taking probability into consideration. It is stated in NUREG–0396 that emergency response plans should be useful for responding to any accident that would result in offsite doses in excess of the PAGs. The early phase PAG ranges as published at that time were used in the determination of the plume exposure EPZ distance: Projected doses per accident of 1–5 rem to the whole body and 5–25 rem to the thyroid.

The NRC has more recent data on reactor accident consequences and risks in the SOARCA study, has completed a spent fuel pool accident consequence study, and has embarked on a full-scope site Level 3 PRA project. In SECY–12–0123, the NRC staff specifically states that insights from the Level 3 PRA project could inform the process for evaluating the potential impact that a multi-unit accident (or an accident involving spent fuel) may have on the efficacy of the EPZ in protecting public health and safety. Insights gained from the Level 3 PRA project are expected to include radiological source term characterization to support determination as to whether the EPZ size and response timing remains protective of public health and safety in response to severe accidents.

Issue 11. Expand EPZs because radiation does not stop at an EPZ boundary.

Several commenters stated that radioactive contamination would not stop at an EPZ boundary. One commenter stated that airborne radiation plumes from past releases including Chelyabinsk, Seversk, Chernobyl, Three Mile Island, and Fukushima Dai-ichi have not stopped 10 miles from the reactor site. Therefore, 10-mile EPZs need to be enlarged to provide adequate protection of the public health and safety beyond 10 miles from the plant.

NRC Response to Issue 11

The NRC agrees that in the event of a radioactive release the plume might not stop at the 10-mile EPZ boundary. However, the NRC disagrees with the commenter that this requires expansion of the EPZ. As stated previously, the basis for the EPZ is that it provides a substantial basis for the expansion of emergency response beyond the EPZ should that prove to be necessary. The competence of State and local authorities to implement protective measures for the public (as described in NUREG/CR–6864 and NUREG/CR–6981) has also been discussed previously in response to Issues 5 and 6. Additionally, the DHS has provided several documents that guide Federal, State, and local response efforts should they be required for an event at a licensee facility. These documents include FEMA's National Response Framework, NIMS, and ICS, which were established by Homeland Security Presidential Directive/HSPD–5—Management of Domestic Incidents on February 28, 2003. These programs present a framework for use in an emergency that is scalable, is flexible, and allows for an adaptable coordinating structure. The DHS has achieved near universal acceptance of the National Response Framework at the Federal, State, and local levels in the United States. The supporting systems, NIMS and ICS, are implemented daily in response to routine emergencies nationwide, such as response to hazardous material spills and fires.

In addition to the DHS guidelines that are used by offsite response organizations, the current requirements for the 10-mile planning basis used by licensees establish an infrastructure consisting of emergency organizations, communications capabilities, training, and equipment that are similar to other normal community emergency organizations, such as police and fire departments that can be used in the event of an accident at the facility. The DHS guidance and the process it outlines would support ORO efforts to implement protective actions beyond the plume exposure pathway EPZ if conditions warranted them.

Issue 12. Expand EPZs because current regulations do not provide adequate protection. Amending the regulations as requested in the petition would more likely provide adequate protection.

Many commenters agreed with the petitioner that the current emergency planning regulations do not provide adequate protection of the public health and safety and are outdated. Several commenters stated that one of the lessons that should be learned from Fukushima Dai-ichi is that the NRC's current emergency planning regulations are inadequate. One commenter stated that while Japan and Germany are closing their nuclear power plants, the United States continues building new ones despite having outdated and inadequate emergency planning regulations. Some comments stated that shadow evacuations occurred after the accidents at Fukushima Dai-ichi and Three Mile Island and would be a problem for any future evacuation. Some commenters stated that geography, roadways, bridges, traffic patterns, and other site-specific features would make evacuation in an emergency difficult or impossible.

The Nuclear Energy Institute disagreed with the petitioner and argued that the September 11, 2001, attacks and the accidents at Chernobyl and Fukushima Dai-ichi do not show that the current 10- and 50-mile EPZs are inadequate. The Nuclear Energy Institute and several emergency management agencies stated that the

existing EPZs are based on a conservative analysis of a wide range of accident consequences and continue to provide assurance that adequate protective measures can and will be taken in the event of an emergency.

NRC Response to Issue 12

The NRC disagrees with the comments that current emergency preparedness regulations do not provide adequate protection. On December 13, 1991 (56 FR 64966), the Commission stated that ''through its standards and required exercises, the Commission ensures that existing plans are adequate throughout the life of a plant even in the face of changing demographics and other site related factors.'' The current regulations in 10 CFR 50.47 require that a finding be made by the NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency before an initial operating license is issued. These measures are required to be outlined in each site's radiological emergency plan. The site-specific emergency plans must meet the 16 planning standards listed in 10 CFR 50.47(b). Additionally, a holder of a nuclear power reactor operating license under 10 CFR 50.54(q) is required to follow and maintain the effectiveness of an emergency plan that meets the standards in 10 CFR 50.47(b) and the requirements in appendix E to 10 CFR part 50. All U.S. nuclear power plants currently have NRC-approved emergency plans that include EPZs in compliance with the regulations in 10 CFR 50.47 and appendix E to 10 CFR part 50.

The FEMA approves offsite emergency response plans and evaluates the capability of State and local agencies to implement their plans in a biennial demonstration exercise. The ORO's evacuation planning and protective action decisionmaking are major components of the FEMA evaluation and are addressed in every biennial exercise. Any finding of deficiency must be addressed by the responsible agency in order to maintain the FEMA finding that there is adequate protection of public health and safety.

The NRC agrees that shadow evacuations may occur and should be appropriately considered. The NRC's guidance document for preparing evacuation time estimate studies establishes the need to include a 20 percent shadow evacuation in the analysis (NUREG/CR–7002). The NRC defines a shadow evacuation as an evacuation of people from areas outside an officially declared evacuation zone. The shadow population is considered in the analysis to account for the potential for this population group to impede the evacuation of those under evacuation orders. It should be recognized that 20 percent was chosen based on data in NUREG/CR–6864 and is an estimate of the potential for shadow evacuation. The shadow evacuation can be minimized through frequent and effective crisis messaging by OROs. Supplement 3 to NUREG–0654 provides guidance to assist OROs with crisis messaging.

The NRC staff has conducted considerable research into evacuations, including the impact of shadow evacuations on evacuation outcomes. As stated in NUREG/CR–6864:

> Shadow evacuations, defined as evacuations by persons outside of any officially declared evacuation zone(s), occurred in 18 (36%) of the 50 [3] case studies examined. Of those 18 cases involving shadow evacuations, traffic movement was impacted in only five of the cases and there was no impact on congregate care center capacity, according to the individuals interviewed. These five cases were all in Florida and included Hurricane Andrew, Hurricane Floyd (3 cases), and the Mims Fire. In the Mims Fire, Interstate 95 was closed due to poor visibility from the smoke and significantly contributed to the traffic congestion. The hurricanes that had traffic movement problems were exceptionally large, with two cases involving over 600,000 evacuees.
>
> The Governor's Hurricane Task Force has since identified improvements in the areas of decision making, traffic management, congregate care center management, and dissemination of emergency public information, that are expected to improve the efficiency and effectiveness of future large hurricane evacuations, and thus, reduce impacts from shadow evacuations.

Based on this research, the NRC has confidence that shadow evacuations generally have little impact on traffic movement and concludes that the licensees' current emergency planning bases continue to provide reasonable assurance of protection of the public's health and safety.

The NRC agrees that most evacuations would be considered difficult by those experiencing them but disagrees that evacuations would be impossible. All U.S. nuclear power plants have provided updated ETEs to the NRC per 10 CFR 50.47(b)(10). The NRC staff is not aware of any evacuations that are impossible. A review of the evacuations studied in NUREG/CR–6864 shows that effective evacuations of large numbers of people were routinely accomplished, including:

- Hurricane Floyd, 373,000 people (1999)
- Hurricane Andrew, 650,000 people (1992)
- Hurricane Georges, 1,500,000 people (1998)
- Centennial Olympic Park, 60,000 people (1996)
- World Trade Center, 300,000 people (2001)
- World Trade Center, 150,000 people (1993)
- The East Bay Hills Wildfire, 30,000 people (1991)

The petition provided no substantial information that would indicate evacuations cannot be accomplished in support of a nuclear power plant accident should it be necessary, or that would support its claim that the NRC's emergency planning regulations do not provide adequate protection of the public health and safety.

In SECY–12–0095, the NRC staff stated that the existing EP framework of regulations and guidance to provide reasonable assurance of adequate protection of public health and safety in a radiological emergency. The NRC staff referred to several studies that have informed the NRC evaluation of the adequacy of this approach. These studies, which are discussed in more detail in the response to Issue 2, included NUREG/CR–6864 and NUREG–1935. These studies have informed the NRC's conclusion that the NRC's existing EP framework provides reasonable assurance of adequate protection of public health and safety in the event of a radiological emergency at an existing U.S. power reactor facility.

The Commission concludes that the current size of EPZs helps to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at an existing nuclear power plant. In addition, as part of previously-approved research efforts associated with Tier 3 program plans, the NRC plans a long-term action involving EPZs. The NRC will use insights from the current full-scope site Level 3 PRA project as well as information obtained from the UNSCEAR assessment to inform the evaluation of the potential impacts that a multi-unit event may have on an EPZ. If these research activities indicate that changes need to be made to the existing EP regulations, the NRC will commence a rulemaking effort to make those changes.

[3] These 50 evacuations were selected because they were of sufficient size and complexity to challenge local and regional emergency response capabilities and to provide sufficient detail to identify the factors contributing to evacuation efficiency.

Issue 13. Require EP exercises to include a regionally-relevant initiating or concurrent natural disaster because natural disasters can challenge nuclear safety systems.

The petitioner argued that the NRC should amend its regulations to require that licensees include a regionally-appropriate natural disaster in every other exercise because a natural disaster may trigger a nuclear accident or complicate the emergency response to an accident.

The petitioner listed several recent natural disasters including Hurricane Katrina and Hurricane Irene and expressed the opinion that there is a trend due in large part to climate change. ''If this is correct,'' the petitioner stated, '''unprecedented' natural disasters will not only continue to occur, they will accelerate.''

The petitioner stated that natural disasters can greatly complicate the ability to evacuate a given area.

Many commenters agreed that exercises should include a regionally-relevant initiating or concurrent natural disaster for the reasons provided in the petition.

Several State and county emergency management agencies stated that many nuclear power plant licensees already incorporate natural disasters into their drills.

NRC Response to Issue 13

The NRC agrees that natural disasters may challenge nuclear safety systems; however, the NRC disagrees that it is necessary to modify the regulations as proposed by the petitioner because the existing requirements and emergency planning framework are sufficient. The majority of nuclear power plant licensees currently incorporate natural or destructive phenomena into their drill and exercise scenarios. This planning helps licensees prepare for natural disasters that could coincide with a reactor emergency. All NRC-licensed sites in the United States have emergency action levels (EAL) in their radiological emergency plans that include protective actions related to aspects of natural disasters. Moreover, current activities being undertaken by the NRC staff for the NTTF recommendations resulting from the Fukushima Dai-ichi event are addressing the issue of additional requirements, including training and drills, for a beyond-design-basis event such as a natural disaster (Order EA–12–049). The proposed requirements to perform a drill for an event that originates from a beyond-design-basis external event and leads to a multi-unit prolonged station blackout would involve licensees planning, preparing, and practicing for these unlikely natural events.

The NRC notes that each U.S. nuclear power plant has an emergency plan as a defense-in-depth measure. Emergency plans contain contingencies for alternate evacuation routes, alternate means of notification, and other backup plans in the event of a natural disaster that damages the infrastructure surrounding a nuclear power plant. Licensees exercise these plans on a regular basis. The NRC performs oversight to verify the acceptable performance of the licensee's response during exercises, drills, and actual incidents and events. The FEMA provides oversight for offsite response. For Incidents of National Significance where the critical infrastructure is severely damaged, the DHS has a lead role as a coordinating agency to orchestrate Federal, State, and local assets. The Nuclear/Radiological Incident Annex to the National Response Framework provides for the NRC to be a coordinating agency for incidents involving NRC-licensed materials.

As noted in the response to Issue 1, the NTTF conducted a systematic and methodical review of the NRC's regulations and processes to determine if the agency should make safety improvements in light of the events in Japan. As a result of this review, the NTTF issued SECY–11–0093, ''Near-Term Report and Recommendations for Agency Actions Following the Events in Japan,'' dated July 12, 2011 (ADAMS Accession No. ML11186A950). SECY–11–0124, ''Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report,'' dated September 9, 2011 (ADAMS Accession No. ML11245A158), and SECY–11–0137, ''Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned,'' were issued to establish the NRC staff's prioritization of the recommendations. The NRC staff determined that Recommendation 4.2, concerning strategies to mitigate the consequences of accidents similar to those that occurred at Fukushima Dai-ichi, was a high-priority action. Order EA–12–049, ''Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events,'' was issued to each power reactor licensee and each holder of a construction permit on March 12, 2012. The Order requires a three-phase approach for mitigating beyond-design-basis external events. The initial phase requires the use of installed equipment and resources to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities. The transition phase requires providing sufficient, portable, onsite equipment and consumables to maintain or restore these functions until they can be accomplished with resources brought from offsite. The final phase requires obtaining sufficient offsite resources to sustain those functions indefinitely. Specifically, the Order requires the following:

(1) Licensees or construction permit holders shall develop, implement, and maintain guidance and strategies to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities following a beyond-design-basis external event.

(2) These strategies must be capable of mitigating a simultaneous loss of all alternating current (ac) power and loss of normal access to the ultimate heat sink and have adequate capacity to address challenges to core cooling, containment, and spent fuel pool cooling capabilities at all units on a site subject to this Order.

(3) Licensees or construction permit holders must provide reasonable protection for the associated equipment from external events. Such protection must demonstrate that there is adequate capacity to address challenges to core cooling, containment, and spent fuel pool cooling capabilities at all units on a site subject to this Order.

(4) Licensees or construction permit holders must be capable of implementing the strategies in all modes.

(5) Full compliance shall include procedures, guidance, training, and acquisition, staging, or installing of equipment needed for the strategies.

These new requirements provide a greater mitigation capability consistent with the overall defense-in-depth philosophy, and, therefore, provide a greater assurance that the challenges posed by beyond-design-basis external events, such as natural disasters, to power reactors do not pose an undue risk to public health and safety.

Issue 14. Require EP exercises to include a regionally-relevant initiating or concurrent natural disaster because natural disasters may affect communications during emergency response.

The petitioner stated that natural disasters can greatly complicate the ability to provide sufficient communication to assure that sheltering or other protective actions are taken within a given area.

NRC Response to Issue 14

The NRC agrees that natural disasters may affect communications during emergency response; however, the NRC disagrees that it is necessary to modify the regulations as proposed by the petitioner because of the existing requirements and emergency planning framework. The majority of nuclear power plant licensees currently incorporate natural or destructive phenomena into their drill and exercise scenarios. This planning helps licensees prepare for natural disasters that could coincide with a reactor emergency. All NRC-licensed sites in the United States have EALs in their radiological emergency plans that include protective actions related to aspects of these natural events. However, current activities being undertaken by the NRC for the NTTF recommendations resulting from the Fukushima Dai-ichi event associated with emergency preparedness communications are addressing the issue of reliable communications following a natural disaster. The proposed requirements to perform a drill for an event that originates from a beyond-design-basis external event and leads to a multi-unit prolonged station blackout would involve licensees planning, preparing, and practicing for these unlikely natural events.

Emergency plan communications requirements and detailed guidance on how to meet those requirements are contained in the following:

- 10 CFR 50.47(b)(6) states that provisions should be made for prompt communications among principal response organizations to emergency personnel and to the public.
- Section IV.E.9 of appendix E to 10 CFR part 50 states that adequate provisions shall be made and described for emergency facilities and equipment, including ''at least one onsite and one offsite communications system; each system shall have a backup power source.''
- NUREG–0696, ''Functional Criteria for Emergency Response Facilities,'' dated February 1981 (ADAMS Accession No. ML051390358), offers guidance on how to meet the requirements of appendix E to 10 CFR part 50 and discusses the onsite and offsite communications requirements for the licensee's emergency operating facilities.

As a result of the Tier 1 recommendations in the NTTF report, the NRC issued to each power reactor licensee and each holder of a construction permit on March 12, 2012, a ''Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* 50.54(f) regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident'' (ADAMS Accession No. ML12056A046). The NRC issued this information request regarding the power supplies for communications systems to determine if additional regulatory action is warranted. This request is based upon NTTF Recommendation 9.3, which proposed that facility emergency plans provide for a means to power communications equipment needed to communicate onsite (e.g., radios for response teams and between facilities) and offsite (e.g., cellular telephones and satellite telephones) during a prolonged station blackout. The NRC requested that the following assumptions be made in preparing responses to this request for information: assume that the potential onsite and offsite damage is a result of a large-scale natural event resulting in a loss of all alternating current (ac) power and assume that the large-scale natural event causes extensive damage to normal and emergency communications systems both onsite and in the area surrounding the site. The NRC recognizes that following a large-scale natural event, ac power may not be available to cell and other communications infrastructures.

The NRC requested that addressees assess their current communications systems and equipment used during an emergency event given the aforementioned assumptions. The NRC also requested that consideration be given to any enhancements that may be appropriate for the emergency plan with respect to the communications requirements of 10 CFR 50.47 and appendix E to 10 CFR part 50, and the guidance in NUREG–0696 in light of the assumptions previously stated. Also, addressees were requested to consider the means necessary to power the new and existing communications equipment during a prolonged station blackout.

Addressees were requested to provide an assessment of the current communications systems and equipment used during an emergency event to identify any enhancements that may be needed to ensure communications are maintained during a large-scale natural event meeting the conditions previously described. The assessment should:

- Identify any planned or potential improvements to existing onsite communications systems and their required normal and/or backup power supplies,
- Identify any planned or potential improvements to existing offsite communications systems and their required normal and/or backup power supplies,
- Provide a description of any new communications system(s) or technologies that will be deployed based upon the assumed conditions previously described, and
- Provide a description of how the new and/or improved systems and power supplies will be able to provide for communications during a loss of all ac power.

Nuclear power plant licensees were also requested to describe any interim actions that have been taken or are planned to be taken to enhance existing communications systems power supplies until the communications assessment and the resulting actions are complete, and to provide an implementation schedule of the time needed to conduct and implement the results of the communications assessment.

The NRC staff is evaluating the responses received from this information request to determine their acceptability as part of the agency's lessons learned from the events at Fukushima Dai-ichi.

III. Determination of the Petition

The Commission has reviewed the petition and the public comments. For the reasons described in Section II, Public Comments on the Petition, of this document, the Commission does not find that the arguments raised by the petitioner warrant changing the current regulations. The Commission reiterates that the basis for the current size of EPZs is valid for existing reactors and proposed new reactors. Furthermore, the Commission has reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at an existing nuclear power plant. For new reactors under construction and licensed to operate, the Commission has determined that subject to the required conditions and limitations of the full-power license, adequate protective measures can and will be taken in the event of a radiological emergency. Separate from this petition, as part of previously-approved research efforts associated with Tier 3 program plans, the NRC plans a long-term action involving EPZs. If these research activities indicate that changes need to be made to the existing EP regulations, the NRC will commence a rulemaking effort to make those changes.

Because the Commission has decided that the petition does not present

sufficient information to warrant changing the size of EPZs or requiring licensees to include natural disasters in their EP exercises at this time, the NRC cannot consider this PRM in the rulemaking process. Therefore, the NRC is denying the petition under 10 CFR 2.803, ''Determination of petition.''

IV. Availability of Documents

The following table provides information on how to access the documents referenced in this document. For more information on accessing ADAMS, see the **ADDRESSES** section of this document.

Date	Document	ADAMS accession No./ **Federal Register** citation
October 1975	Reactor Safety Study: An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants (WASH–1400 (NUREG–75/014)).	ML072350618.
December 1978	Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants (NUREG–0396).	ML051390356.
October 23, 1979	Planning Basis for Emergency Responses to Nuclear Power Reactor Accidents.	44 FR 61123.
February 28, 1981	Functional Criteria for Emergency Response Facilities (NUREG–0696).	ML051390358.
July 6, 1984	Emergency Planning and Preparedness	49 FR 27733.
May 8, 1985	Emergency Planning and Preparedness	50 FR 19323.
August 4, 1986	Safety Goals for the Operations of Nuclear Power Plants; Policy Statement.	51 FR 28044.
August 21, 1986	Safety Goals for the Operation of Nuclear Power Plants; Policy Statement; Correction and Republication.	51 FR 30028.
November 3, 1987	Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline to Participate in Off-Site Emergency Planning.	52 FR 42078.
April 30, 1989	Implications of the Accident at Chernobyl for Safety Regulation of Commercial Nuclear Power Plants in the United States (NUREG–1251).	ML082030501, ML082030502.
June 14, 1996	Production and Utilization Facilities; Emergency Planning and Preparedness Exercise Requirements.	61 FR 30129.
January 19, 2001	Consideration of Potassium Iodide in Emergency Plans	66 FR 5427.
February 28, 2001	Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants (NUREG–1738).	ML010430066.
August 20, 2003	Fact Sheet: NRC Review of Paper on Reducing Hazards from Stored Spent Nuclear Fuel.	ML032320620.
January 31, 2005	Identification and Analysis of Factors Affecting Emergency Evacuations (NUREG/CR–6864).	ML050250245, ML050250219.
July 18, 2005	NRC Bulletin 2005–002: Emergency Preparedness and Response Actions for Security-Based Events.	ML051740058.
October 29, 2005	SECY–05–0202, Staff Review of the National Academies Study of the Health Risks from Exposure to Low Levels of Ionizing Radiation (BEIR VII).	ML052640532.
October 31, 2008	Assessment of Emergency Response Planning and Implementation for Large Scale Evacuations (NUREG/CR–6981).	ML082960499.
June 17, 2011	Response Letter to Senator James Webb from Chairman Jaczko regarding NRC Evacuation Recommendations for the U.S. Residents within 50 Miles of Fukushima Reactors.	ML11143A033.
July 12, 2011	SECY–11–0093, Near-Term Report and Recommendations for Agency Actions Following the Events in Japan.	ML11186A959.
July 12, 2011	Recommendations for Enhancing Reactor Safety in the 21st Century, The Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident.	ML111861807.
September 9, 2011	SECY–11–0124, Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report.	ML11245A158.
October 3, 2011	SECY–11–0137, Prioritization of Recommended Actions to be Taken in Response to Fukushima Lessons Learned.	ML11272A111.
October 18, 2011	Staff Requirements Memorandum—SECY–11–0124—Recommended Actions to be Taken Without Delay from the Near-Term Task Force Report.	ML112911571.
November 20, 2011	Guidance for Protective Action Strategies (Supplement 3 to NUREG–0654/FEMA–REP–1, Rev. 1).	ML113010596.
November 28, 2011	Criteria for Development of Evacuation Time Estimate Studies (NUREG/CR–7002).	ML113010515.
January 31, 2012	State-of-the-Art Reactor Consequence Analyses (SOARCA) Report, Draft Report for Comment (NUREG–1935).	ML120250406.
February 15, 2012	Incoming Petition (PRM–50–104) from Mr. Michael Mariotte	ML12048B004.
March 12, 2012	Order Modifying Licenses with Regard to Requirements for Mitigation Strategies for Beyond-Design-Basis External Events, NRC Order EA–12–049.	ML12054A736.

Date	Document	ADAMS accession No./ **Federal Register** citation
March 12, 2012	Order Modifying Licenses with Regard to Reliable Spent Fuel Pool Instrumentation, NRC Order EA–12–051.	ML12054A682.
March 12, 2012	Request for Information Pursuant to Title 10 of the *Code of Federal Regulations* 50.54(f) regarding Recommendations 2.1, 2.3, and 9.3, of the Near-Term Task Force Review of Insights from the Fukushima Dai-ichi Accident.	ML12056A046.
April 25, 2012	SECY–12–0064, Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance.	ML121020108.
April 30, 2012	Notice of Receipt of Petition for Rulemaking and Request for Comment (77 FR 25375).	ML120820212.
July 13, 2012	SECY–12–0095, Tier 3 Program Plans and 6-Month Status Update in Response to Lessons Learned from Japan's March 11, 2011, Great Tohoku Earthquake and Subsequent Tsunami.	ML12208A208, ML12165A092, ML12165A093, ML12208A210.
September 13, 2012	SECY–12–0123, Update on Staff Plans to Apply the Full-Scope Site Level 3 PRA Project Results to the NRC's Regulatory Framework.	ML12202B170.
November 30, 2012	State-of-the-Art Reactor Consequence Analyses (SOARCA) Report, Final Report (NUREG–1935).	ML12332A057, ML12332A058.
December 17, 2012	SRM–SECY–12–0064, Recommendations for Policy and Technical Direction to Revise Radiation Protection Regulations and Guidance.	ML12352A133.
March 19, 2013	SRM–SECY–12–0157, Consideration of Additional Requirements for Containment Venting Systems for Boiling Water Reactors with Mark I and Mark II Containments.	ML13078A017.
June 6, 2013	Order Modifying Licenses with Regard to Reliable Hardened Containment Vents Capable of Operation Under Severe Accident Conditions, NRC Order EA–13–109.	ML13143A321.
October 9, 2013	Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor.	ML13256A342.
March 2014	Comment Response Document, Petition for Rulemaking to Expand Emergency Planning Zones, PRM–50–104.	ML14042A227.

Dated at Rockville, Maryland, this 2nd day of April, 2014.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2014–07981 Filed 4–8–14; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. OCC–2014–0002]

RIN 1557–AD64

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Docket No. R–1486]

RIN 7100–AE15

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 323 and 390

RIN 3064–AE10

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB 2014–0006]

RIN 3170–AA44

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1222

RIN 2590–AA61

Minimum Requirements for Appraisal Management Companies

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); National Credit Union Administration (NCUA); Bureau of Consumer Financial Protection (Bureau); and Federal Housing Finance Agency (FHFA).

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, NCUA, Bureau, and FHFA (collectively, the Agencies) are jointly proposing a rule to implement the minimum requirements in the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act or Act) to be applied by States in the registration and supervision of appraisal management companies (AMCs). The proposed rule also implements the requirement in the Dodd-Frank Act for States to report to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council (FFIEC) the information required by the Appraisal Subcommittee (ASC) to administer the new national registry of appraisal management companies (AMC National Registry or Registry). In conjunction with this implementation, the FDIC is proposing to integrate its appraisal regulations for State nonmember banks and State savings associations.

DATES: Comments must be received on or before June 9, 2014.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the Agencies. Commenters are encouraged to use the title ''Minimum Requirements for Appraisal Management Companies'' to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit written comments to:

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Minimum Requirements for Appraisal Management Companies'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''regulations.gov'':* Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0002'' in the Search Box and click ''Search''. Results can be filtered using the filtering tools on the left side of the screen. Click on ''Comment Now'' to submit public comments.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.
- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2014–0002'' in your comment. In general, the OCC will enter all comments received into the docket and publish those comments on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *http://www.regulations.gov.* Enter ''Docket ID OCC–2014–0002'' in the Search box and click ''Search''. Comments can be filtered by Agency using the filtering tools on the left side of the screen.
- Click on the ''Help'' tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- Docket: You may also view or request available background documents and project summaries using the methods described above.

Board: Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. All public

comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web site: http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivered/Courier:* The guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.
- *Email: comments@FDIC.gov.* Comments submitted must include ''FDIC'' and ''RIN 3064–AE10.'' Comments received will be posted without change to *http://www.FDIC.gov/regulations/laws/federal/propose.html,* including any personal information provided.

NCUA: You may submit comments, identified by RIN 3133–AE22 by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx.* Follow the instructions for submitting comments.
- *Email:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Minimum Requirements for Appraisal Management Companies'' in the email subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for email.
- *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier in Lieu of Mail:* Same as mail address.

You can view all public comments on NCUA's Web site at *http://www.ncua.gov/Legal/Regs/Pages/PropRegs.aspx* as submitted, except for those we cannot post for technical reasons. NCUA will not edit or remove any identifying or contact information from the public comments submitted. You may inspect paper copies of comments in NCUA's law library at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6546 or send an email to *OGCMail@ncua.gov.*

Bureau: You may submit comments, identified by Docket No. CFPB–2014–0006 or RIN 3170–AA44, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FHFA: You may submit your comments, identified by regulatory information number (RIN) 2590–AA61, by any of the following methods:

- *Email:* Comments to Alfred M. Pollard, General Counsel, may be sent by email to *RegComments@fhfa.gov.* Please include ''RIN 2590–AA61'' in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''RIN 2590–AA61'' in the subject line of the message.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA61, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9 a.m. to 5 p.m.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA61, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.

Copies of all comments will be posted without change, including any personal information you provide, such as your name, address (mailing and email), and phone number, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., Eastern Time, at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 649–3804.

FOR FURTHER INFORMATION CONTACT: *OCC:* Robert L. Parson, Appraisal Policy Specialist, (202) 649–6423, G. Kevin Lawton, Appraiser (Real Estate Specialist), (202) 649–7152, Mitchell E. Plave, Special Counsel, or Charlotte M. Bahin, Senior Counsel, Legislative & Regulatory Activities Division, (202) 649–5490, for persons who are deaf or hard of hearing, TTY, (202) 649–5597, or Christopher Manthey, Special Counsel, Bank Activities and Structure Division, (202) 649–5500.

Board: Carmen Holly, Supervisory Financial Analyst, Division of Banking Supervision and Regulation, at (202) 973–6122, Walter McEwen, Senior Counsel, Legal Division, at (202) 452–3321, or Will C. Giles, Counsel, Legal Division, at (202) 452–3351, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FDIC: Beverlea S. Gardner, Senior Examination Specialist, Division of Risk Management and Supervision, at (202) 898–3640, Sandra S. Barker, Senior Policy Analyst, Division of Consumer Protection, at (202) 898–3915, Mark Mellon, Counsel, Legal Division, at (202) 898–3884, Kimberly Stock, Counsel, Legal Division, at (202) 898–3815, or Benjamin K. Gibbs, Senior

Regional Attorney, at (678) 916–2458, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

NCUA: John Brolin or Pamela Yu, Staff Attorneys, Office of General Counsel, at (703) 518–6540, or Vincent Vieten, Program Officer, Office of Examination and Insurance, at (703) 518–6360, or 1775 Duke Street, Alexandria, Virginia 22314.

Bureau: Owen Bonheimer, Counsel, Office of Regulations, David Friend, Counsel, Office of Regulations, or Connor Raso, Attorney-Advisor, Legal Division, 1700 G Street NW., Washington, DC 20552, at (202) 435–7000.

FHFA: Robert Witt, Senior Policy Analyst, Office of Housing and Regulatory Policy, (202) 649–3128, or Ming-Yuen Meyer-Fong, Assistant General Counsel, Office of General Counsel, (202) 649–3078, Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Background

AMC Minimum Requirements

On July 21, 2010, the Dodd-Frank Act [1] was signed into law. Section 1473 of the Dodd-Frank Act added a new section 1124 to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) [2] and established minimum requirements to be applied by States in the registration and supervision of AMCs. An AMC is an entity that serves as an intermediary for, and provides certain services to, appraisers and lenders.[3] These minimum requirements apply to States that have elected to establish, pursuant to section 1117 of FIRREA,[4] an appraiser certifying and licensing agency with authority to register and supervise AMCs (participating States). Section 1473 of the Dodd-Frank Act [5] also created the AMC National Registry, which will be administered by the ASC, and requires participating States to report AMC registration information to the ASC to support the Registry.[6] The AMC National Registry will include AMCs that are either: (1) Registered with, and subject to supervision of, a State appraiser certifying and licensing agency; or (2) subsidiaries owned and controlled by an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency.

Under section 1124, participating States must require that AMCs: (1) Register with, and be subject to, supervision by the State appraiser certifying and licensing agency in the State or States in which such company operates; (2) verify that only State-certified or State-licensed appraisers are used for Federally related transactions; [7] (3) require that appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP); and (4) require that appraisals are conducted in accordance with the statutory appraisal independence standards under the Truth in Lending Act (TILA) (15 U.S.C. 1639e) and implementing regulations.[8] An AMC that is a subsidiary owned and controlled by an insured depository institution or an insured credit union, and that is regulated by a Federal financial institutions regulatory agency is subject to all of the minimum requirements, except the requirement to register with a State. The minimum requirements will apply to any AMC that provides appraisal management services, as defined in the proposed regulation, and meets the statutory size threshold, which is that the AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or of 25 or more appraisers nationally in a given year. States may establish requirements for AMC registration and supervision that are in addition to these minimum requirements.[9]

Under section 1124, beginning 36 months from the time the Agencies issue the final AMC rule, an AMC may not provide services for a Federally related transaction in a State unless the AMC is registered with the State or is subject to oversight by a Federal financial institutions regulatory agency. This effectively allows each State up to 36 months to set up registration and supervision systems that meet the requirements of the final rule. The ASC, with the approval of the FFIEC, may extend the 36-month deadline for an additional 12 months if the ASC makes a finding that the State has made substantial progress toward implementation of a system that meets the criteria in the final rule.

Section 1124 does not compel a State to establish an AMC registration and supervision program, nor is there a penalty imposed on a State that does not establish a regulatory structure for AMCs within 36 months of issuance of the final AMC rule. However, in such a State, unless and until it establishes such a regulatory structure, AMCs are barred by section 1124 from providing appraisal management services for Federally related transactions.[10]

Under section 1124 of Title XI, the Agencies must establish, by rule, minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State.[11] The statute also directs the Agencies to issue regulations that identify certain activities of AMCs that participating State appraiser certifying and licensing agencies should report to the ASC. This proposed rule implements these statutory requirements.

Consolidation of FDIC and OTS Rules on Appraisals

Title III of the Dodd-Frank Act transferred the powers, duties, and functions formerly performed by the Office of Thrift Supervision (OTS), the Federal entity formerly responsible for the supervision of federally insured savings associations and their holding companies, to the FDIC for State savings associations and authorized the FDIC to consolidate OTS and FDIC rules.[12] This proposed rule implements this authority by rescinding the OTS regulatory provisions on appraisals pertaining to State savings associations as such associations are covered by the FDIC's existing appraisal rules.

II. The Proposed Rule

The Agencies are issuing this proposal to implement the minimum requirements for registration and supervision of AMCs in the Dodd-Frank Act, Title XIV, Subtitle F (Appraisal Activities). As required by the Dodd-Frank Act, this proposal was developed jointly by the OCC, the Board, the FDIC, the Bureau, the FHFA, and the NCUA. The proposed rule would: (1) Establish

[1] Public Law 111–203, 124 Stat. 1376.

[2] Public Law 101–73, 103 Stat. 183; 12 U.S.C. 3353.

[3] The term ''appraisal management company'' is defined in more detail in section 1121 of Title XI of FIRREA, 12 U.S.C. 3350(11), and in proposed § 34.211(c).

[4] 12 U.S.C. 3346.

[5] Hereafter, section references are to Title XI of FIRREA unless otherwise noted.

[6] 12 U.S.C. 3332(a)(6); 3338(a)(3); 3353(e).

[7] Under FIRREA, a Federally related transaction is a real estate related financial transaction that involves an institution regulated by the OCC, Board, FDIC, or NCUA and that requires the services of an appraiser under the interagency appraisal rules. OCC: 12 CFR part 34, subpart C and 12 CFR part 164; Board: 12 CFR part 208, subpart E and 12 CFR part 225, subpart G; FDIC: 12 CFR part 323; and NCUA: 12 CFR part 722.

[8] *See* Board: 12 CFR 226.42; Bureau: 12 CFR 1026.42.

[9] 12 U.S.C. 3353(b).

[10] 12 U.S.C. 3353(f)(1). Under section 1124, this restriction will not apply to AMCs that are subsidiaries owned and controlled by an insured depository institution or an insured credit union, and regulated by a Federal financial institutions regulatory agency. Such AMCs are subject to all the requirements of section 1124, with the exception of the requirement to register with a State.

[11] 12 U.S.C. 3353(a).

[12] The OTS was abolished on October 19, 2011.

the minimum requirements in section 1473 of the Dodd-Frank Act for registration of AMCs; (2) establish the minimum requirements for AMCs that register with the State under section 1473 of the Dodd-Frank Act; (3) require Federally regulated AMCs to meet the minimum requirements of section 1473 (other than registering with the State); and (4) require the reporting of certain AMC information to the ASC. The proposed rule is being published in the CFR separately by the OCC, the Board, the FDIC, and the FHFA. No substantive difference between the rules is intended. The proposed rule would also integrate FDIC appraisal regulations for State nonmember banks and State savings associations.

Key Definitions

Appraisal management company. Proposed § 34.211(c) [13] defines an AMC as a person [14] that: (1) provides appraisal management services to creditors or secondary mortgage market participants; (2) provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction (including consumer credit transactions incorporated into securitizations); and (3) within a given year, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States. The proposed definition cross-references proposed § 34.212 for the rules on how to calculate the numeric threshold for the appraiser panel.

Securitization within the definition of appraisal management company. The proposed definition of AMC applies to appraisal management services provided in connection with residential mortgage transactions and securitizations involving residential mortgages. The proposed rule does not extend to appraisal management services provided in connection with commercial real estate transactions or securitizations involving commercial real estate mortgages. In drafting the definition of AMC for the proposal, the Agencies considered whether the statutory definition of AMC in section 1121 should be construed to encompass not only appraisal management services provided for securitizations of residential mortgages, but also appraisal services in connection with securitizations of commercial mortgages.

The Agencies' reading of the statute—that it only extends to residential mortgage transactions and securitizations involving residential mortgages—is consistent with the text of section 1124 and of other relevant portions of the Dodd-Frank Act taken as a whole. Non-residential or commercial mortgages are not mentioned in any AMC provisions in section 1473 (or elsewhere in Title XIV of the Dodd-Frank Act). The lack of a reference to commercial mortgage lending in the relevant Dodd-Frank Act provisions suggests that AMCs were not intended to be covered by the AMC minimum requirements when they are providing appraisal management services for underwriters or other principals of commercial mortgage securitizations. Moreover, the Agencies understand that individual appraisers, as opposed to AMCs, are more typically retained to provide an appraisal of properties that will be included in securitizations of commercial mortgage loans because of the size and complexity of those properties.[15]

''External third party'' within the definition of appraisal management company. Section 1121 defines an AMC as any ''external third party'' authorized to take certain actions by a creditor of a consumer credit transaction secured by a consumer's principal dwelling or by an underwriter of or other principal in the secondary mortgage markets.[16] Consistent with the statutory definition, the proposal would define the term AMC to exclude a department or division of an entity when such department or division provides appraisal management services only to that entity. These departments or divisions are not ''external third parties'' as required by the statute. An AMC that is an affiliate (rather than a department or division) of a creditor or secondary market principal, however, would be treated as an AMC under the proposed rule, even if the AMC provides appraisal management services only to the entity with which it is affiliated, because the affiliate is a separate legal entity.

The Agencies believe that this interpretation is consistent with the plain meaning of ''external'' and ''third party,'' as well as with section 1124(c), which by its terms contemplates that the requirements of section 1124 would apply to subsidiaries of financial institutions. In the Agencies' view, this interpretation is also consistent with section 1124 as a whole, which is directed at regulating parties that provide appraisal management services on behalf of creditors and secondary market principals, but does not regulate creditors or secondary market principals directly.

Question 1. The Agencies request comment on all aspects of the proposed definition of AMC.

Appraisal management services. Proposed § 34.211(d) defines ''appraisal management services'' to mean one or more of the following: (1) recruiting, selecting, and retaining appraisers; (2) contracting with State-certified or State-licensed appraisers to perform appraisal assignments; (3) managing the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary mortgage market participants, collecting fees from creditors and secondary mortgage market participants for services provided, and paying appraisers for services performed; or (4) reviewing and verifying the work of appraisers. This definition reflects the appraisal management services outlined in the definition of AMC in section 1121.

Appraiser panel. The definition of AMC in section 1473 of the Dodd-Frank Act provides that an entity will be treated as an AMC for purposes of State registration if it has an ''appraiser network or panel'' of more than 15 State-certified or State-licensed appraisers in a State or 25 or more nationally within a given year. Section 1473 does not specify whether a ''network or panel'' consists of employees of an AMC or independent contractors retained by the AMC (or both). To help address this issue, the Agencies conducted outreach with associations that represent AMCs and appraisers to gather information about the AMC business model. The Agencies also conducted outreach with State appraiser certifying and licensing agencies to gather information on the experience of States that have adopted AMC laws that define ''appraiser panel.'' [17]

[13] For ease of reference, the preamble refers to section numbers in the proposed rule text for the OCC.

[14] The proposed rule incorporates the definition of ''person'' from Regulation Z, which defines a person as ''a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.'' 12 CFR 1026.2(22).

[15] This understanding is based on the supervisory experience of the Agencies as well as outreach to a major trade association for AMCs and a large AMC, which confirmed that, under the current business model, AMCs do not generally provide services in connection with securitizations of commercial mortgages.

[16] 12 U.S.C. 3350(11).

[17] The Agencies conducted outreach in 2013 with State appraiser certifying and licensing agencies

Based on this outreach, the Agencies understand that a majority of States that have adopted AMC laws define ''appraiser panel'' as being comprised of independent contractors.[18] A minority of States use a broader definition for ''appraiser panel'' that encompasses a combination of independent contractors and employees.[19] The majority approach is consistent with the model AMC code offered by a trade association for appraisers and the minority approach is consistent with a model code offered by a trade association for AMCs.

Proposed § 34.211(e) defines an appraiser network or panel as a network of State-licensed or State-certified appraisers who are independent contractors to an AMC. This definition reflects the approach taken by the majority of States that have adopted AMC registration laws or have proposed such laws, as discussed above. The proposed definition of appraiser panel also reflects the Agencies' understanding, based on the outreach, that AMCs typically engage appraisers as independent contractors under the current AMC business model, rather than having employees perform appraisals. Proposed § 34.211(e) also reflects the definition of appraisal management company in section 1121, which outlines typical tasks carried out by AMCs, such as contracting with State-licensed or State-certified appraisers. This definition of AMC and its description of appraisal management services *do not include* performing appraisals.

Although the Agencies believe that defining an ''appraiser network or panel'' as including independent contractors is consistent with the Dodd-Frank Act and the current business model of AMCs, the Agencies, in conjunction with the ASC, will monitor AMCs to assess whether they are hiring appraisers as part-time employees to avoid State registration requirements. Outreach with State officials did not indicate this is currently occurring or at significant risk of occurring.

Question 2. The Agencies request comment on the proposed definition of ''appraiser network or panel'' and on the alternative of defining this term to include employees as well as independent contractors. The Agencies also request comment on whether the term ''independent contractor'' should be defined, and if so why and how, including whether it should be defined based upon Federal law (*e.g.,* using the standards issued by the Internal Revenue Service[20] or standards adopted in other Federal regulations, such as those issued under the Secure and Fair Enforcement for Mortgage Licensing Act[21] (S.A.F.E. Act)),[22] or left to State law (so as to be consistent with existing AMC laws).

Appraisal firms. An appraisal firm is a firm that is engaged to perform appraisals. Section 1473 of the Dodd-Frank Act appears to distinguish AMCs that contract with others to perform appraisals from appraisal *firms* that are comprised of groups of appraisers that perform appraisals as part of a single firm or partnership. For the following reasons, the Agencies believe that appraisal firms should not be treated as AMCs under section 1473.

One basic reason to distinguish between AMCs and appraisal firms is that the business models of AMCs and appraisal firms are different. AMCs provide appraisal management services to third parties, including retaining appraisers to perform appraisals, but AMCs do not perform appraisals. This is a core characteristic of an AMC that distinguishes its model from appraisal firms, given that appraisal firms perform appraisals using one of the firm's employees or partners.[23]

The text of section 1473 also reflects these difference in the business models of AMCs and appraisal firms. Section 1473 describes the duties of AMCs as including ''contracting with State-certified or State-licensed appraisers to perform appraisal assignments.'' While Congress could have explicitly included ''performing appraisal assignments'' in this list of business lines, it did not. Another basis for excluding appraisal firms from State AMC registration is that section 1124 uses the term ''Appraisal Management Company,'' which, again, is understood generally to refer to an entity that provides appraisal management services by retaining appraisers as independent contractors and not by performing appraisals.

Given this statutory language, the proposal differentiates between entities that contract with appraisers to perform appraisals (such entities being AMCs), versus those whose employees directly perform appraisals (those entities being appraisal firms). For this reason, and for other reasons discussed above, the Agencies have proposed that business entities that perform appraisals should not be treated as AMCs for purposes of implementing the Dodd-Frank Act's State registration and supervision requirements, with the exception of a hybrid firm, as discussed below. Thus, the proposed regulation does not authorize participating States to require appraisal firms to register as AMCs or to require that appraisal firms be subject to supervision under the AMC registration and supervision programs implemented by the proposed regulation (again, however, with the exception of a hybrid firm).[24]

Hybrid firms or entities. The Agencies have considered the possibility that there are, or may be in the future, ''hybrid'' entities, meaning entities that both hire appraisers as employees to perform appraisals, and engage independent contractors to perform appraisals. In this situation, the entity could be considered both an AMC and an appraisal firm. In such a case, the entity should be treated as an AMC for purposes of State registration if it meets the numerical test (of overseeing more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States within a given year). The numerical calculation for hybrid entities should only include appraisers engaged as independent contractors.

through the Association of Appraisal Regulatory Officials (AARO), *see http://www.aaro.net/.*

[18] *See, e.g.,* N.C. Gen. Stat. section 93E–2–2 (defining an appraiser panel as a network or panel of appraisers who are independent contractors to the AMC); Vernon's Tex. Code Ann. Occupations Code section 1104.003(b)(3) (same); Louisiana La. Rev. Stat. Ann section 37:3415.2(a) (same); *see also* Ohio (draft code) (same).

[19] *See, e.g.,* Cal. Bus. & Prof. Code section 11302 (defining AMC to include both independent contractors and employees); Ark. Code Ann. section 17–14–402(2) (same); Ky. Rev, Stat. section 324A.150(2)(same).

[20] *See, e.g.,* IRS Publication 1779, ''Independent Contractor or Employee,'' available at *http://www.irs.gov/pub/irs-pdf/p1779.pdf;* IRS Publication 15–A, ''Employer's Supplemental Tax Guide,'' at p. 7 *et seq.* (discussing factors for distinguishing employees from independent contractors), available at *http://www.irs.gov/pub/irs-pdf/p15a.pdf.*

[21] 12 CFR 1008.23 (''*Independent contractor* means an individual who performs his or her duties other than *at the direction of and subject to the supervision and instruction of* an individual . . .''). The term ''independent contractor'' is distinguished from ''employee,'' which is defined as an individual (1) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and (2) whose compensation for Federal income tax purposes is reported, or required to be reported, on a W–2 form issued by the controlling person.).

[22] The S.A.F.E. Act was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110–289, Division A, Title V, sections 1501–1517, 122 Stat. 2654, 2810–2824 (July 30, 2008), *codified at* 12 U.S.C. 5101–5116.

[23] *See, e.g.,* U.S. House of Reps., Comm. on Fin. Servs., *Report on H.R. 1728, Mortgage Reform and Anti-Predatory Lending Act,* No. 111–94, 75 (May 4, 2009) (noting that the AMC statutory provision would authorize the ASC to oversee companies that retain or contract with appraisers and manage the process of having an appraisal performed (appraisal management companies)).

[24] The Agencies note that participating States would have authority, under their general power to regulate commerce within their borders, and not in implementation of this rule, to regulate appraisal firms.

Question 3. The Agencies request comment on the distinction the Agencies have drawn between employees and independent contractors as a basis for exclusion of appraisal firms from the definition of an AMC.

Covered transaction. The proposed rule applies to AMCs that provide appraisal management services relating to a ''covered transaction.'' Proposed § 34.211(h) defines a covered transaction as any consumer credit transaction secured by the consumer's principal dwelling. The proposed definition does not limit the definition of ''covered transaction'' to Federally related transactions (generally, credit transactions involving a Federally regulated depository institution, *see* 12 U.S.C. 3350(4)), even though Title XI of FIRREA and its implementing regulations have historically applied only to appraisals for Federally related transactions.

This interpretation is proposed to reflect the statutory text of section 1121(11), which defines the term ''appraisal management company'' in connection with ''valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization.'' This interpretation is also consistent with the structure and text of other parts of section 1124, which distinguish between ''appraisals'' generally and appraisal services related specifically to Federally related transactions.[25] Furthermore, the text of section 1124(a)(4) indicates that one of the chief purposes of the minimum requirements for AMCs is to ensure compliance with the appraisal independence standards established under section 129E of TILA.[26] Those standards apply to AMCs whenever they engage in a consumer credit transaction secured by a principal dwelling, regardless of whether the transaction is a Federally related transaction.[27]

For these reasons, the proposed rule would establish minimum requirements in participating States for *all* entities that meet the definition of AMC, regardless of whether the AMC participates in Federally related transactions.

Federally regulated AMCs and Federally related transaction regulations. Under section 1124(c), an AMC that is a subsidiary owned and controlled by an insured depository institution or an insured credit union and that is regulated by a Federal financial institutions regulatory agency[28] is not required to register with a State.[29] Proposed § 34.211(j) defines such an AMC as a ''Federally regulated AMC,'' meaning an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the OCC, Board, NCUA, or the FDIC.

A Federally regulated AMC must follow the minimum requirements that are applicable to State-registered AMCs and is subject to supervision for compliance with these standards by the appropriate Federal financial institutions regulatory agency. In addition, a Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State to the ASC for inclusion of the AMC on the AMC National Registry.

The NCUA, unlike the other banking agencies to this rulemaking, does not directly oversee or regulate any subsidiaries owned and controlled by credit unions, including AMC subsidiaries. Rather, the NCUA's regulations permit Federal credit unions to invest in or lend only to credit union service organizations (CUSOs) that conform to specific requirements outlined in part 712 of the NCUA's regulations.[30] As explained above, the Agencies are interpreting section 1124(c)[31] to apply only to AMC subsidiaries owned and controlled by an insured depository institution, or an insured credit union, *and* regulated by a Federal financial institutions regulatory agency. NCUA has not, historically, asserted that CUSOs or their employees are exempt from applicable State registration and licensing regimes, and this proposed rule would not alter that approach.[32] Nor does NCUA directly regulate or oversee CUSOs owned by State-chartered credit unions. Accordingly, under the proposal, AMC CUSOs, whether owned by a State or Federally chartered credit union, are not considered to be regulated by a Federal financial institutions regulatory agency at this time and would be required to be registered in accordance with applicable State requirements.

Question 4. The agencies request comment on whether references to the NCUA and insured credit unions should be removed from the definition of 'Federally regulated AMC' and other parts of the final regulation to clarify that AMC CUSOs are subject to State registration and supervision.

Proposed § 34.211(k) defines ''Federally related transaction regulations'' to mean the regulations issued by the OCC, Board, FDIC, and NCUA pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343. These interagency regulations established certain safety and soundness standards for appraisals conducted in connection with lending by institutions regulated by the OCC, Board, FDIC, or NCUA. The Agencies added this definition to implement the minimum standard in section 1124(a)(2) that requires an AMC to verify that only certified or licensed appraisers are used for Federally related transactions.

Secondary mortgage market participant. The term ''secondary mortgage market participant'' is used in the proposed regulation to implement the corresponding reference in the statute to ''an underwriter of or other principal in the secondary mortgage markets.'' Proposed § 34.211(n) defines ''secondary mortgage market participant'' to mean a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. The definition includes individual investors in a mortgage-backed security only if they also serve in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

Question 5. The Agencies request comment on the proposed definition of ''secondary mortgage market participant.'' Are the types of entities cited in the proposed definition appropriately included in this context? Should any other types of entities be expressly included or excluded from this definition, for the sake of clarity? Should any other types of entities be considered ''an underwriter or other principal in the secondary mortgage markets'' for the purpose of the definition of AMC in the Dodd-Frank Act?

[25] See 12 U.S.C. 3353(a)(3) and (4); *contra* 12 U.S.C. 3353(a)(2) and (f)(1).

[26] 12 U.S.C. 3353(a)(4).

[27] *See* 15 U.S.C. 1639e(a) (defining scope); 12 CFR 1026.42(b)(1)–(2) (implementing regulations defining scope).

[28] The term ''Federal financial institutions regulatory agencies'' means the Board, the FDIC, the OCC, the former OTS, and the NCUA. 12 U.S.C. 3350(6). Title III of the Dodd-Frank Act provides that the OCC is now the Federal financial institutions regulatory agency for Federal savings associations. Title III of the Dodd-Frank Act also provides that the FDIC is the Federal financial institutions regulatory agency for state savings associations. Finally, the Dodd-Frank Act provides that the Board is responsible for regulation of savings and loan holding companies.

[29] 12 U.S.C. 3353(c).

[30] 12 CFR Part 712.

[31] 12 U.S.C. 3353(c).

[32] *See* 75 FR 44656, 44659 (July 28, 2010) (Applying similar reasoning to the licensing of mortgage loan originators who were employees of CUSOs under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008).

Minimum AMC Requirements and Implementation Issues

Method for assessing the number of appraisers on AMC panels. The proposed rule provides parameters for determining whether, within a given year, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States.[33] Under the proposed rule, an appraiser is deemed part of the AMC's appraiser panel as of the earliest date the AMC accepts the appraiser for consideration for future appraisal engagements, or contracts with the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal, including an affiliate of such a creditor or principal.

An appraiser who is considered to be part of the AMC's appraiser panel is deemed to remain on the panel until the date on which the AMC sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; receives written notice from the appraiser asking to be removed from the appraiser panel; or receives notice of the death or incapacity of the appraiser. If an appraiser is removed from an AMC's appraiser panel, but the AMC subsequently re-admits the appraiser or engages the appraiser at any time during the twelve months after the appraiser's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption. The Agencies believe that these procedural provisions will provide clarity to States and prevent circumvention of the registration requirement.

Minimum requirements for State registration and supervision of AMCs. Under the proposed rule, participating States must have in place within the State appraiser certifying and licensing agency a licensing program that has authority to: (1) Review and approve or deny an AMC's application for initial registration; (2) review and renew or refuse to renew an AMC's registration periodically; (3) examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents to the State; (4) verify that the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable; (5) conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders; (6) discipline, suspend, terminate, and refuse to renew the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and (7) report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the ASC.

These proposed authorities and mechanisms reflect the Agencies' interpretation of the provisions of section 1124(a), including the minimum requirement in section 1124(a)(1) that AMCs be ''subject to supervision'' by the State agency.[34] The Agencies interpret section 1124(a) as being consistent with the criteria outlined in sections 1103, 1109, and 1118(a) of FIRREA, as amended by the Dodd-Frank Act, which describe the elements of State regulation of AMCs that will be monitored by the ASC.[35] For example, the ASC will monitor whether States have supervision systems in place that would allow a State to process complaints against an AMC and conduct investigations in connection with those complaints. The ASC will also monitor whether a State takes appropriate enforcement actions against an AMC that is found to have violated applicable laws and regulations.

The Agencies believe that the proposed rule will provide notice to States of the enforcement and supervision obligations the States have under FIRREA and ensure that State appraiser certifying and licensing agencies have the required minimum structures for registration and supervision of AMCs

Question 6. The Agencies request comment on the proposed minimum requirements for State registration and supervision of AMCs.

Minimum requirements for State-registered AMCs. Under section 1124, participating States are required to ensure that AMCs that provide appraisal management services for a creditor or ''underwriter of or other principal in the secondary mortgage markets'' related to a covered transaction follow certain minimum requirements. The proposed rule implements these requirements.

Under the proposed rule, an AMC must register with, and be subject to supervision by, a State appraiser certifying and licensing agency in each State in which the AMC operates. (Again, however, the requirement to register with a State does not apply to Federally regulated AMCs; the rules for these AMCs are discussed further below.) In addition, an AMC must verify that only State-certified or State-licensed appraisers are used when a creditor or secondary mortgage market participant engages in a transaction that requires the services of a State-certified or State-licensed appraiser under the Federally related transaction regulations. An AMC must also have processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who has the requisite education, expertise, and experience necessary to complete competently the assignment for the particular market and property type. This minimum requirement implements the requirement of section 1124(a)(3) and emphasizes a core principle of the Interagency Appraisal and Evaluation Guidelines and USPAP, which is that an appraiser must be not only be competent generally, but also have specific competency to perform a particular appraisal.[36]

The proposed rule also requires that an AMC establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with: (1) The AMC's obligations as a covered person with respect to mandatory reporting, conflicts of interest, and other acts or practices that would violate appraisal independence pursuant to section 129E(a) through (e) of TILA; and (2) the AMC's obligations as a creditor's agent with respect to appraiser compensation pursuant to section 129E(i) of TILA, 15 U.S.C. 1639e(i).[37] The proposed rule directly imposes these requirements on Federally regulated AMCs.

[33] The Agencies recognize that States, in exercise of their general powers to license and regulate commerce within their borders and not in implementation of this rule, may choose to adopt registration provisions for AMCs that do not meet the size thresholds in the proposed rule.

[34] The Agencies believe that section 1124 allows the Agencies to establish more specific requirements for supervision and registration of AMCs that implement the general requirements enumerated in section 1124(a). In addition, by providing that the regulation shall ''include'' the requirements enumerated in section 1124, it is implied that the Agencies have the discretion to establish additional supervisory standards for State oversight of AMCs beyond the general requirements specifically enumerated in section 1124(a).

[35] *See* 12 U.S.C. 3332(a)(1)(B) (requiring the ASC to monitor requirements established by the States for supervision of AMCs); 12 U.S.C. 3338(a) (requiring each participating State to transmit reports to the ASC on supervisory activities involving AMCs and disciplinary actions taken); and 12 U.S.C. 3347(a) (requiring the ASC to monitor States to assess whether a State has an effective regulatory program).

[36] Interagency Appraisal and Evaluation Guidelines, 75 FR 77450, 77458 (December 10, 2010).

[37] *See* 12 CFR 226.42 (Board); 12 CFR 1026.42 (Bureau).

The purpose and scope section of the proposed rule notes that the AMC minimum standards do not affect the responsibility of banks, Federal savings associations, state savings associations, bank holding companies, and credit unions for compliance with applicable regulations and guidance concerning appraisals. Under the interagency appraisal standards, for example, if an appraisal is prepared by a fee appraiser (as opposed to in-house, by the institution), the appraiser must be engaged directly by the regulated institution or its agent, and have no direct or indirect interest, financial or otherwise, in the property or the transaction.[38] As such, as stated in the Interagency Appraisal and Evaluation Guidelines, an institution that engages a third party such as an AMC to act as its agent in administering any part of the institution's appraisal program remains responsible for compliance with applicable laws concerning appraisers and appraisals.[39]

In drafting these minimum requirements, and the definition of appraisal management services discussed previously, the Agencies considered whether to require AMCs to follow minimum standards when performing appraisal reviews. The Agencies note that section 1110 of FIRREA, as amended by section 1473 of the Dodd-Frank Act,[40] requires a separate rulemaking to require ''appropriate'' appraisal review for compliance with USPAP in connection with Federally related transactions. The Agencies believe that the section 1110 rulemaking provides the appropriate opportunity to address the requirement for appraisal reviews. For this reason, the Agencies are not proposing to issue appraisal review standards in this AMC rulemaking.

Question 7. The Agencies request comment on the proposed approach to the appraisal review issue.

Minimum requirements for Federally regulated AMCs. As explained earlier in this preamble, section 1124 provides that AMCs that are owned and controlled subsidiaries of an insured depository institution or an insured credit union and regulated by a Federal financial institutions regulatory agency, are not required to register with a State.[41] These Federally regulated AMCs are, however, subject to the same minimum requirements as AMCs that are not regulated by a Federal financial institutions agency.

The proposed rule implements these minimum requirements in § 34.214(a) using the same substantive standards that are proposed for AMCs that are not subject to regulation by a Federal financial institutions regulatory agency. Specifically, the proposed rule requires Federally regulated AMCs to have systems in place to ensure that only State-certified or State-licensed appraisers perform appraisals for Federally related transactions; that appraisers with the requisite education, expertise, and experience necessary for the assignment are used; that the appraisers comply with USPAP; and that the appraisal independence requirements of TILA section 129E are complied with.[42]

In addition, in order to establish a means for Federally regulated AMCs to be included in the ASC National Registry, the proposed rule would require Federally regulated AMCs to provide to each participating State in which it operates the information required by the ASC for administration of the AMC National Registry. First, the proposed rule would require Federally regulated AMCs to provide information related to the determination by the ASC of the AMC National Registry fee. This provision implements section 1124(e) of FIRREA.[43] Second, the proposed rule would require Federally regulated AMCs to provide to each participating State the information needed to determine whether the limitations on registration or inclusion in the AMC National Registry under § 34.215 apply. *See* proposed § 34.215 and accompanying section-by-section analysis, below. The proposed rule recognizes, however, the possibility that a State might not establish a system for collecting such information from Federally regulated AMCs. If the State does not have a system for accepting such information and reporting it to the ASC, the proposed rule would direct the Federally regulated AMC to the ASC for more information on alternative means for submitting the information outlined in § 34.214(b).

Registration limitations. Proposed § 34.215 would place certain limitations on whether an AMC (whether or not Federally regulated) can be registered in a State or included in the National Registry. Proposed § 34.215 is based on section 1124(d) of FIRREA,[44] which provides that an AMC shall not be registered by a State or included on the AMC National Registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Section 1124(d) provides further that each person who owns more than 10 percent of an AMC must be of good moral character, as determined by the State appraiser certifying and licensing agency, and must submit to a background investigation carried out by the State appraiser certifying and licensing agency.

To implement this provision, proposed § 34.215(a) would provide that an AMC may not be registered by a State or included on the AMC National Registry if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. As indicated above, the statute clearly states that the limitations regarding appraiser licensure and certification determine both whether an AMC may be ''registered by a State'' and whether an AMC may be ''included on the national registry'' of AMCs.[45]

Proposed § 34.215(b) provides that, for AMCs seeking to be registered in a State, each person who owns more than 10 percent of an AMC must be of good moral character, as determined by the State appraiser certifying and licensing agency, and must submit to a background investigation carried out by the State appraiser certifying and licensing agency. The statute is ambiguous regarding whether the limitation regarding the moral character of AMC owners applies to both registration with a State and inclusion on the AMC National Registry. Given that the title of the statutory section is ''Registration Limitations,'' the Agencies have proposed that the limitation would apply only with respect to AMC registration with a State. Under the proposal, this limitation would apply to Federally regulated AMCs only if they seek to register voluntarily with a State.

Under the proposal, these threshold requirements concerning licensure would be ongoing obligations for State appraiser certifying and licensing agencies. As such, a State would be expected to review whether an AMC meets the proposed registration

[38] 12 CFR 34.45 and 164.5 (OCC); 12 CFR 225.65 (Board); 12 CFR 323.5 (FDIC).

[39] *See* Interagency Appraisal and Evaluation Guidelines, 75 FR 77450, 77463 (December 10, 2010)(discussing third party arrangements).

[40] Section 1110(3), 12 U.S.C. 3339(3).

[41] However, nothing in the proposed rule would prohibit a Federally regulated AMC from registering with a State if the State permitted it to do so.

[42] *See* proposed § 34.214(a) and 15 U.S.C. 1639e (implemented at 12 CFR 1026.42) (implementing section 129E of TILA).

[43] 12 U.S.C. 3353(e).

[44] 12 U.S.C. 3353(d).

[45] 12 U.S.C. 3353(d).

limitations, as described in the statute and in proposed § 34.215, at the time of registration of an AMC, and at the time of renewal of the AMC license each year, or more frequently as determined necessary by that State.

Submission of reports to the ASC. Under § 34.216 of the proposed rule, States that establish AMC registration programs must submit to the ASC the information regarding AMCs required by ASC regulations and guidance. The proposed rule implements the requirement in section 1124(e) for the Agencies to establish these reporting requirements.

Integration of FDIC and OTS Rules on Appraisals

As noted previously, pursuant to Title III of the Dodd-Frank Act, the FDIC is proposing to integrate its appraisal regulations for both nonmember banks and State savings associations. Specifically, the FDIC proposes to rescind 12 CFR Part 390, Subpart X (Part 390, Subpart X), of the former OTS regulation entitled ''*Appraisals.*'' The proposed rescission of Part 390, Subpart X completes the FDIC's review of this subpart of the OTS rules for rescission, amendment, or adoption. This subpart was included in the regulations that were transferred to the FDIC from the OTS on July 21, 2011, in connection with the implementation of applicable provisions of Title III of the Dodd-Frank Act. Upon removal of Part 390, Subpart X, the appraisal regulations applicable for all insured depository institutions (''IDIs''), for which the FDIC has been designated the appropriate Federal banking agency (including State savings associations), will be found at 12 CFR Part 323, entitled *''Appraisals.''*

Rescinding Part 390, Subpart X will serve to streamline the FDIC's rules and eliminate redundancy and unnecessary regulations. The FDIC does not, however, see any need to make conforming amendments to Part 323 of its Regulations to accomplish this goal. This is because Part 323 already applies to ''regulated institutions,'' defined by section 323.1(b) as ''institutions regulated by the FDIC.'' As noted previously, under Title III of the Dodd-Frank Act, the FDIC is now responsible for the regulation of State savings association. The FDIC is therefore of the opinion that Part 323 as currently drafted is sufficiently broad to include State savings associations without any further amendment. If the proposal is adopted in final form, all insured depository institutions regulated by the FDIC, including State savings associations, will be regulated in a uniform manner. The FDIC nonetheless solicits comment on these proposed changes.

III. Request for Comment on the Proposed Rule

The Agencies request comments on all aspects of this proposed rule, including specific requests for comment that appear throughout the Supplementary Information above. In addition, we ask for specific comment on the following questions:

Question 8. What barriers, if any, exist that may make it difficult for a State to implement the proposed AMC rules?

Question 9. What aspects of the rule, if any, will be challenging for States to implement within 36 months? To the extent such challenges exist, what alternative approaches do commenters suggest that would make implementation easier, while maintaining consistency with the statute?

Question 10. Are there any barriers to a State collecting information on Federally regulated AMCs and submitting such information to the ASC? And if so what are they?

Question 11. Are any questions raised by any differences between State laws and the proposed AMC rules? Should these be addressed in the final AMC rules and, if so, how?

IV. Regulatory Analysis

Paperwork Reduction Act

Certain provisions of the proposed rule contain ''information collection'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.). Under the PRA, the Agencies may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule are being submitted to OMB for review and approval by the FDIC, FHFA, and OCC under section 3506 of the PRA and section 1320.11 of the OMB's implementing regulations (5 CFR part 1320). The Board reviewed the proposed rule under the authority delegated to the Board by OMB.

The collection of information requirements in the proposed rule are found in §§ 34.212–34.216. This information is required to implement section 1473 of the Dodd-Frank Act.

Title of Information Collection: Minimum Requirements for Appraisal Management Companies.

OMB Control Nos.: The Agencies will be seeking new control numbers for these collections.

Frequency of Response: Event generated.

Affected Public: States; businesses or other for-profit and not-for-profit organizations.

Abstract

State Recordkeeping Requirements

States seeking to register AMCs must have an AMC certifying and licensing program. Section 34.213(a) requires participating States to establish and maintain within its appraiser certifying and licensing agency a licensing program with the legal authority and mechanisms to: (i) review and approve or deny an application for initial registration; (ii) periodically review and renew, or deny renewal of, an AMC's registration; (iii) examine an AMC's books and records and require the submission of reports, information, and documents; (iv) verify an AMC's certifications or licenses; (v) investigate and assess potential law, regulation, or order violations; (vi) discipline, suspend, terminate, or deny registration renewals of, AMCs that violate laws, regulations, or orders; and (vii) report violations of appraisal-related laws, regulations, or orders, and disciplinary and enforcement actions to the Appraisal Subcommittee.

Section 34.213(b) requires each participating State to impose requirements on AMCs not owned and controlled by an insured depository institution and regulated by a Federal financial institution regulatory agency to: (i) Register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which the AMC operates; (ii) use only State-certified or State-licensed appraisers for Federally regulated transactions in conformity with any Federally regulated transaction regulations; (iii) establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type; (iv) direct the appraiser to perform the assignment in accordance with USPAP; and (v) establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with section 129E(a)–(i) of the Truth in Lending Act.

State Reporting Burden

Section 34.216 requires that each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted under this Subpart and any additional information required by the Appraisal Subcommittee concerning AMCs.

AMC Reporting Requirements

Section 34.214(b) requires that a Federally regulated AMC must report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies, including: (i) Policies regarding the determination of the AMC National Registry fee; and (ii) the information listed in § 34.215.

Section 34.215 provides that an AMC may not be registered by a State or included on the AMC National Registry if such company is owned, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Each person that owns more than 10 percent of an appraisal management company shall submit to a background investigation carried out by the State appraiser certifying and licensing agency. While section 34.215 does not authorize States to conduct background investigations of Federally regulated AMCs, it would allow a State to do so if the Federally regulated AMC chooses to register voluntarily with the State.

AMC Recordkeeping Requirements

Section 34.212(b) provides that an appraiser in an AMC's network or panel is deemed to remain on the network or panel until: (i) The AMC sends a written notice to the appraiser removing the appraiser with an explanation; or (ii) receives a written notice from the appraiser asking to be removed or a notice of the death or incapacity of the appraiser. The AMC would retain these notices in its files.

Burden Estimates

Total Number of Respondents: 500 AMCs, 50 States.

Bureau: The Bureau is not seeking OMB approval for the information collection requirements already accounted for by the other agencies' information collection requests submitted to OMB in association with this rule.

FDIC Burden Total: 1,545 hours.

FHFA Burden Total: 617 hours.

OCC Burden Total: 1,545 hours.

Board Burden Total: 1,545 hours.

Total Burden: 5,252 hours.

The Agencies have a continuing interest in the public opinion of our collections of information. Comments regarding the questions set forth below may be sent to the OMB desk officer for the Agencies by mail to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, or by the Internet to *oira_submission@omb.eop.gov,* with copies to the Agencies at the addresses listed in the **ADDRESSES** section of this **SUPPLEMENTARY INFORMATION**.

a. Whether the information collection is necessary for the proper performance of the Agencies' functions, and how the instructions can be clarified so that information gathered has more practical utility;

b. The accuracy of the Agencies' estimates of the burdens 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;

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; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Regulatory Flexibility Act

OCC: The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. However, the regulatory flexibility analysis otherwise required under the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million) and publishes its certification and a brief explanatory statement in the **Federal Register** together with the rule.

The OCC currently supervises 1,745 banks (1,139 commercial banks, 66 trust companies, 492 federal savings associations, and 48 branches or agencies of foreign banks). Approximately 1,195 of OCC-supervised banks are small entities based on the Small Business Administration's (SBA's) definition of small entities for RFA purposes. The OCC classifies the economic impact of total costs on a bank as significant if the total costs in a single year are greater than 5 percent of total salaries and benefits, or greater than 2.5 percent of total non-interest expense.

As discussed in the **SUPPLEMENTARY INFORMATION** above, section 1473 of the Dodd-Frank Act requires the Agencies to jointly prescribe regulations to implement the minimum requirements for State registration and supervision of AMCs. The proposal meets this obligation by requiring States that elect to register and supervise AMCs to impose certain requirements on AMCs. The proposal also requires participating States to have certain basic supervisory authorities, such as the ability to investigate complaints against AMCs, and take disciplinary action with respect to AMCs that violate applicable laws.

The OCC believes the proposed rule will not have a significant economic impact on a substantial number of small entities for several reasons. First, the proposed rule imposes requirements primarily on States, not on national banks or Federal savings associations. Second, to the extent that the proposal imposes burden on national banks or Federal savings associations that own and control an AMC, there are only two such AMCs, and these are owned by large national banks. For these reasons, the OCC estimates that the average cost per small bank or Federal savings association will be zero. Therefore, the OCC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required.

Board: The RFA requires an agency to provide and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities. A regulatory flexibility analysis is not required, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations of the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million or $35.5 million or less in annual revenues for the majority of nonbank entities that are likely to be subject to the proposed regulations) and publishes its certification and a short explanatory statement in the **Federal Register**

together with the rule.[46] 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.

The proposed AMC rule applies to States that establish licensing and certifying authorities to regulate AMCs. In the Board's regulatory flexibility analysis for this rule, the Board determined that approximately 32 entities subject to Board regulation and supervision would be subject to the requirements of the rule. Data currently available to the Board are not sufficient to estimate how many of the approximately 32 entities subject to Board regulation and supervision would be classified as ''small entities.'' In addition, the number of these 32 entities that will be subject to State regulation and supervision is currently unknown since one or more of the entities may have a network or panel of contract appraisers that is too small to satisfy a threshold requirement of the proposed AMC rule and therefore may be exempt from registration.

The proposed AMC rule does not impose directly any significant new recordkeeping, reporting, or compliance requirements on small entities. The proposed AMC rule requires those States electing to establish licensing and certifying authorities for AMCs to impose certain requirements on AMCs registered in the State. Generally, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when the agency's rule directly regulates the small entities. The impact of the proposed rule on small entities is indirect.

In addition, while certain minimum requirements are imposed on participating States by the language of section 1473 of the Dodd-Frank Act, each State may establish additional requirements in addition to those required by section 1473. Furthermore, an entity with a network or panel of appraisers that does not meet the numerical test specified in section 1473 may *voluntarily* register with a participating state and the ASC, thus incurring some nominal expenses in establishing and maintaining the required registration information and meeting the minimum operational requirements. Because of these uncertainties, calculation of the impact of the proposed rule on an affected institution or entity is uncertain, although the number of Board-supervised institutions or entities subject to the rule is expected to be less than 32.

Based on its analysis, and for the reasons stated above, the Board believes that the proposed rule, if adopted in final form, will not have a significant economic impact on a substantial number of small entities. The Board is publishing an initial regulatory flexibility analysis and, if necessary, will conduct a final regulatory flexibility analysis after consideration of comments received during the public comment period.

The Board requests public comment on all aspects of this analysis.

FDIC: The RFA generally requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[47] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to $500 million) and publishes its certification and a short, explanatory statement in the **Federal Register** together with the rule. As of September 30, 2013, there were approximately 3,632 small FDIC-supervised institutions, which include 3,324 State nonmember banks and 308 State-chartered savings institutions.

The FDIC analyzed the organizational structure information in the Board of Governors of the Federal Reserve System's National Information Center database. This analysis found that few FDIC-supervised institutions owned or controlled an entity that provides the types of appraisal management services specified in Section 1473. Of these institutions, none oversees a network or panel of appraisers that meets the numerical test requirement specified in Section 1473 for an entity to be an AMC. Therefore, the proposed rule would not have any impact on any FDIC-supervised institutions. If any FDIC-supervised institution that owns or controls an entity with a network or panel of appraisers that does not meet the numerical test specified in Section 1473 *voluntarily* decides to register that entity with the States, then the institution may incur some nominal expenses in establishing and maintaining a process for providing the required registration information and meeting the minimum operational requirements.

It is the opinion of the FDIC that the proposed rule will not have a significant economic impact on a substantial number of small entities that it regulates in light of the fact that no FDIC-supervised institutions own or control an entity with a network or panel of appraisers that meets the numerical test requirement specified in Section 1473 for an entity to be an AMC. Accordingly, the FDIC certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. Thus, an initial regulatory flexibility analysis is not required.

The FDIC seeks comment on whether the proposed rule, if adopted in final form, would impose undue burdens, or have unintended consequences for, small FDIC-supervised institutions and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 1473(f) of the Dodd-Frank Act.

Bureau: The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[48] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[49]

An IRFA is not required for this proposed rule because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Bureau notes that the proposed rule would not impose requirements on AMCs, but instead seeks to encourage States to adopt minimum requirements in their regulation of AMCs.

[46] U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/sites/default/files/files/size_table_07222013.pdf.*

[47] *See* 5 U.S.C. 601 *et seq.*

[48] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

[49] 5 U.S.C. 609.

Nonetheless, to inform the rulemaking and to inform the public, the Bureau has exercised its discretion to analyze economic impacts that may be imposed by States on AMCs if the proposed rule were adopted.[50] For this purpose, the Bureau assumed States that have not yet passed an AMC licensing and registration law (14 States, as of July 2013; this number is expected to decrease by the time the Agencies adopt a final rule) would all elect to pass such a law and establish an AMC licensing and supervision program that satisfies the standards of the proposed rule. This assumption is taken to establish an outer bound. Because the proposed rule does not require States to adopt the minimum requirements in the proposed rule, however, it is possible that not all 14 States would do so.[51]

State registration fees would constitute the primary economic impact of the proposed rule. In estimating the impact of the proposed rule in the 14 States that have not yet passed an AMC licensing and registration law as of July 2013, the Bureau notes that State fees vary widely. Such State registration and renewal fees are not necessarily for the sole purpose of recovering costs of administering the minimum requirements under the proposed rule. States can impose charges for a variety of reasons, including to raise revenue (independent of the cost of the registration regime) or to fund the administration of a regime that exceeds the minimum requirements under the proposed rule. The Bureau believes that the fee charged by Vermont—$125 for registration and $250 for annual renewal—would be sufficient to comply with the proposed rule.[52] The Bureau therefore considered this fee in estimating the economic impact of the proposed rule in the 14 States that do not yet have AMC registration requirements. As discussed below, however, the Bureau also considered more conservative estimates of the impact of the proposed rule using significantly higher fee amounts.

With respect to the Federal registration fee, the Bureau notes that the proposed rule neither requires collection of registration fees by the Appraisal Subcommittee (ASC) nor authorizes the collection of such fees. The Dodd-Frank Act grants that authority exclusively to the ASC.[53] Therefore, the Bureau does not consider any fees imposed on AMCs by the ASC (whether directly or through the States for forwarding to the ASC) as an impact of the proposed rule.

An additional requirement in the proposed rule is that the State AMC licensing programs have authority and mechanisms to examine books and records of the AMCs, to otherwise obtain information from the AMCs, and to discipline AMCs. The Bureau believes that existing State registration fees generally already account for the cost to the States of having such authority and mechanisms, and that the requirement in the proposed rule therefore would not lead to higher registration fees in any significant amount.[54] Accordingly, in the 14 States that would adopt new registration and renewal systems, the Bureau believes the registration fee currently charged in Vermont would cover the State's cost associated with implementing this requirement.

The Bureau notes that the proposed rule is not prescriptive as to how or when the States must exercise the authority or mechanisms. Exercise of such authority and mechanisms is determined by the discretion of the States, subject to monitoring by the ASC for effectiveness in the judgment or discretion of the ASC. Accordingly, to the extent that State exercise of such authority and mechanisms leads to burden on small entities, such burden would be attributable to such State implementation and/or ASC oversight expectations rather than to the proposed rule itself. Therefore, State statutes that implement this requirement relating to establishing examination authority and mechanisms are not expected to cause fee increases or new burden above the $125 overall baseline assumed for purposes of this analysis.[55]

Similarly, the Bureau believes that other minimum requirements for AMCs under the proposed rule (verifying the use of licensed or certified status of appraisers, requiring that appraisers comply with USPAP, complying with any contractual review provisions, and establishing and complying with processes to ensure appraisers are qualified and independent and that the AMC acts in compliance with applicable appraisal independence regulations), as well as the standard for removing appraisers from the appraiser panel, would not result in new burden on AMCs because these standards merely reinforce existing compliance requirements as well as industry practice.[56] The Bureau further notes that States have discretion to interpret the requirements to establish processes and controls to ensure compliance, subject to monitoring by the ASC for effectiveness in the judgment or discretion of the ASC. Accordingly, to the extent that State interpretations of such requirements leads to burden on small entities, such burden would be attributable to such State implementation and/or ASC oversight

[50] The Bureau does not assume costs associated with the proposed rule's requirements to ensure compliance with USPAP and other regulations because AMCs would be subject to these standards even without their being referenced in the proposed rule.

[51] A state could accept the consequences on AMCs' business in the state from not implementing the proposed rule. FIRREA section 1124(f) provides that three years after the proposed rule takes effect, AMCs cannot provide services related to Federally related transactions in a state that has not implemented the proposed rule. However, the Bureau understands that only a minority of mortgage transactions are ''Federally related transactions'' within the meaning of FIRREA. *See, e.g.,* 12 CFR 225.62(f) (transaction must ''[r]equire the services of an appraiser'' to be federally related). *But see id.* at 225.63(a)(1),(9),(10) (exemptions from FIRREA appraisal requirements for transactions of $250,000 or less, transactions insured by or sold to a U.S. government agency, and transactions that conform to GSE appraisal standards). However, the Bureau believes all states will choose to participate.

[52] As of the Bureau's 2013 review of State laws, the application fee in Vermont was $125. *See http://vtprofessionals.org/opr1/real_estate_appraisers/AMC/AMC_Application.pdf.* The application fee in Vermont is $125. The annual renewal fee is $250. *See http://vtprofessionals.org/opr1/real_estate_appraisers/AMC/Appraisal%20Management%20Company%20Renewal%202013.pdf.http://vtprofessionals.org/opr1/real_estate_appraisers/AMC/Appraisal%20Management%20Company%20Renewal%202013.pdf.* In addition, while some States may elect to impose additional requirements relating to examination and inspection of their AMCs, the Bureau does not believe that the minimum requirements that states must provide would lead to significant costs for AMCs.

[53] *See* 12 U.S.C. 3338.

[54] *See, e.g.,* Vermont Statutes Title 26 section 3324 (requiring AMCs to ''retain all records related to an appraisal, review, or consulting assignment for no less than five years . . . [and w]ith reasonable notice, a licensee or registrant shall produce any records governed by this section for inspection and copying by the board or its authorized agent.'').

[55] In addition, the Bureau does not believe that in States that add this requirement there will be any significant new burden on the AMCs. The Bureau believes that the AMCs already keep their books and records in order as a standard course of business practice, and thus the occasional State examiner visits should not impose any significant burden. In addition, the proposed rule requires only that the State have the authority and mechanism to request records and information. The proposed rule does not require that the State exercise this authority and any burdensome exercise of this authority would therefore not be caused by the proposed rule. Finally, to the extent State supervision programs do increase burden, the Bureau believes this burden would be within the sensitivity tolerances described in the footnote at the end of this section.

[56] These requirements also would not result in new burden on Federally regulated AMCs, for the same reason. Federally regulated AMCs do not have to comply with state registration and renewal requirements, which can entail fees. Conservatively, however, the Bureau applied the State fee burden to all of the small AMCs in its calculation method described herein. As a result, the estimated burden of State fees associated with the proposed rule may be overestimated.

expectations rather than to the proposed rule itself.

Just as these conduct standards would not impose a significant burden on AMCs required to register at the State level, the Bureau does not believe they would impose significant burdens on Federally regulated AMCs either. *See* Interagency Appraisal and Evaluation Guidelines, 75 FR 77450 (Dec. 10, 2010) (Interagency Guidelines). The Interagency Guidelines, part VI, already require Federal financial institutions to select appraisers who are certified or licensed, qualified, in compliance with USPAP, and independent. 75 FR at 77458. AMCs that are affiliated with Federal financial institutions frequently perform appraisals for their affiliates. Therefore, it can be assumed that in delegating these functions to AMCs, these Federal financial institutions also delegate these requirements from part VI of the Interagency Guidelines to these AMCs.

To estimate the impact of the proposed rule on small AMCs, the Bureau conducted a survey. The Bureau called nine AMCs, picked randomly from a list of approximately 500 AMCs provided by industry trade associations. The AMCs were asked for certain basic data including the number of States in which they operate, their revenue (including the revenue from any non-appraisal business), and the number of appraisals that they performed in 2012.[57] The Bureau estimated the revenue to be the number of appraisals performed in 2012 multiplied by $350—the average appraisal cost assumed in the Agencies' analysis under section 1022 of the Dodd-Frank Act in the 2013 Interagency Appraisals Rule. This revenue estimate is likely to be underestimated, given that several AMCs out of nine reported additional revenue that was not due to the residential appraisal business. Out of the nine AMCs, seven had revenues of less than $7,000,000 in 2012, and thus would be within the scope of the RFA analysis based upon Small Business Administration guidelines.[58] The Bureau computed the cost of registration and renewal fees in States that do not already have them, allocated these costs to individual AMCs based upon the number of States in which the AMC operated,[59] and computed the ratio of these allocated costs to the AMCs' revenues.

The Bureau acknowledges that requiring AMCs to send letters to the appraisers that the AMC decides to remove from its panel might add burden in States that do not already have registration requirements (which typically include notice provisions). The Bureau does not possess any evidence on the number of appraisers to whom an AMC would have to send these letters. According to the Bureau of Labor and Statistics' October 2013 preliminary numbers (available at *http://www.bls.gov/news.release/jolts.t11.htm*), 1.9 percent of the labor force in the real estate and rental and leasing industry was either laid off or discharged in the most recent month. Thus, the Bureau estimates that an AMC will dismiss approximately a quarter of appraisers from its panel in any given year. The Bureau assumes that each AMC will have several standardized letters explaining the reason for dismissal: For example, changing economic conditions or the appraiser's violation of USPAP or work performance issues. Each AMC might incur a minimal one-time cost to draft these letters, with some industry associations potentially providing templates. After this minimal one-time cost is incurred, the ongoing cost would include a minimal adjustment of the letter based on the appraiser's particular circumstances and the actual printing and mailing cost. These letters also could be sent in batches, periodically, such as on an annual basis. Thus, for the purposes of this analysis, the Bureau implicitly accounts for these costs in the sensitivity analyses below (which use a State fee to $5,250 and include a $300 administrative expense). The Bureau requests comments on availability of data on these costs.

The Bureau then fit the received ratios using three different distributions: normal, generalized extreme value, and logistic. The three different distributions were used because no *a priori* assumptions regarding how these ratios are distributed can be made. The three distributions mentioned above are commonly used by empirical researchers to fit observed values. Considering the costs imposed by the States as a result of the proposed rule, the Bureau believes that less than 1 percent of the small entities would experience a cost of over 1 percent of their revenue, using either the normal, or the logistic, or the generalized extreme value distributions.[60] The Bureau also notes that because the sample did not include any AMCs that were either too small (for example, less than 15 appraisers in one State) or that were subsidiaries of Federally regulated financial institutions, these estimates are likely overstated.

The Bureau seeks comment on the data used in its analysis as well as the methodology for estimating burden described in this analysis, including data from States that have existing registration and renewal regimes on whether the proposed minimum requirements would lead them to change their laws and impose any new fees (which this analysis assumes would not occur). In addition, as noted in the section-by-section analysis above, the Agencies are seeking comment on the proposed approach of not imposing minimum requirements for appraisal reviews or defining appraisal review and verification activities. The Bureau seeks data on the types of review and verification services provided by AMCs, and in particular, AMCs that meet the definition of small entities, as well as the frequency with which each type of practice is performed. Further, the Bureau seeks data on the potential impact of any minimum review requirements or review and verification definitions—such as requirements or definitions that would be set at a level above administrative checks for grammatical errors or other technical or computerized quality checks that are not performed by licensed appraisers.

Certification

Accordingly, the Bureau Director, by signing below, certifies that this

[57] One of the AMCs did not report its revenue.

[58] NAICS code 531320—Offices of Real Estate Appraisers—includes ''appraisal services,'' which we believe would include services provided by AMCs in the processing and review of appraisals. An alternative classification would be NAICS code 561110—Office Administrative Services. In any event, this code also has an SBA threshold of $7,000,000.

[59] The Bureau assumed that an AMC that operated in x states needs to register in additional (14/50)*x states. This assumption results in a (14/50)*x*$250 state registration and renewal fee burden on an AMC operating in x states.

[60] The Bureau notes that the percentage of small institutions for which the estimated burden of the proposed rule would amount to over 3 percent of the revenue would remain under 1 percent even if the Bureau had used the following alternative assumptions: (1) $5,250 as the assumed burden of the proposed rule for states that adopt new registration regimes—the highest among the existing State registration fees as of the Bureau's 2013 review of state laws (in Minnesota), and assumed this same amount as the annual renewal fee (even though the Minnesota renewal fee at the time of the review was only $2,650); and (2) an additional annual labor cost of $300 for any possible associated burden of (a) filling out registration and renewal forms in those states (assuming an AMC operates in approximately 20 States on average, such that 6.26 of those States adopt new AMC licensing programs) and any additional burden related to notices from small AMCs removing appraisers from their panels in those states. The percentages of institutions for which this cost would amount to over 1 percent of the revenue changed, respectively, to 18 percent, 13 percent, and 9 percent of the small institutions affected, according to the normal, generalized extreme value, and logistic distributions.

proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

FHFA: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to analyze a proposed regulation's impact on small entities if the final rule is expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). The proposed rule implements Section 1124 of the Financial Institutions Reform, Recovery, and Enforcement Act and establishes minimum requirements to be imposed by a participating State appraiser certifying and licensing agency on AMCs doing business in the State. FHFA has considered the impact of this regulation and determined that it is not likely to have a significant economic impact on a substantial number of small entities because States and FHFA's regulated entities—Fannie Mae, Freddie Mac, and the Federal Home Loan Banks—are not small entities for purposes of the Regulatory Flexibility Act. *See* 5 U.S.C. 601(6).

NCUA: The Regulatory Flexibility Act (RFA)[61] requires NCUA to provide an initial regulatory flexibility analysis with a proposed rule to certify that the rule will not have a significant economic impact on a substantial number of small entities and publish its certification and a short explanatory statement in the **Federal Register** also with the proposed rule.[62] As explained above, the requirements of this proposed rule would only apply directly to AMC subsidiaries owned and controlled by an insured depository institution, or an insured credit union, *and* regulated by a Federal financial institutions regulatory agency. NCUA, unlike the other banking agencies to this rulemaking, does not directly oversee or regulate any subsidiaries owned and controlled by credit unions, including AMC subsidiaries. Rather, NCUA's regulations permit Federal credit unions to invest in or lend only to credit union service organizations (CUSOs) that conform to specific requirements outlined in part 712 of the NCUA's regulations. Because NCUA does not directly regulate or oversee CUSOs owned by State or federally chartered credit unions, NCUA is not proposing regulatory text or proposing any requirements through this rulemaking that would directly affect small entities. Accordingly, the NCUA Board certifies the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 Determination

OCC: The OCC has analyzed the proposed rule under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1532). Under this analysis, the OCC considered whether the proposed rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation). For the following reasons, the OCC finds that the proposal does not trigger the $100 million UMRA threshold. First, the mandates in the proposed rule apply only to those States that choose to establish an AMC registration system. Second, the costs specifically related to requirements set forth in law are excluded from expenditures under the UMRA. Given that the proposed rule reflects requirements that arise from section 1473, the UMRA cost estimate for the proposal, if implemented, is zero. For this reason, and for the other reasons cited above, the OCC has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, or the private sector, of $100 million or more in any one year. Accordingly, this proposal is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 34

Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Consumer protection, Crime, Currency, Insurance, Investments, Mortgages, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 323

Banks, banking, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 1026

Advertising, Appraisal, Appraiser, Banks, Banking, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

12 CFR Part 1222

Appraisals, Government sponsored enterprises, Mortgages.

Department of the Treasury

Office of the Comptroller of the Currency

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend 12 CFR part 34 as follows:

PART 34—REAL ESTATE LENDING AND APPRAISALS

■ 1. The authority citation for part 34 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 25b, 29, 93a, 371, 1463, 1465, 1701j–3, 1828(o), 3331 *et seq.,* 5101 *et seq.,* and 5412(b)(2)(B) and 15 U.S.C. 1639h.

■ 2. Subpart H to part 34 is added to read as follows:

Subpart H—Appraisal Management Company Minimum Requirements

Sec.
34.210 Authority, purpose, and scope.
34.211 Definitions.
34.212 Appraiser panel.
34.213 Appraisal management company registration.
34.214 Requirements for Federally regulated appraisal management companies.
34.215 Registration limitations.
34.216 Information to be presented to the Appraisal Subcommittee by participating States.

§ 34.210 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Office of the Comptroller of the Currency under 12 U.S.C. 93a and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et seq.*

(b) *Purpose.* The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) *Scope.* This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection

[61] 5 U.S.C. 601 *et seq.*

[62] 78 FR 4032 (Jan. 18, 2013).

with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [4] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 34.211 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 34.212;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) *Appraiser panel* means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(f) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) *Consumer credit* has the meaning provided in 12 CFR 1026.2(a)(12).

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* has the meaning provided in 12 CFR 1026.2(a)(17).

(j) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, or the Federal Deposit Insurance Corporation.

(k) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(l) *Person* has the meaning in 12 CFR 1026.2(a)(22).

(m) *Principal dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 34.212 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States under § 34.211(c)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

[4] 75 FR 77450 (December 10, 2010).

§ 34.213 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 34.215 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution or by an insured credit union and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 34.214 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in §§ 34.213(b)(2) through (5).

(b) *Reporting information for the AMC National Registry.* A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 34.215, as applicable.

(2) Contact the Appraisal Subcommittee for alternative arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 34.215 Registration limitations.

(a) *Appraiser certification or licensing of owners.* An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 34.216 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Board of Governors of the Federal Reserve System

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR parts 208 and 225, as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

■ 3. The authority citation for part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1833(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, 3353, and 3905–3909; 15 U.S.C. 78b, 78l(b), 78l(i), 780–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104b, 4106, and 4128.

■ 4. Revise the heading of subpart E to read as follows:

Subpart E—Real Estate Lending, Appraisal Standards, and Minimum Requirements for Appraisal Management Companies

■ 5. Section 208.50 is revised to read as follows:

§ 208.50 Authority, purpose, and scope.

(a) *Authority.* Subpart E of Regulation H (12 CFR part 208, subpart E) is issued by the Board of Governors of the Federal Reserve System under section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, (12 U.S.C 1828(o)), Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act, (12 U.S.C 3331–3351), and section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, (12 U.S.C. 3353).

(b) *Purpose and scope.* This subpart E prescribes standards for real estate lending to be used by member banks in adopting internal real estate lending policies. The standards applicable to appraisals rendered in connection with federally related transactions entered into by member banks and the minimum requirements for Appraisal Management Companies are set forth in

12 CFR part 225, subparts G and M respectively (Regulation Y).

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 6. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1844(b), 3106 and 3108, 1817(j)(13), 1818(b), 1831i, 1972, 3310, 3331–3351 and 3353 and the International Lending Supervision Act of 1983 (Pub. L. 98–181, title IX). The BHC Act is codified at 12 U.S.C. 1841, *et seq.*

■ 7. Subpart M is added to part 225 to read as follows:

Subpart M—Minimum Requirements for Appraisal Management Companies

Sec.
225.190 Authority, purpose, and scope.
225.191 Definitions.
225.192 Appraiser panel.
225.193 Appraisal management company registration.
225.194 Requirements for Federally regulated appraisal management companies.
225.195 Registration limitations.
225.196 Information to be presented to the Appraisal Subcommittee by participating States.

§ 225.190 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Board of Governors of the Federal Reserve System (the Board) under title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (Pub. L. No. 101–73, 103 Stat. 183 (1989)), 12 U.S.C. 3310, 3331–3351, section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. 3353, and section 5(b) of the Bank Holding Company Act, 12 U.S.C. 1844(b).

(b) *Purpose and scope.* (1) The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

Title XI provides protection for federal financial and public policy interests in real estate related transactions by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by appraisers whose competency has been demonstrated and whose professional conduct will be subject to effective supervision. This subpart implements the requirements of title XI as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act and applies to all federally related transactions entered into by the Board or by institutions regulated by the Board and applies to States and to appraisal management companies (AMCs) performing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(2) This subpart:

(i) Identifies which real estate related financial transactions require the services of an appraiser.

(ii) Prescribes which categories of federally related transactions shall be appraised by a State certified appraiser and which by a State licensed appraiser;

(iii) Prescribes minimum standards for the performance of real estate appraisals in connection with federal related transactions under the jurisdiction of the Board;

(iv) Prescribes minimum requirements to be applied by participating States in the registration and supervision of appraisal management companies (AMCs); and

(v) Prescribes minimum requirements to be applied by participating States to report certain information concerning appraisal management companies registered with the States to a national registry of appraisal management companies.

(c) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [1] or other relevant agency guidance that cautions banks and bank holding companies, that each organization is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the creditor.

§ 225.191 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c) *Appraisal Foundation* means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(d)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 225.192;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(e) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(f) *Appraiser panel* means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(g) *Consumer credit* has the meaning provided in 12 CFR 1026.2(a)(12).

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* has the meaning provided in 12 CFR 1026.2(a)(17).

(j) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(k) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to

[1] 75 FR 77450 (December 10, 2010).

sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(l) *Person* has the meaning in 12 CFR 1026.2(a)(22).

(m) *Principal dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 225.192 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States under § 225.191(d)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 225.193 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 225.195 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution, an insured credit union, and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 225.194 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in §§ 225.193(b)(2) through (5).

(b) *Reporting information for the AMC National Registry.* A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 225.195.

(2) Contact the Appraisal Subcommittee for alternative arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 225.195 Registration limitations.

(a) *Appraiser certification or licensing of owners.* An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 225.196 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Federal Deposit Insurance Corporation

Authority and Issuance

For the reasons set forth in the preamble, the FDIC proposes to amend 12 CFR parts 323 and 390 as follows:

PART 323—APPRAISALS

■ 8. Revise the authority citation for part 323 to read as follows:

Authority: 12 U.S.C. 1818, 1819 [''Seventh'' and ''Tenth''] and 3331 *et seq.*

■ 9. Add a heading for new subpart A to read as follows:

Subpart A—Appraisals Generally

§§ 323.1 through 323.7— [Designated as subpart A]

■ 10. Designate §§ 323.1 through 323.7 under new subpart A.

§§ 323.1, 323.3, 323.4, and 323.5— [Amended]

■ 11. Amend Sections 323.1, 323.3, 323.4, and 323.5 by removing ''part'' and adding ''subpart'' in its place in each instance in which it appears.

■ 12. Add subpart B to part 323 to read as follows:

Subpart B—Appraisal Management Company Minimum Requirements

Sec.
323.210 Authority, purpose, and scope.
323.211 Definitions.
323.212 Appraiser panel.
323.213 Appraisal management company registration.
323.214 Requirements for Federally regulated appraisal management companies.
323.215 Registration limitations.
323.216 Information to be presented to the Appraisal Subcommittee by participating States.

§ 323.210 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued under 12 U.S.C. 1818, 1819 [''Seventh'' and ''Tenth''] and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et seq.*

(b) *Purpose.* The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) *Scope.* This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [1] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings association, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 323.211 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 323.212;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) *Appraiser panel* means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(f) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) *Consumer credit* has the meaning provided in 12 CFR 1026.2(a)(12).

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* has the meaning provided in 12 CFR 1026.2(a)(17).

(j) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit

[1] 75 FR 77450 (December 10, 2010).

Union Administration, or the Federal Deposit Insurance Corporation.

(k) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(l) *Person* has the meaning in 12 CFR 1026.2(a)(22).

(m) *Principal dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 323.212 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States under § 323.211(c)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 323.213 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 323.215 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution or an insured credit union and not regulated by a Federal financial institution regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use only State-certified or State-licensed appraisers for Federally regulated transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 323.214 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in §§ 323.213(b)(2) through (5).

(b) *Reporting information for the AMC National Registry.* A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 323.215, as applicable.

(2) Contact the Appraisal Subcommittee for alternative

arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 323.215 Registration limitations.

(a) *Appraiser certification or licensing of owners.* An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 323.216 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 13. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

Subpart A also issued under 12 U.S.C. 1820.

Subpart B also issued under 12 U.S.C. 1818.

Subpart C also issued under 5 U.S.C. 504; 554–557; 12 U.S.C. 1464; 1467; 1468; 1817; 1818; 1820; 1829; 3349, 4717; 15 U.S.C. 78*l*; 78o–5; 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart D also issued under 12 U.S.C. 1817; 1818; 1820; 15 U.S.C. 78*l*.

Subpart E also issued under 12 U.S.C. 1813; 1831m; 15 U.S.C. 78.

Subpart F also issued under 5 U.S.C. 552; 559; 12 U.S.C. 2901 *et seq.*

Subpart G also issued under 12 U.S.C. 2810 *et seq.,* 2901 *et seq.*; 15 U.S.C. 1691; 42 U.S.C. 1981, 1982, 3601–3619.

Subpart I also issued under 12 U.S.C. 1831x.

Subpart J also issued under 12 U.S.C. 1831p–1.

Subpart K also issued under 12 U.S.C. 1817; 1818; 15 U.S.C. 78c; 78l.

Subpart L also issued under 12 U.S.C. 1831p–1.

Subpart M also issued under 12 U.S.C. 1818.

Subpart N also issued under 12 U.S.C. 1821.

Subpart O also issued under 12 U.S.C. 1828.

Subpart P also issued under 12 U.S.C. 1470; 1831e; 1831n; 1831p–1; 3339.

Subpart Q also issued under 12 U.S.C. 1462; 1462a; 1463; 1464.

Subpart R also issued under 12 U.S.C. 1463; 1464; 1831m; 1831n; 1831p–1.

Subpart S also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1468a; 1817; 1820; 1828; 1831e; 1831o; 1831p–1; 1881–1884; 3207; 3339; 15 U.S.C. 78b; 78*l*; 78m; 78n; 78p; 78q; 78w; 31 U.S.C. 5318; 42 U.S.C. 4106.

Subpart T also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l*; 78m; 78n; 78w.

Subpart U also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l*; 78m; 78n; 78p; 78w; 78d–1; 7241; 7242; 7243; 7244; 7261; 7264; 7265.

Subpart V also issued under 12 U.S.C. 3201–3208.

Subpart W also issued under 12 U.S.C. 1462a; 1463; 1464; 15 U.S.C. 78c; 78*l;* 78m; 78n; 78p; 78w.

Subpart Y also issued under 12 U.S.C. 1831o.

Subpart Z also issued under 12 U.S.C. 1462; 1462a; 1463; 1464; 1828 (note).

Subpart X—[Removed and Reserved]

■ 14. Remove and reserve subpart X consisting of §§ 390.440 through 390.447.

Bureau of Consumer Financial Protection

Authority and Issuance

For the reasons stated above, the Bureau amends Regulation Z, 12 CFR part 1026, as follows:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 14. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

Subpart A—General

■ 15. Section 1026.1 is amended by revising paragraph (a) to read as follows:

§ 1026.1 Authority, purpose, coverage, organization, enforcement, and liability.

(a) *Authority.* This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Public Law 100–86, 101 Stat. 552). Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*). In addition, this part implements certain provisions of the Financial Institutions Reform, Recovery, and Enforcement Act, as amended (12 U.S.C. 3331 *et seq.*). The Bureau's information-collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0015 (Truth in Lending).

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

■ 16. Section 1026.42 is amended by adding paragraph (h), as follows:

§ 1026.42 Valuation independence.

* * * * *

(h) The Bureau issued a joint rule to implement the appraisal management company minimum requirements in the Financial Institutions Reform, Recovery, and Enforcement Act, as amended by section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. See 12 CFR part 34.

Federal Housing Finance Agency

Authority and Issuance

For the reasons set forth in the Supplementary Information, FHFA proposes to amend 12 CFR part 1222, as follows:

PART 1222—APPRAISALS

■ 17. The authority citation for part 1222 is revised to read as follows:

Authority: 12 U.S.C. 4501 *et seq.,* 12 U.S.C. 4526 and 15 U.S.C. 1639h.

■ 18. Add subpart B to part 1222 to read as follows:

Subpart B—Appraisal Management Company Minimum Requirements

Sec.

1222.20 Authority, purpose, and scope.
1222.21 Definitions.
1222.22 Appraiser panel.
1222.23 Appraisal management company registration.
1222.24 Requirements for Federally regulated appraisal management companies.
1222.25 Registration limitations.

1222.26 Information to be presented to the Appraisal Subcommittee by participating States.

§ 1222.20 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued by the Federal Housing Finance Agency under 12 U.S.C. 4501 *et seq.,* 12 U.S.C. 4526, and Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376 (2010)), 12 U.S.C. 3331 *et seq.*

(b) *Purpose.* The purpose of this subpart is to implement sections 1109, 1117, 1121, and 1124 of FIRREA Title XI, 12 U.S.C. 3338, 3346, 3350, and 3353.

(c) *Scope.* This subpart applies to States and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions.

(d) *Rule of construction.* Nothing in this subpart should be construed to prevent a State from establishing requirements in addition to those in this subpart. In addition, nothing in this subpart should be construed to alter guidance in, and applicability of, the Interagency Appraisal and Evaluation Guidelines [1] or other relevant agency guidance that cautions banks, bank holding companies, Federal savings associations, state savings associations, and credit unions, as applicable, that each such entity is accountable for overseeing the activities of third party service providers and ensuring that any services provided by a third party comply with applicable laws, regulations, and supervisory guidance applicable directly to the financial institution.

§ 1222.21 Definitions.

For purposes of this subpart:

(a) *Affiliate* has the meaning provided in 12 U.S.C. 1841.

(b) *AMC National Registry* means the registry of State-registered appraisal management companies (AMCs) and Federally regulated AMCs maintained by the Appraisal Subcommittee.

(c)(1) *Appraisal management company* (AMC) means a person that:

(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates;

(ii) Provides such services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(iii) Within a given year, oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States, as described in § 1222.22;

(2) An AMC does not include a department or division of an entity that provides appraisal management services only to that entity.

(d) *Appraisal management services* means one or more of the following:

(1) Recruiting, selecting, and retaining appraisers;

(2) Contracting with State-certified or State-licensed appraisers to perform appraisal assignments;

(3) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(4) Reviewing and verifying the work of appraisers.

(e) *Appraiser panel* means a network or panel of licensed or certified appraisers who are independent contractors to the AMC.

(f) *Appraisal Subcommittee* means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(g) *Consumer credit* has the meaning provided in 12 CFR 1026.2(a)(12).

(h) *Covered transaction* means any consumer credit transaction secured by the consumer's principal dwelling.

(i) *Creditor* has the meaning provided in 12 CFR 1026.2(a)(17).

(j) *Federally regulated AMC* means an AMC that is owned and controlled by an insured depository institution, as defined in 12 U.S.C. 1813, or an insured credit union, as defined in 12 U.S.C. 1752, and that is regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the National Credit Union Administration, or the Federal Deposit Insurance Corporation.

(k) *Federally related transaction regulations* means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of FIRREA Title XI, 12 U.S.C. 3341–3343.

(l) *Person* has the meaning in 12 CFR 1026.2(a)(22).

(m) *Principal dwelling* means a residential structure that contains one to four units, whether or not that structure is attached to real property, that is also a consumer's primary residence. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence. A vacation or other second home is not a principal dwelling. A consumer can have only one principal dwelling at a time. However, if a consumer buys or builds a new dwelling that will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling.

(n) *Secondary mortgage market participant* means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. Secondary mortgage market participant only includes an individual investor in a mortgage-backed security if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(o) *States* mean the 50 States and the District of Columbia and the territories of Guam, Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

(p) *Uniform Standards of Professional Appraisal Practice* (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

§ 1222.22 Appraiser panel.

For purposes of determining whether, within a given year, an AMC oversees an appraiser panel of more than 15 State-certified or State-licensed appraisers in a State or 25 or more State-certified or State-licensed appraisers in two or more States under § 1222.21(c)(1)(iii)—

(a) An appraiser is deemed part of the AMC's appraiser panel as of the earliest date on which the AMC:

(1) Affirms eligibility or acceptance of the appraiser for the AMC's consideration for future appraisal assignments; or

(2) Engages the appraiser to perform one or more appraisals on behalf of a creditor or secondary mortgage market principal.

(b) An appraiser who is deemed part of the AMC's appraiser panel pursuant to paragraph (a) of this section is deemed to remain on the panel until the date on which the AMC:

[1] 75 FR 77450 (December 10, 2010).

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an AMC's appraiser panel pursuant to paragraph (b) of this section, but the AMC subsequently re-admits or engages the appraiser at any time during the twelve months after the AMC's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the AMC's appraiser panel without interruption.

(d) The annual period for purposes of counting appraisers on an AMC's appraiser panel may be the calendar year or a 12-month period established by law or rule of each State with which the AMC is required to register.

§ 1222.23 Appraisal management company registration.

Each State electing to register AMCs pursuant to paragraph (b)(1) of this section must:

(a) Establish and maintain within the State appraiser certifying and licensing agency a licensing program that is subject to the limitations set forth in § 1222.25 and with the legal authority and mechanisms to:

(1) Review and approve or deny an AMC's application for initial registration;

(2) Review and renew or review and deny an AMC's registration periodically;

(3) Examine the books and records of an AMC operating in the State and require the AMC to submit reports, information, and documents;

(4) Verify that the appraisers on the AMC's appraiser list, network, panel, or roster hold valid State certifications or licenses, as applicable;

(5) Conduct investigations of AMCs to assess potential violations of applicable appraisal-related laws, regulations, or orders;

(6) Discipline, suspend, terminate, or deny renewal of the registration of an AMC that violates applicable appraisal-related laws, regulations, or orders; and

(7) Report an AMC's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other relevant information about an AMC's operations, to the Appraisal Subcommittee.

(b) Impose requirements on AMCs that are not owned and controlled by an insured depository institution or by an insured credit union and not regulated by a Federal financial institutions regulatory agency to:

(1) Register with and be subject to supervision by the State appraiser certifying and licensing agency;

(2) Use only State-certified or State-licensed appraisers for Federally related transactions in conformity with any Federally related transaction regulations;

(3) Establish and comply with processes and controls reasonably designed to ensure that the AMC, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;

(4) Direct the appraiser to perform the assignment in accordance with USPAP; and

(5) Establish and comply with processes and controls reasonably designed to ensure that the AMC conducts its appraisal management services in accordance with the requirements of section 129E(a)–(i) of the Truth in Lending Act, 15 U.S.C. 1639e(a)–(i), and regulations thereunder.

§ 1222.24 Requirements for Federally regulated appraisal management companies.

(a) *Requirements in providing services.* To provide appraisal management services for a creditor or secondary mortgage market participant relating to a covered transaction, a Federally regulated AMC must comply with the requirements in §§ 1222.23(b)(2) through (5).

(b) *Reporting information for the AMC National Registry.* A Federally regulated AMC must:

(1) Report to the State or States in which it operates the information required to be submitted by the State pursuant to the Appraisal Subcommittee's policies regarding:

(i) The determination of the AMC National Registry fee, including but not necessarily limited to a statement that the AMC is a Federally regulated AMC; and

(ii) The collection of information related to the limitations set forth in § 1222.25, as applicable.

(2) Contact the Appraisal Subcommittee for alternative arrangements to submit the information described in paragraph (b)(1) of this section if a State in which a Federally regulated AMC operates has not established a process for accepting the information from Federally regulated AMCs.

§ 1222.25 Registration limitations.

(a) *Appraiser certification or licensing of owners.* An AMC shall not be registered by a State or included on the AMC National Registry if such AMC, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State.

(b) *Good moral character of owners.* An AMC shall not be registered by a State if any person that owns more than 10 percent of the AMC—

(1) Is determined by the State appraiser certifying and licensing agency not to have good moral character; or

(2) Fails to submit to a background investigation carried out by the State appraiser certifying and licensing agency.

§ 1222.26 Information to be presented to the Appraisal Subcommittee by participating States.

Each State electing to register AMCs for purposes of permitting AMCs to provide appraisal management services relating to covered transactions in the State must submit to the Appraisal Subcommittee the information required to be submitted by Appraisal Subcommittee regulations or guidance concerning AMCs that operate in the State.

Dated: March 20, 2014.

Thomas J. Curry,

Comptroller of the Currency.

Dated: March 19, 2014.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 19th day of March, 2014.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: March 11, 2014.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

Dated: March 1, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

In consultation with:

By the National Credit Union Administration Board on March 20, 2014.

Gerard Poliquin,

Secretary of the Board.

[FR Doc. 2014–06860 Filed 4–8–14; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 7535–01–P; 4810–AM–P; 8070–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 102

RIN 3245–AG01

Management and Technical Assistance Service Providers Information

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to amend its regulations to establish for the affected public that existing Agency standards governing the use and disclosure of information also apply to information collected from SBA's resource partners, including Small Business Development Centers (SBDCs), Women's Business Centers (WBCs) and SCORE, as well as from the clients of these resource partners. The rule covers information collected when conducting financial examinations, programmatic reviews, polls, surveys, and any other collections of information.

DATES: SBA must receive comments to this proposed rule on or before June 9, 2014.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG01, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail, for paper, disk, or CD/ROM submissions:* Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration, Office of Entrepreneurial Development, 409 Third Street SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration, Office of Entrepreneurial Development, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments to this proposed rule on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* you must submit such information to Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration, Office of Entrepreneurial Development, 409 Third Street SW., Washington, DC 20416, or send an email to *eric.won@sba.gov*. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and make the final determination on whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Eric Won, Director for Performance and Program Evaluation, U.S. Small Business Administration, Office of Entrepreneurial Development, (202) 205–6923 or *eric.won@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA's Office of Entrepreneurial Development (OED) provides management and technical assistance to small businesses through its resource partners, including Small Business Development Centers (SBDCs), Women's Business Center (WBCs), and SCORE. OED monitors the Agency's resource partners by performing financial examinations and programmatic reviews to determine whether they are utilizing SBA financial assistance efficiently and effectively. OED also measures the impact of the resource partners' services by conducting polls and surveys of those individuals and small businesses that receive management and technical assistance through the resource partners.

Sections 21(a)(7)(c) and 29(n)(3) of the Small Business Act, (15 U.S.C. 648(a)(7)(c) and 656(n)(3)), direct SBA to promulgate regulations to establish standards for the disclosure and use of certain client information when the Agency conducts a financial audit of an SBDC or WBC or conducts surveys of SBDC clients. In the absence of these regulations, SBDCs and WBCs are prohibited from disclosing certain identifying information to SBA, without the consent of the resource partners' clients, unless a court orders SBA to disclose the information in a civil or enforcement action brought by a Federal or State agency or unless SBA considers the information necessary to conduct a financial audit. As discussed below, for purposes of this rule the term ''financial audits'' refers to OED conducted financial examinations and programmatic reviews. The definition of ''audit'' does not apply to audits, investigations, or other activities conducted by the SBA's Office of Inspector General or a financial statement audit. Section 21(a)(7)(c) also requires SBA to include in the regulations standards for the oversight of client surveys and ''to the extent practicable, provide for the maximum amount of privacy protection'' for the information collected. Until SBA issues regulations, the SBA Office of Inspector General must approve any client survey and information collected.

This rule proposes to implement the two statutory provisions described above by adding a new Subpart C, consisting of sections 102.50 through 102.56, to the Agency's Record Disclosure and Privacy regulations at 13 CFR part 102. This proposed rule does not set new standards for the disclosure and use of information because SBA already has standards in place. Rather, this rule would make it clear that those existing standards also apply to information collected from resource partners and their clients. This proposed rule, therefore, proposes to incorporate the standards in § 102.7 that govern the protection and disclosure of confidential business information, as well as the standards in § 102.22 that cover the protection and disclosure of personal information under the Privacy Act of 1974, 5 U.S.C. 552a, and apply them to SBA's resource partners and their clients.

The standards are found in 13 CFR part 102; the SBA Privacy Act Standard Operating Procedures (SOP) 40 04 3 (*http://collab.sba.gov/sops/Documents/4004/SBASOP-40-04-3.pdf*); and the Disclosure of Information SOP 40 03 *http://collab.sba.gov/sops/Documents/4003/SOP400331.doc*. SBA also has a Privacy Act System of Records that covers the pertinent information collected from resource partners and their clients. See SBA 11, Entrepreneurial Development—Management Information System, 74 FR 14890 (April 1, 2009), at *http://www.sba.gov/sites/default/files/Federal_Register_Revision_of_Privacy_Act_System_of_Records.pdf*.

Additionally, although the Small Business Act requires the publication of these regulations only for SBDCs and WBCs, SBA proposes to extend the same disclosure and use standards to information collected during financial examinations and programmatic reviews, polls and client surveys pertaining to all of SBA's resource partners to ensure uniform standards for all of SBA's grantees, including SCORE, Veterans Business Outreach Centers (VBOCs) and Microloan Intermediaries.

SBA requests comments on all aspects of this rulemaking, which as stated above, is intended to clearly establish that information collected by SBA from SBDCs, WBCs, SCORE, and other SBA grantees and their client small businesses is protected under the FOIA and Privacy Acts, as implemented by SBA in its regulations at 13 CFR part 102 and its standard operating procedures.

Section by Section Analysis

Section 102.50, Purpose and Scope, proposes that the purpose of these regulations is to establish standards for the disclosure of information collected,

including the name, address, or telephone number of any individual or small business concern receiving assistance from SBA through its resource partners. The scope of the regulations covers but is not limited to, SBA conducted financial examinations or programmatic reviews of SBA resource partners, and polls or surveys of the resource partners or their clients.

Section 102.51, Definitions, sets forth terms applicable to this subpart, and which, in general are currently used in the various entrepreneurial development programs and as such are already familiar to the resource partners.

Section 102.52, Standards for Disclosure and Use of Information, informs the public that SBA's existing standards for disclosure and use of information also apply to information collected from resource partners and their clients.

Section 102.53, Data Collection Methodologies, would provide that all data collection methods will be consistent with existing federal regulations, policies and procedures.

Section 102.54, Use of Program Activity or Survey and Poll Data, proposes that the purposes for collecting program activity data using surveys or polls include: (1) Measuring the effect and economic impact of Agency programs; (2) measuring the public benefit of such programs (3) evaluating customer satisfaction ; (4) assessing public and resource partner needs to make improvements to programs and policies; and (5) determining the level and types of managerial, financial, marketing and other business management or specialized services provided.

Section 102.55, Use of Financial Examination or Programmatic Review Data, proposes how SBA would use the client information collected during a financial examination or programmatic review. Specifically, the information would be used to assess the quality, quantity and scope of the client services provided, compliance with program requirements and the appropriateness of program activities or costs incurred.

Compliance With Executive Orders 12866, 12988, and 13132, 13563, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612) Executive Order 12866

The Office of Management and Budget (OMB) determined that this proposed rule does not constitute a significant regulatory action for purposes of Executive Order 12866 and also that this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have a retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13563

As part of its ongoing efforts to engage stakeholders in the development of its regulations, SBA conducted a series of conference calls with resource partner representatives (Small Business Development Centers, Women's Business Centers and SCORE) to review the intent of the new rule and various components related to it. No concerns were raised during those calls and no comments were raised that needed to be addressed in this rule. SBA also coordinated development of this rule with its Office of Inspector General, which has statutory approval responsibility to approve client surveys until this rule is finalized.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this proposed rule will not impose any reporting or recordkeeping requirements. SBA will continue to follow the Paperwork Reduction Act requirements, including obtaining OMB's review and approval, for any current or future surveys, polls and other collections of information from the resource partners and their clients.

Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

In Fiscal Year 2013 (the most current year for which complete information is available), there were 63 SBDCs serving 332,421 clients; 102 WBCs serving 136,951 clients; SCORE served 458,773 clients; and VBOCS served 80,000 clients. For Fiscal Year 2014, SBA received $113,625,000 for SBDCs; $14,000,000 for WBCs; $7,000,000 for SCORE; and $2,500,000 for VBOCs. SBA does not have data on how many of these entities are small under the applicable North American Industry Classification System (NAICS) codes set forth in 13 CFR part 121. Therefore, SBA requests information on how many of the SBDCs, WBCs, SCORE, and VBOC entities are considered small under the NAICS codes.

Even if all of these entities are small, SBA believes that this rule would not have a significant economic impact on them. The rule would not require additional expenditures or impose any new requirements on these entities, including collection of information requirements as that term is defined by the Paperwork Reduction Act. Rather, as stated above, the rule would merely establish how SBA would handle any information the Agency collects from the resource partners and their clients. Specifically, the rule would make it clear that existing SBA standards for the disclosure and use of information would also apply to any such information collected. SBA is responsible for complying with the requirements of the proposed rule, not the SBDCs, WBCs, SCORE, or VBOCs. Nonetheless, SBA also requests public comments on any impact this proposed rule would have on these organizations.

With respect to the small businesses that obtain counseling and training from these entities, there would be no economic impact from this proposed rule as well. The disclosure and protection standards discussed in the rule applies to the information collected from all such businesses that obtain services from an SBDC, WBC, SCORE or VBOC entity; however, the rule would not impose any requirements on these businesses to provide the information or to take any other action.

Based on the reasons stated above and for purposes of the RFA, SBA certifies that this rule would not have a significant economic impact on a substantial number of the SBDCs, WBCS, SCORE or VBOC entities, and

the small businesses that receive services from them.

List of Subjects in 13 CFR Part 102

Freedom of information, Privacy, Grants.

For the reasons set forth in the preamble, SBA proposes to amend 13 CFR part 102 as follows:

PART 102—RECORD DISCLOSURE AND PRIVACY

■ 1. The authority citation for part 102 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 15 U.S.C. 648(a)(7) and 656(n); 31 U.S.C. 9701; 44 U.S.C. 3501, E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

■ 2. Add subpart C to read as follows:

Subpart C—Standards for Collection and Use of Program Activity Data and Surveys

Sec.
102.50 Purpose and scope.
102.51 Definitions.
102.52 Standards for disclosure and use of information.
102.53 Data collection methodologies.
102.54 Use of program activity or survey and poll data.
102.55 Use of financial examination and programmatic review data.

§ 102.50 Purpose and scope.

The purpose of these regulations is to establish standards for the disclosure of information collected from any individual or small business concern receiving assistance from SBA through its resource partners. The scope of these regulations is limited to SBA conducted financial examinations or programmatic reviews of a resource partner, or a survey or poll conducted of an SBA resource partner's clients.

§ 102.51 Definitions

Audit means a financial examination or programmatic review conducted by the Office of Entrepreneurial Development. This provision does not apply to audits, investigations or other activities conducted by the SBA's Office of Inspector General (OIG) or a financial statement audit.

Client means a person or small business that receives management or technical assistance from SBA, an SBA resource partner, an approved SBA lender, or any other provider participating in any of SBA's programs. The assistance is direct or indirect and may also include loans, or investments or other such activities as enumerated in agreements or funding documents between the resource partner and SBA.

Customer Satisfaction means the degree to which clients would recommend the service received to other small business individuals and/or that they were generally pleased with the service provided to them and would use the service again.

Examination means a financial examination or programmatic review. This provision does not apply to audits conducted by the SBA's Office of Inspector General (OIG) or a financial statement audit.

Poll means an informal, voluntary data collection that contains broad based questions that place little to no burden on the respondent. A Poll is anecdotal and not statistical in nature, and is used to gain a quick view of a particular issue. A Poll does not collect information protected under the Privacy Act of 1974.

Program Activity Data means data collected through any methods established by or on behalf of SBA concerning a resource partner's client activity, including but not limited to, counseling, training, and other technical assistance activities.

Resource Partner means any grantee, subrecipient, or system of grantees and subrecipients that enters into a formal agreement with SBA to deliver small business management and technical assistance to the general public, small business concerns and/or any specialized assistance related thereto.

Submitter means any person or entity that provides information to SBA through a data collection system, survey, poll, financial examination, programmatic review or other data collection activity.

Survey means a collection of data whose purposes include the description, estimation, or analysis of the characteristics of groups, organizations, segments, activities, or geographic areas.

§ 102.52 Standards for disclosure and use of information.

The standards in subparts A and B of 13 CFR part 102 relating to privacy and disclosure of information collected and maintained by the SBA apply to the disclosure and use of information collected from resource partners and their clients.

§ 102.53 Data collection methodologies.

All data collection methodologies utilized will be consistent with relevant Federal rules and regulations, including the Paperwork Reduction Act, and SBA standard operating procedures.

§ 102.54 Use of program activity or survey and poll data.

Program activity and client survey or poll data are collected for the purposes of:

(a) Measuring the effect and economic or other impact of Agency programs;

(b) Assessing public and resource partner needs;

(c) Measuring customer satisfaction;

(c) Guiding program policy development;

(d) Improving grant-making processes;

(e) Improving relationship management with these entities; and

(f) Other areas SBA determines would be valuable to strengthen programs and/or enhance support for clients.

§ 102.55 Use of financial examination or programmatic review data.

Financial examination or programmatic review data regarding client information is collected, to the extent necessary, for the purposes of:

(a) Assessing the quality, quantity and scope of client service provided;

(b) Ensuring compliance with the governing rules and program requirements;

(c) Determining the appropriateness of activities conducted under the program and/or cost incurred by submitters such as grantees, resource partners, contractors, lenders and other program stakeholders; and

(d) Other areas relevant to SBA oversight of its programs.

This data is separate from ongoing program activity data and does not interfere with the collection of that information.

Dated: March 31, 2014.

Marianne O'Brien Markowitz,

Acting Administrator.

[FR Doc. 2014–07850 Filed 4–8–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0191; Directorate Identifier 2013–NM–256–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of swing arm assemblies of engine fuel feed ejector pumps detaching from the outlet port of

the engine fuel feed ejector pump and partially blocking the engine fuel feed line. This proposed AD would require installing a restrictor into the engine fuel feed line. We are proposing this AD to prevent blocked engine fuel flow and possible engine flameout.

DATES: We must receive comments on this proposed AD by May 27, 2014.

ADDRESSES: You may send comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Fax: (202) 493–2251.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0191; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Morton Lee, Propulsion Engineer, Propulsion & Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7355; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0191; Directorate Identifier 2013–NM–256–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2013–35, dated November 15, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been incidents of the ''ENG FUEL PRESS'' caution light illuminating in-flight. An investigation revealed the engine fuel feed ejector pump swing arm assembly became detached from the outlet port of the engine fuel feed ejector pump and partially blocked the engine fuel feed line. If the failed swing arm assembly migrates along the fuel line downstream of the Fuel Tank AUX Pump junction, it could block the engine fuel flow and the affected engine may experience a flameout condition.
>
> Bombardier issued Service Bulletin (SB) 84–28–16 to introduce a restrictor into the engine fuel feed line that is designed to contain a detached ejector pump swing arm assembly.
>
> This [Canadian] AD mandates the installation of a restrictor into the engine fuel feed line to prevent possible engine flameout.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0191.

Relevant Service Information

Bombardier has issued Service Bulletin 84–28–16, Revision B, dated June 17, 2013. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 81 airplanes of U.S. registry.

We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $82,620, or $1,020 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2014–0191; Directorate Identifier 2013–NM–256–AD.

(a) Comments Due Date

We must receive comments by May 27, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes; certificated in any category; serial numbers 4001, and 4003 through 4417 inclusive, with installed engine fuel feed ejector pump having part number (P/N) 2960008–102.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of swing arm assemblies of engine fuel feed ejector pumps detaching from the outlet port of the engine fuel feed ejector pump and partially blocking the engine fuel feed line. We are issuing this AD to prevent blocked engine fuel flow and possible engine flameout.

(f) Compliance

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

(g) Installation

Within 6,000 flight hours or 36 months, whichever occurs first, after the effective date of this AD, install a restrictor into the engine fuel feed line, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–28–16, Revision B, dated June 17, 2013.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 84–28–16, dated July 16, 2012; or Revision A, dated May 23, 2013. This service information is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). For a repair method to be approved, the repair approval must specifically refer to this AD. You are required to ensure the product is airworthy before it is returned to service.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2013–35, dated November 15, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0191.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 2, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–07934 Filed 4–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0192; Directorate Identifier 2013–NM–221–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2013–10–06, for all Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes. AD 2013–10–06 currently requires an inspection to identify the installed windshields, and replacement of any affected windshield. Since we issued AD 2013–10–06, the manufacturer has identified a new batch of affected windshield parts on the airplane. This proposed AD would expand the inspection area to 15 additional windshields' serial numbers. We are proposing this AD to prevent significantly increased workload for the flightcrew, which could, under some flight phases and/or circumstances, constitute an unsafe condition.

DATES: We must receive comments on this proposed AD by May 27, 2014.

ADDRESSES: You may send comments by any of the following methods:

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0192; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0192; Directorate Identifier 2013–NM–221–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On May 16, 2013, we issued AD 2013–10–06, Amendment 39–17459 (78 FR 32347, May 30, 2013). AD 2013–10–06 requires actions intended to address an unsafe condition on all Airbus Model A330–200 Freighter, A330–200, A330–300, A340–200, A340–300, A340–500, and A340–600 series airplanes.

Since we issued AD 2013–10–06, Amendment 39–17459 (78 FR 32347, May 30, 2013), the manufacturer has identified a new batch of windshield parts that are subject to the identified unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0256, dated October 21, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

The MCAI states:

> Several operators reported cases of burning smell and/or smoke in the cockpit during cruise phase leading in some cases to diversion. Findings showed that the cause of these events is the burning of the Saint-Gobain Sully (SGS) windshield connector terminal block.
>
> This condition, if not corrected, could significantly increase the flight crew workload which would, under some flight phases and/or circumstances constitute an unsafe condition.
>
> To address this unsafe condition, Airbus published 3 different Service Bulletins (SB) and EASA issued AD 2011–0242 (later corrected) which required the identification of the installed windshields and replacement of the affected part.
>
> Since issuance of that [EASA] AD, a new occurrence in service led Airbus to identify a new batch of affected parts.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2011–0242, which is superseded, and requires identification and replacement of the additionally identified windshields.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0192.

Relevant Service Information

Airbus has issued the following service information:

- Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013;
- Airbus Service Bulletin A340–56–4008, Revision 02, including Appendixes 01 and 02, dated August 1, 2013; and
- Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 60 airplanes of U.S. registry.

The actions that are required by AD 2013–10–06, Amendment 39–17459 (78 FR 32347, May 30, 2013), and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that were required by AD 2013–10–06 is $170 per product.

We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $10,200, or $170 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $0, for a cost of $850 per product. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Amend § 39.13 by removing Airworthiness Directive (AD) 2013–10–06, Amendment 39–17459 (78 FR 32347, May 30, 2013), and adding the following new AD:

Airbus: Docket No. FAA–2014–0192; Directorate Identifier 2013–NM–221–AD.

(a) Comments Due Date

We must receive comments by May 27, 2014.

(b) Affected ADs

This AD supersedes AD 2013–10–06, Amendment 39–17459 (78 FR 32347, May 30, 2013).

(c) Applicability

This AD applies to all airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 56, Windows.

(e) Reason

This AD was prompted by several reports of a burning smell and/or smoke in the cockpit during cruise phase, leading in some cases, to diversion to alternate airports. We are issuing this AD to prevent significantly increased workload for the flightcrew, which could, under some flight phases and/or circumstances, constitute an unsafe condition.

(f) Compliance

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

(g) Retained Inspection With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2013–10–06, Amendment 39–17459 (78 FR 32347, May 30, 2013), with revised service information. Within 1,200 flight hours after July 5, 2013 (the effective date of AD 2013–10–06), inspect to identify the manufacturer, the part number, and the serial number of the left-hand (LH) and right-hand (RH) windshields installed on the airplane, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD. A review of airplane delivery or maintenance records is acceptable in lieu of this inspection if the manufacturer, part number, and serial number of the installed windshields can be conclusively determined from that review.

(1) For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes: Airbus Service Bulletin A330–56–3009, Revision 02, including Appendix 01, dated February 8, 2012; or Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013. As of the effective date of this AD, use only Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013, to do the actions required by paragraph (g) of this AD.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: Airbus Service Bulletin A340–56–4008, Revision 01, including Appendix 01, dated February 8, 2012; or Airbus Service Bulletin A340–56–4008, Revision 02, including Appendixes 01 and 02, dated August 1, 2013. As of the effective date of this AD, use only Airbus Service Bulletin A340–56–4008, Revision 02, including Appendixes 01 and 02, dated August 1, 2013, to do the actions required by paragraph (g) of this AD.

(3) For Model A340–541 and –642 airplanes: Airbus Service Bulletin A340–56–5002, Revision 01, including Appendix 01, dated February 8, 2012; or Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013. As of the effective date of this AD, use only Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013, to do the actions required by paragraph (g) of this AD.

(h) Retained Replacement With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2013–10–06, Amendment 39–17459 (78 FR 32347, May 30, 2013), with revised service information. If it is found, during the inspection required by paragraph (g) of this AD, that any installed LH or RH windshield was manufactured by Saint-Gobain Sully (SGS) and the part number and serial number are specified in the applicable Airbus service information specified in paragraph (g)(1), (g)(2), or (g)(3) of this AD: Within 9 months or 1,200 flight hours after July 5, 2013 (the effective date of AD 2013–10–06), whichever occurs first, replace all affected LH and RH windshields, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD.

(1) For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes: Airbus Service Bulletin A330–56–3009, Revision 02, including Appendix 01, dated February 8, 2012; or Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013. As of the effective date of this AD, use only Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013, to do the actions required by paragraph (h) of this AD.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: Airbus Service Bulletin A340–56–4008, Revision 01, including Appendix 01, dated February 8, 2012; or Airbus Service Bulletin A340–56–4008, Revision 02, including Appendixes 01 and 02, dated August 1, 2013. As of the effective date of this AD, use only Airbus Service Bulletin A340–56–4008, Revision 02, including Appendixes 01 and 02, dated August 1, 2013, to do the actions required by paragraph (h) of this AD.

(3) For Model A340–541 and –642 airplanes: Airbus Service Bulletin A340–56–5002, Revision 01, including Appendix 01,

dated February 8, 2012; or Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013. As of the effective date of this AD, use only Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013, to do the actions required by paragraph (h) of this AD.

(i) New Requirement of This AD: Inspection

Within 6 months after the effective date of this AD, inspect to identify the manufacturer, the part number, and the serial number of the LH and RH windshields installed on the airplane, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD. A review of airplane delivery or maintenance records is acceptable in lieu of this inspection if the manufacturer, part number, and serial number of the installed windshields can be conclusively determined from that review.

(1) For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes: Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: Airbus Service Bulletin A340–56–4008, Revision 02, including Appendixes 01 and 02, dated August 1, 2013.

(3) For Model A340–541 and –642 airplanes: Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013.

(j) New Requirement of This AD: Replacement

If it is found, during the inspection required by paragraph (i) of this AD, that any installed LH or RH windshield was manufactured by Saint-Gobain Sully (SGS) and the part number and serial number are specified in Appendix 2 of the applicable Airbus service information specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD, or if the manufacturer or part number or serial number is not identifiable: Within 6 months after the effective date of this AD, replace the affected LH and/or RH windshield with a serviceable part, in accordance with the Accomplishment Instructions of the applicable Airbus service information specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD.

(1) For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes: Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: Airbus Service Bulletin A340–56–4008, Revision 02, including Appendixes 01 and 02, dated August 1, 2013.

(3) For Model A340–541 and –642 airplanes: Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013.

(k) Definition of Serviceable Windshield

For the purposes of this AD, a serviceable windshield is a windshield not identified in Appendix 1 of the applicable Airbus service information as specified in paragraphs (j)(1), (j)(2), or (j)(3) of this AD; or it is specified in Appendix 1 but has a suffix ''U'' added to the serial number on the identification plate.

(l) Parts Installation Limitations

As of the effective date of this AD, no person may install, on any airplane, an affected windshield from SGS having a part number and serial number identified in Appendix 1 of the applicable Airbus service information as specified in paragraph (l)(1), (l)(2), or (l)(3) of this AD, unless a suffix ''U'' has been added on the serial number identification plate.

(1) For Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes: Airbus Service Bulletin A330–56–3009, Revision 03, including Appendixes 01 and 02, dated August 1, 2013.

(2) For Model A340–211, –212, –213, –311, –312, and –313 airplanes: Airbus Service Bulletin A340–56–4008, Revision 02, including Appendix 01 and 02, dated August 1, 2013.

(3) For Model A340–541 and –642 airplanes: Airbus Service Bulletin A340–56–5002, Revision 02, including Appendixes 01 and 02, dated August 1, 2013.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using the applicable Airbus service information specified in paragraphs (m)(1) through (m)(4) of this AD, provided that the actions were accomplished on the airplane, and no replacement windshield has been installed with a part number and serial number identified in Appendix 02 of the applicable Airbus service information as specified in paragraphs (j)(1) through (j)(3) of this AD.

(1) Airbus Service Bulletin A330–56–3009, dated May 4, 2010 (for Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes), which is not incorporated by reference in this AD.

(2) Airbus Service Bulletin A330–56–3009, Revision 01, dated January 27, 2011 (for Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes), which is not incorporated by reference in this AD.

(3) Airbus Service Bulletin A340–56–4008, dated May 4, 2010 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), which is not incorporated by reference in this AD.

(4) Airbus Service Bulletin A340–56–5002, dated May 4, 2010 (for Model A340–541 and –642 airplanes), which is not incorporated by reference in this AD.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM 116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval, as applicable). You are required to ensure the product is airworthy before it is returned to service.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0256, dated October 21, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0192.

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

Issued in Renton, Washington, on April 1, 2014.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–07954 Filed 4–8–14; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 742, 748, 762, and 772

[Docket No. 131018874–3874–01]

RIN 0694–AG00

Proposed Revisions to the Support Document Requirements of the Export Administration Regulations in Response to Executive Order 13563 Retrospective Regulatory Review

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to support documents required to be submitted for license applications under the Export Administration Regulations (EAR) and changes to the Bureau of Industry and Security's (BIS's) role in issuing documents for the Import Certificate and Delivery Verification system. This proposed rule would remove the requirement to obtain an International Import Certificate or Delivery Verification in connection with license applications, require a Statement by Ultimate Consignee and Purchaser for most license applications previously requiring an International Import Certificate, and increase the license application value requirement for obtaining a Statement by Ultimate Consignee and Purchaser. In addition, BIS would cease issuing U.S. Import Certificates or Delivery Verifications for imports into the United States. Finally, this rule revises the structure and description of support document requirements to improve clarity. BIS is proposing these changes in response to public comments received in response to BIS's notice of inquiry on retrospective regulatory review being undertaken under Executive Order 13563.

DATES: Comments must be received by June 9, 2014.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. The identification number for this rulemaking is BIS–2014–0009.
- By email directly to *publiccomments@bis.doc.gov*. Include RIN 0694–AG00 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AG00.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of National Security and Technology Transfer Controls, 202–482–4479, *patricia.muldonian@bis.doc.gov*. Steven Emme, Office of the Assistant Secretary for Export Administration, 202–482–5491, *steven.emme@bis.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2011, President Barack Obama issued Executive Order 13563 to improve regulation and regulatory review. *See* 76 FR 3821 (Jan. 21, 2011). Among other things, the President stressed the need for the regulatory system to allow for public participation and an open exchange of ideas, as well as to promote predictability and reduce uncertainty. The President also emphasized that regulations must be accessible, consistent, written in plain language, and easy to understand. Under Executive Order 13563, each agency is required to ''periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.'' Through a notice of inquiry on this retrospective regulatory review published on August 5, 2011 (76 FR 47527), the Bureau of Industry and Security (BIS) sought comments on aspects of the Export Administration Regulations (EAR) that are not immediately affected by the Export Control Reform initiative and that could improve clarity in the EAR or streamline requirements to improve efficiency and reduce burden.

Among the public comments received, three commenters proposed improvements to aspects of the support document requirements in part 748 of the EAR. Specifically, two commenters suggested removing the requirement to obtain International Import Certificates (ICs) under § 748.10 of the EAR, and one commenter recommended that BIS explicitly allow the use of electronic signatures. After reviewing these comments, BIS proposes to amend the EAR to remove the requirement for ICs under § 748.10, remove the Delivery Verification Certificate (DVs) in § 748.13, change certain prior approval requirements involving support documents to recordkeeping requirements, raise the license application value threshold for requiring the submission of a Statement by Ultimate Consignee and Purchaser, remove language that suggests the preclusion of electronic signatures currently in § 748.11, and streamline the support document requirements to improve clarity. BIS believes that these proposals further the aims of Executive Order 13563 by tailoring the requirements of the EAR to reduce unnecessary burdens imposed on license applicants while continuing to further the national security and foreign policy objectives of the United States.

Proposal To Remove Requirement To Obtain International Import Certificate or Delivery Verification for Exports, Reexports, or Transfers (In-Country) Subject to the EAR; Proposal To Eliminate Issuance of U.S. Import Certificate, U.S. Import Certificate With Triangular Transaction Stamp, or Delivery Verification Certificate by BIS

Background

The current International Import Certificate and Delivery Verification (IC/DV) system is a remnant of the Coordinating Committee on Multilateral Export Controls (COCOM). COCOM was a multilateral organization that restricted strategic exports to controlled countries during the Cold War. On March 31, 1994, COCOM disbanded and was later replaced by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The IC/DV system addressed diversion of items from COCOM countries or countries cooperating with COCOM, and this system has remained in place under the Wassenaar Arrangement.

Under the IC/DV system, the importer in an international transaction is required to certify that it will import the goods into the destination country and will not reexport or otherwise divert the goods without the authorization of the government of the importing country. This certification takes the form of a document issued by the government of the importing country. When goods are exported to the United States, the United States Government may issue a U.S. IC (Form BIS–645P/ATF–4522) for this purpose.

Along with the IC (or other certification used by foreign governments), an importer in an international transaction may be required to have the government of the importing country complete a DV in order to give greater assurance to the exporter's country that the importing country will be aware and thus in a better position to prevent potential diversion. When a DV is required, it is presented together with evidence of entry of the goods for certification by the customs authority of the importing

country. The form is then delivered from the importer to the exporter and from the exporter to its export control licensing authority. When goods are exported to the United States, the United States Government may issue a DV (Form BIS–647P) when requested for this purpose.

As commenters to the notice of inquiry pointed out, while the IC/DV system is intended to prevent diversion and increase awareness among participating countries of potential enforcement concerns, the system's utility has diminished over time. While the IC provides information about the importation of items, it lacks an affirmative statement on the actual end use of the item by the ultimate consignee or end user. Similarly, a DV does not provide the same level of assurance that a pre-license check or post-shipment verification would achieve. This lack of utility and information under the IC/DV system serves little purpose for licensing and enforcement operations. Further, many countries participating in the Wassenaar Arrangement do not require their exporters to obtain an IC from the country of destination for dual-use items. Consequently, the IC/DV system imposes additional burdens on the public and the U.S. Government without achieving the system's intended objectives.

While the U.S. Government has previously attempted to implement changes to the IC/DV system through the Wassenaar Arrangement, the participating countries have not reached a consensus on this issue. Since the IC/DV system is not addressed in the Wassenaar Arrangement Initial Elements and there is no applicable U.S. statutory requirement for the IC/DV system, BIS is initiating, under national discretion, changes to the implementation of the IC/DV system through this proposed rule.

Proposed Changes Impacting License Applications Submitted to BIS

In this proposed rule, BIS proposes to remove the requirement in § 748.10 to obtain an IC for a license application, and instead require that the exporter obtain a Statement by Ultimate Consignee and Purchaser. Under § 748.10, an IC is required for license applications of items controlled for national security reasons valued over $50,000 that are destined for countries listed in § 748.9(b)(2), with the exception of the People's Republic of China (PRC). This proposed change would treat countries in current § 748.9(b)(2) like most other countries under the current requirements. This proposed change would not, however, apply to the PRC or Argentina. License applications for the PRC would continue to require a PRC End-User Statement, as is currently the case under § 748.10. License applications for Argentina would be treated like most other countries and territories in the Americas and only require a support document for applications involving firearms and related commodities under current § 740.14 of the EAR.

BIS believes that this proposed change would significantly reduce burden and improve timeliness for shipping under an approved license. Currently, U.S. exporters must receive a signed original of the IC prior to shipping commodities under an approved license. As one commenter pointed out, the time necessary to obtain an original IC can be significant. Generally, the U.S. exporter would need to request that the foreign importer obtain an IC from the foreign government, the foreign importer would have to fill out and submit the IC by mail or hand delivery to the foreign government, the foreign government would have to process and certify the IC, the foreign government would have to return the IC by mail to the foreign importer or have the foreign importer pick up the form, the foreign importer would have to mail the certified original to the U.S. exporter, and the IC may have to be translated into English prior to submission or record retention. Consequently, the current requirement to obtain an IC can put U.S. exporters at a competitive disadvantage since many of the other member states of the Wassenaar Arrangement do not require their own exporters to obtain an IC from other Wassenaar Arrangement member states when importing dual-use items.

To address this time-consuming burden, BIS believes that requiring a Statement by Ultimate Consignee and Purchaser rather than an IC would benefit U.S. exporters. Unlike ICs, Statements by Ultimate Consignee and Purchaser only require the engagement of parties directly involved in the transaction. Further, U.S. exporters currently do not have to wait for an original Statement by Ultimate Consignee and Purchaser before shipping under an approved license so long as the exporter receives the original within 60 days from the date the document is signed by the ultimate consignee. In addition to greatly reducing burden and delays, this proposal would provide greater transparency and information for BIS in processing license applications and for enforcement officials to monitor potential concerns.

To implement these changes for ICs, this proposed rule removes all references to ICs in § 748.9 of the EAR. Further, this proposed rule removes references to ICs in § 748.10 while maintaining the requirements described for the PRC End-User Statement. In addition, since BIS is proposing the removal of the requirement to obtain an IC, this proposed rule also eliminates the need for BIS to request that a DV be obtained from a foreign government for a transaction. As a result, this proposed rule eliminates all current text in § 748.13 of the EAR and Supplement No. 4 to part 748, which lists contact information for the IC/DV authorities of foreign governments.

Proposed Elimination of Issuance of U.S. Import Certificate, U.S. Import Certificate With Triangular Transaction Stamp, and Delivery Verification Certificate by BIS

As described in Supplement No. 5 to part 748, BIS currently issues U.S. ICs or DVs for items subject to the EAR that are controlled for national security reasons or for items subject to the jurisdiction of the Nuclear Regulatory Commission. BIS may also issue a U.S. IC with a triangular transaction stamp when the U.S. importer in a transaction is uncertain whether the items in question will be imported into the United States or knows that the items will not be imported into the United States. As previously mentioned, the issuance of a U.S. IC or DV provides little utility to the U.S. Government or to the foreign country granting an export license as no representation is made by the ultimate consignee or end user on the documents. Eliminating the review, processing, and issuance of U.S. ICs and DVs will allow BIS to focus its resources on more effective methods to adjudicate license applications and focus its efforts on the risk of diversion. Consequently, under this proposed rule, BIS would cease accepting Form BIS–645P and BIS–647P and thus cease issuing a U.S. IC or DV when requested by a foreign government. Accordingly, this rule proposes to remove and reserve Supplement No. 5 to part 748 and to remove entries for information collections related to ICs and DVs in Supplement No. 1 to part 730.

This proposal would not impact the participation by other agencies of the U.S. Government in the IC/DV system. Currently, the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives issues U.S. ICs for the permanent import of defense articles described on either the U.S. Munitions List (USML) in 22 CFR part 121 or the U.S. Munitions Import List in 27 CFR

part 447. Also, should U.S. Government documentation acknowledging a temporary import of defense articles described on the USML in 22 CFR part 121 be required, U.S. importers may obtain a DSP–61 Application/License for Temporary Import of Unclassified Defense Articles from the Department of State's Directorate of Defense Trade Controls.

Proposal To Increase Value Threshold for Requiring a Statement by Ultimate Consignee and Purchaser

Prior to June 19, 2007, the EAR applied a consistent value threshold of $5,000 for obtaining a support document for a license application, with the exception of license applications for computers destined for the PRC. On June 19, 2007, BIS published a final rule that increased the value threshold for license applications requiring an IC and for most license applications requiring a PRC End-User Statement. The final rule increased the value threshold from $5,000 to $50,000, with the exception of license applications for computers and certain cameras destined for the PRC. The value threshold for a Statement by Ultimate Consignee and Purchaser, however, remained at $5,000. This change resulted in requiring support documents for more license applications involving close allies and regime partners for items controlled for reasons other than national security than for license applications involving the same items destined for the PRC. As such, BIS believes that the varying value levels add to the complexity of support document requirements without providing a necessary national security or foreign policy rationale.

To address the inconsistency in value threshold, this proposed rule raises the value of license applications requiring a Statement by Ultimate Consignee and Purchaser from $5,000 to $50,000. This change would further reduce the burden for U.S. exporters by eliminating a requirement for transactions with controlled items valued between $5,000 and $50,000. As is currently required, license applicants may not split an order into multiple license applications in order to avoid the value threshold requiring a Statement by Ultimate Consignee and Purchaser.

Additional proposed changes to part 748 impacting the Statement by Ultimate Consignee and Purchaser are addressed herein.

Proposed Revisions to Part 748 To Improve Clarity of Support Document Requirements

The current framework for describing support document requirements in the EAR is found in §§ 748.9 through 748.14. The proposal to remove the requirement to obtain ICs and DVs affords BIS the opportunity to streamline the framework of the support document requirements and improve clarity. This proposed rule revises § 748.6(a) to provide greater clarity on general instructions for license applications and then revises the framework in current §§ 748.9 through 748.14 as follows:

Proposed § 748.9

Section 748.9 is currently drafted as a decision tree to inform readers when a support document is required for a license application. This framework has led to difficulty in clearly and efficiently determining whether a support document is required for a specific license application. Under this rule, proposed paragraph (a) provides a general overview of and need for support document requirements. Proposed paragraph (b) outlines when a support document is required for a license application and provides citations to the relevant provision that further describes the specific support document in question. Proposed paragraph (c) details when reexport license applications and transfer (in-country) license applications would require a support document. Proposed paragraph (d) lists exceptions to the requirements to obtain support documents outlined in paragraph (b). Proposed paragraph (e) describes general requirements for the content of all support documents. Proposed paragraph (f) incorporates recordkeeping information currently in § 748.12(e) and addresses returning unused or partially used support documents to foreign importers. Proposed paragraph (g) parallels the language in current § 748.9(h) on the impact of a support document on BIS's review of a license application. Proposed paragraph (h) contains the information on grace periods for compliance following regulatory changes, which is currently in § 748.12(a).

Proposed §§ 748.10 Through 748.12

With the removal of ICs and DVs under this proposed rule, the remaining support documents would be described in separate, consecutive sections—§ 748.10 for the PRC End-User Statement, § 748.11 for the Statement by Ultimate Consignee and Purchaser, and § 748.12 for import certificates for firearms and related items. This rule also proposes to rename import certificates described in current § 748.14 as FC Import Certificates. This change is being made to reduce potential ambiguity between the Import Certificate for firearms and related items in current § 748.14 and the IC in current § 748.10.

For each description of the support documents proposed to remain under this rule, BIS is revising and reorganizing the descriptions into parallel, uniform topics in proposed §§ 748.12 through 748.14. Thus, all three sections will provide the requirements for the applicable support document under the following topics—(a) requirement to obtain document, (b) obtaining the document, (c) content of the document, (d) procedures for using document with license application, and (e) recordkeeping. BIS believes this new organization should allow readers to more readily identify the applicable requirements for each support document.

Proposed § 748.10

Currently, § 748.10 combines requirements for ICs and PRC End-User Statements. This proposed rule revises § 748.10 to remove all references to ICs and make this section applicable to PRC End-User Statements only. Under this proposed rule, paragraph (a) separates the three combinations of commodity and value thresholds requiring a PRC End-User Statement rather than listing all three in one paragraph. In addition, this proposed rule attempts to tighten the language of the requirements to make clear the applicability of the value thresholds. For example, if a license application is submitted to export cameras controlled under ECCN 6A003 to the PRC, the value of the 6A003 cameras must be over $5,000 to generate a requirement for a PRC End-User Statement. If the same order includes other items that do not require a license, the value of the other items should not be factored in to the $5,000 value threshold for 6A003 cameras. However, if the license application includes 6A003 cameras valued at, for example, $4,000 and includes other commodities requiring a license to the PRC valued at $47,000, a PRC End-User Statement would still be required because the cumulative total of commodities requiring a license to the PRC exceeds $50,000.

Proposed paragraph (b) provides information in current § 748.10(c)(1) and Supplement No. 4 to part 748. Proposed paragraph (c) provides information in current § 748.10(c)(2), (c)(3), and (h). Proposed paragraph (d) largely reflects information in current § 748.9(c), (e), (f), and (h). Proposed paragraph (e) details the recordkeeping requirements and amends the current

procedure in § 748.9(j), which describes the process by which exporters must submit the PRC End-User Statement and other information to BIS for determination on whether a PRC End-User Statement may be returned to the foreign importer. This proposed rule removes the submission requirement and instead adds a recordkeeping obligation, thereby simplifying the process and reducing the burden for both exporters and the U.S. Government.

Specific Changes in Proposed § 748.11

Under this proposed rule, information regarding the Statement by Ultimate Consignee and Purchaser would remain under § 748.11, but this section would be amended to reflect the changes in requirements to obtain a Statement by Ultimate Consignee and Purchaser due to the removal of ICs. Within this section, proposed paragraph (a) describes the revised requirement to obtain a Statement by Ultimate Consignee and Purchaser to reflect that license applications currently requiring an IC under § 748.10 would now require a Statement by Ultimate Consignee and Purchaser, unless the items are destined for Argentina. To conform to this change, the requirement in proposed paragraph (a) applies to destinations not located in the ''Americas.'' The proposed definition of ''Americas'' in part 772, which is derived from the list of countries found in current § 748.9(a)(1), provides the list of countries and territories that are considered to be in the Americas for purposes of the EAR. The definition makes clear, however, that while Cuba would geographically be considered part of the Americas, it does not fall under the definition in part 772 and would thus be subject to the requirement for obtaining a Statement by Ultimate Consignee and Purchaser. Proposed paragraph (a) also describes the limited use of a Statement by Ultimate Consignee and Purchaser for license applications involving the PRC. Currently, § 748.9(b)(2)(i) addresses the use of a Statement by Ultimate Consignee and Purchaser for limited applications involving the PRC. The proposed paragraph (a) also includes a new Note 2 to paragraph (a) that would allow BIS to require applicants to obtain a Statement by Ultimate Consignee and Purchaser for a license application even if one would not otherwise be required. This note would conform to current § 748.10(b)(3)(iii) for ICs and PRC End-User Statements.

Proposed paragraph (b) incorporates text from current § 748.11(c). Proposed paragraph (c) incorporates the current text of § 748.11(d) and (e). Proposed paragraph (d) consolidates text in current §§ 748.9(c)(2), 748.9(e), and 748.11(b). In addition, proposed paragraph (d) changes the current requirement on when to submit a copy of the Statement by Ultimate Consignee and Purchaser with the license application into a recordkeeping requirement. Also, this proposed rule removes references to wording such as ''original statement'' and ''manually signed original'' in proposed paragraph (d) to allow for the use of electronic signatures. Proposed paragraph (e) retains the current requirements on recordkeeping in § 748.11(b).

Proposed § 748.12

This proposed rule reorganizes the information in current § 748.12 and generally places such information in proposed §§ 748.9 or 748.13. In its place, this proposed rule moves the information on Import Certificates or equivalent documents for license applications of firearms and related commodities (to be collectively renamed FC Import Certificates) from § 748.14 to § 748.12 to position it next to the requirements for the other support documents in §§ 748.10 and 748.11. With the exception of proposed § 748.12(e), this proposed rule makes no substantive changes to the information in current § 748.14. Proposed § 748.12(e) combines the requirements applicable to returning the Import Certificate or equivalent statement to the foreign importer under current §§ 748.9(j) and 748.14(j) and replaces the submission requirement with a recordkeeping requirement. This is similar to the text proposed in § 748.10(e) for PRC End-User Statements.

Proposed § 748.13

With the proposed removal of the requirement to obtain an IC in § 748.10, this proposed rule also removes the text describing DVs in current § 748.13. This rule proposes to move information on granting exceptions to the support document requirements from current § 748.12(c) and (d) to proposed § 748.13.

Additional Revisions to Part 748

Since this rule proposes to move the section on FC Import Certificates from § 748.14 to § 748.12, this rule proposes to remove and reserve § 748.14. In addition, this rule proposes to remove the table of foreign IC/DV authorities in current Supplement No. 4 to part 748 and replace it with a table providing guidance on support document requirements. This table would serve as guidance only; it is not meant to contravene or supersede the support document requirements described in §§ 748.9 through 748.13. Also, current Supplement No. 5 to part 748 would be removed and reserved since BIS is proposing to no longer issue U.S. ICs or DVs.

Additional Conforming Changes to the EAR

This proposed rule also revises § 742.17 to change a citation reference back to part 748 and update the name of the FC Import Certificate, revises references to the support documents in the recordkeeping requirements of § 762.2, and inserts a definition of ''Americas'' in § 772.1 for purposes of support document requirements in part 748. This definition updates the list of destinations currently in § 748.9(a)(1).

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013) has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is part of BIS's retrospective regulatory review being undertaken under Executive Order 13563. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of

information displays a currently valid OMB control number. This proposed rule would affect four collection numbers: Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate (collection number 0694–0009), Delivery Verification Certificate (0694–0016), International Import Certificate (0694–0017), Statement by Ultimate Consignee and Purchaser (0694–0021), and Import Certificates And End-User Certificates (0694–0093).

Under this proposed rule, BIS would cease issuing Import Certificates and Delivery Verifications, which are addressed in collection numbers 0694–0016 and 0694–0017, respectively. This would lead to an annual reduction in burden of 56 hours for 0694–0016 and 52 hours for 0694–0017. With the removal of Import Certificates under 0694–0017, this rule would also remove Import Certificates requiring a Triangular Transaction Stamp, as addressed under collection 0694–0009. BIS has not received a request for approval of a triangular transaction in the past ten years, so the removal of this information collection would result in a reduction of one hour.

Additionally, this proposed rule would amend the requirements for support documents required in conjunction with a license application. Collection number 0694–0093 addresses Import Certificates and End-User Certificates, changes to Import Certificates and End-User Certificates, exception requests to Import Certificates and End-User Certificates, Delivery Verifications, exception requests to Delivery Verifications, and related recordkeeping. This proposed rule would eliminate the requirement for obtaining a Delivery Verification in conjunction with a license application submitted to BIS. This would result in an annual reduction in burden of 361 hours for Delivery Verifications and 0.5 hours for Delivery Verification exception requests. Also, this rule would eliminate the requirement to obtain an Import Certificate in conjunction with a license application. This change would result in the reduction of the following annual burden hour estimates: 354.5 hours for preparing the Import Certificate, 23.6 hours for recordkeeping related to the Import Certificate, 99 hours for changes to Import Certificates, and 7 hours for Import Certificate exception requests.

The proposed changes to support documents required in conjunction with a license application would also impact collection number 0694–0021, which addresses the Statement by Ultimate Consignee and Purchaser. This proposed rule would increase the license application value threshold for requiring a Statement by Ultimate Consignee and Purchaser from $5,000 to $50,000. In addition, with the exception of licenses for Argentina, this proposed rule would require obtaining a Statement by Ultimate Consignee and Purchaser for those license applications previously requiring an Import Certificate. These proposed changes result in a net increase of 135.7 burden hours measured under collection number 0694–0021.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. However, under section 605(b) of the RFA, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number by reducing the burden of having to obtain certain support documents for certain license applications. Therefore, the impact on any affected small entities will be wholly positive. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

For the reasons stated in the preamble, the Bureau of Industry and Security proposes to amend the Export Administration Regulations, 15 CFR parts 730, 742, 748, 762, and 772, as follows:

PART 730—[AMENDED]

■ 1. The authority citation for part 730 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013); Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

■ 2. Supplement No. 1 to part 730 is amended by removing the rows for collection numbers 0694–0009, 0694–0016, and 0694–0017.

PART 742—[AMENDED]

■ 3. The authority citation for part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;*

42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

■ 4. Section 742.17 is amended by:

■ a. Revising the last sentence of paragraph (a);

■ b. Revising ''Import Certificate'' to read ''FC Import Certificate'' in paragraph (b); and

■ c. Revising paragraph (g).

The revisions read as follows:

§ 742.17 Exports of firearms to OAS member countries.

(a) * * * Licenses will generally be issued on a Firearms Convention (FC) Import Certificate or equivalent official document, satisfactory to BIS, issued by the government of the importing OAS member country.

* * * * *

(g) *Validity period for licenses.* Although licenses generally will be valid for a period of four years, your ability to ship items that require an FC Import Certificate or equivalent official document under this section may be affected by the validity of the FC Import Certificate or equivalent official document (see § 748.12(d)(4) of the EAR).

PART 748—[AMENDED]

■ 5. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 6. Revise § 748.6(a) to read as follows:

§ 748.6 General instructions for license applications.

(a) *Instructions.* (1) General instructions for filling out license applications are in Supplement No. 1 to this part.

(2) License applications may require additional information due to the type of items requested in the application or the characteristics of the transaction. Special instructions for applications requiring such additional information are listed in § 748.8 and described fully in Supplement No. 2 to this part.

(3) License applications may also require additional information for evaluation of the parties in the transaction. Special instructions for applications requiring such additional information are listed in §§ 748.9 through 748.13. Additional guidance for determining requirements is located in Supplement No. 4 to this part.

* * * * *

■ 7. Revise § 748.9 to read as follows:

§ 748.9 Support documents for evaluation of foreign parties in license applications.

(a) *Scope.* License applicants may be required to obtain support documents concerning the foreign parties and the disposition of the items intended for export or reexport. Some support documents are issued by foreign governments, while other support documents are signed and issued by the purchaser and/or ultimate consignee. For support documents issued by foreign governments, any foreign legal restrictions or obligations exercised by the government issuing the support document is in addition to the conditions and restrictions placed on the transaction by BIS. However, the laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of a support document by a foreign government.

(b) *Requirements to obtain support documents for export license applications.* Unless an exception in paragraph (d) of this section applies, a support document is required for the following export license applications:

(1) *License applications for exports to the People's Republic of China (PRC).* License applications for commodities ultimately destined for the PRC require a PRC End-User Statement for certain transactions. Under narrow circumstances, a Statement by Ultimate Consignee and Purchaser may be substituted for a PRC End-User Statement. See §§ 748.10 and 748.11(a)(2) for specific requirements.

(2) *License applications for exports of firearms and related commodities to member countries of the Organization of American States (OAS).* License applications for firearms or related commodities classified under ECCN 0A984, 0A986, or 0A987 require a Firearms Convention (FC) Import Certificate when such commodities are destined for a member country of the OAS. See § 748.12 for specific requirements.

(3) *License applications for exports to all other destinations that are not countries or territories located in the ''Americas.''* License applications for commodities requiring a license for any reason on the Commerce Control List may require a Statement by Ultimate Consignee and Purchaser if the items are ultimately destined for a country (other than the PRC) or a territory that is not located in the ''Americas.'' See § 748.11 for specific requirements and § 772.1 for the definition of ''Americas.''

Note to Paragraph (b): For End-Use Certificate requirements under the Chemical Weapons Convention, see § 745.2 of the EAR.

(c) *Requirement to obtain support documents for reexport or transfer (in-country) license applications.* If a support document would be required for an export from the United States under paragraph (b) of this section, then the same support document would also be required for license applications to reexport or transfer (in-country) if the final destination is a country in Country Group D:1 or E:1.

(d) *Exceptions to requirements to obtain support documents.* (1) Even if a support document requirement exists in paragraphs (b) or (c) of this section, no support document is required for any of the following situations:

(i) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies), other than the government of the People's Republic of China. To determine whether the parties in a transaction meet the definition of ''foreign government agency,'' refer to the definition contained in part 772 of the EAR. If either the ultimate consignee or purchaser is not a foreign government or foreign government agency, however, a support document may still be required from the nongovernmental party;

(ii) The license application is filed by, or on behalf of, a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency for International Development, for export to a member agency in the foreign country;

(iii) The license application is submitted for commodities for temporary exhibit, demonstration, or testing purposes;

(iv) The license application is submitted for commodities controlled for short supply reasons (see part 754 of the EAR);

(v) The license application is submitted under the Special Comprehensive License procedure described in part 752 of the EAR;

(vi) The license application is submitted for software or technology; or

(vii) The license application is submitted for encryption commodities controlled under ECCN 5A002 or 5B002.

(2) BIS will consider granting an exception to the requirement for obtaining a support document where the requirements cannot be met due to circumstances beyond the applicant's control. An exception will not be

granted contrary to the objectives of the U.S. export control laws and regulations. Refer to § 748.13 of this part for specific instructions on procedures for requesting an exception.

(e) *Content of support documents.* In addition to specific requirements described for each support document in §§ 748.10, 748.11, and 748.12, the use and submission of support documents must comply with the following requirements.

(1) *English translation.* All abbreviations, coded terms, or other expressions on support documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a language other than English must be accompanied by an attachment giving an accurate English translation, either made by a translating service or certified by the applicant to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(2) *Responsibility for full disclosure.* (i) Information contained in a support document cannot be construed as extending or expanding or otherwise modifying the specific information supplied in a license application or license issued by BIS. The license application covering the transaction discloses all facts pertaining to the transaction. The authorizations contained in the resulting license are not extended by information contained in the support document regarding reexport from the country of destination, transfer (in-country), or any other facts relative to the transaction that are not reported on the license application.

(ii) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, may subject responsible parties to administrative or criminal action by BIS.

(iii) In obtaining the required support document, the applicant is not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end use, end user of which the applicant knows, even if inconsistent with the representations made in the applicable support document. The applicant is responsible for promptly notifying BIS of any change in the facts contained in the support document that comes to the applicant's attention.

(f) *Recordkeeping provisions.* (1) License applicants must retain on file the original copy of any support document issued in support of a license application submitted to BIS. All recordkeeping provisions in part 762 apply to this requirement, except that reproductions may not be substituted for the officially authenticated, original support document. To ensure compliance with this recordkeeping requirement, BIS may require applicants, on a random basis, to submit specific original certificates and statements that have been retained on file. Applicants will be notified in writing of any such request.

(2) See §§ 748.10(e)(2) and 748.12(e)(2) for recordkeeping requirements for returning support documents issued by foreign governments.

(g) *Effect on license application review.* BIS reserves the right in all respects to determine to what extent any license will be issued covering items for which a support document has been issued. If a support document was issued by a foreign government, BIS will not seek or undertake to give consideration to recommendations from the foreign government as to the action to be taken on a license application. A support document will be only one of the factors upon which BIS will base its licensing action, since end uses and other considerations are important factors in the decision making process.

(h) *Grace period for complying with requirements following regulatory change.* (1) Whenever the requirement for an End-User Statement, Statement by Ultimate Consignee or Purchaser, or Import Certificate is imposed or extended by a change in the regulations, the license application need not conform to the new support documentation requirements for a period of 45 days after the effective date of the regulatory change published in the **Federal Register**.

(2) License applications filed during the 45 day grace period must be accompanied by any evidence available to the applicant that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between the applicant and ultimate consignee, or other documents received from the ultimate consignee. Applicants must also identify the regulatory change (including its effective date) that justifies exercise of the 45 day grace period.

■ 8. Revise § 748.10 to read as follows:

§ 748.10 People's Republic of China (PRC) End-User Statement.

(a) *Requirement to obtain document.* Unless the provisions of §§ 748.9(d) or 748.11(a)(2) apply, a PRC End-User Statement is required for any of the following license applications for commodities destined for China:

(1) The license application includes cameras classified under ECCN 6A003 and the value of such cameras exceeds $5,000;

(2) The license application includes computers requiring a license for any reason on the Commerce Control List, regardless of the value of the computers; or

(3) The license application includes any commodity(ies) requiring a license for any reason on the Commerce Control List, and the value of the commodity(ies) requiring a license exceeds $50,000.

Note 1 to Paragraph (a): If an order meets the commodity(ies) and value requirements listed above, then a PRC End-User Statement is required. An order may not be split into multiple license applications solely to avoid a requirement to obtain a PRC End-User Statement.

Note 2 to Paragraph (a): If an order includes both items that do require a license to the PRC and items that do not require a license to the PRC, the value of the latter items should not be factored in to the value thresholds described above. Also, if a license application includes 6A003 cameras and other items requiring a license to the PRC, then the value of the 6A003 cameras should be factored into the value threshold described in paragraph (a)(3).

Note 3 to Paragraph (a): On a case-by-case basis, BIS may require license applicants to obtain a PRC End-User Statement for a license application that would not otherwise require a PRC End-User Statement under the requirements of paragraph (a) of this section.

(b) *Obtaining the document.* (1) If a PRC End-User Statement is required for any reason under paragraph (a) of this section, then applicants must request that the importer obtain a PRC End-User Statement for all items on a license application that require a license to the PRC for any reason listed on the CCL. Applicants must obtain the original PRC End-User Statement from the importer.

(2) PRC End-User Statements are issued and administered by the Ministry of Commerce; Department of Mechanic, Electronic and High Technology Industries; Export Control Division I; Chang An Jie No. 2; Beijing 100731 China; Phone: (86)(10) 6519 7366 or 6519 7390; Fax: (86)(10) 6519 7543; *http://cys.mofcom.gov.cn/ag/ag.html.*

(c) *Content of the document.* (1) The license applicant's name must appear on the PRC End-User Statement submitted to BIS as the applicant, supplier, or order party.

(2) License applicants must ensure that the following information is included on the PRC End-User

Statement signed by an official of the Department of Mechanic, Electronic and High Technology Industries, Export Control Division I, of the PRC Ministry of Commerce (MOFCOM), with MOFCOM's seal affixed to it:

(i) Title of contract and contract number (optional);

(ii) Names of importer and exporter;

(iii) End user and end use;

(iv) Description of the commodity, quantity and dollar value; and

(v) Signature of the importer and date.

(3) After a support document is issued by MOFCOM, no corrections, additions, or alterations may be made on the document by any person. If a license applicant desires to explain any information contained on the statement, the applicant may include a signed letter of explanation as part of the application.

Note to paragraph (c): The license applicant should furnish the consignee with the commodity description contained in the CCL to be used in applying for the PRC End-User Statement. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the commodity is new.

(d) *Procedures for using document with license application*—(1) *Timing for obtaining PRC End-User Statement and submitting license application.* License applicants must obtain a PRC End-User Statement prior to submitting the license application. Applicants, however, may submit the license application upon receipt of a facsimile or other legible copy of the PRC End-User Statement, provided that no shipment is made against any issued license prior to receipt of the original PRC End-User Statement.

(2) *Information necessary for license application.* License applicants should not submit the original or copy of the PRC End-User statement with the license application. Rather, applicants must indicate ''Import/End-User Certificate'' in Block 7 of the application with an ''X'' in the appropriate box. In addition, applicants must identify China as the originating country and input the number of the PRC End-User Statement in Block 13 of the application. If a license application is submitted without either the correct Block or Box marked on the application and no exception request is made pursuant to § 748.13, the license application will be immediately returned without action.

(3) *Using a PRC End-User Statement for multiple applications.* A PRC End-User Statement may cover more than one purchase order and more than one item. Where the Statement includes items for which more than one license application will be submitted, you must include in Block 24 on your application, or in an attachment to each license application submitted against the Statement, the following certification:

I (We) certify that the quantities of items shown on this license application, based on the PRC End-User Statement identified in Block 13 of this license application, when added to the quantities shown on all other license applications submitted to BIS based on the same PRC End-User Statement, do not total more than the total quantities shown on the above cited PRC End-User Statement.

(4) *Alterations.* After a PRC End-User Statement is issued by the Government of the People's Republic of China, no corrections, additions, or alterations may be made on the certificate by any person. If an applicant desires to explain any information contained on the certificate, the applicant may submit a signed statement describing such information as part of the license application.

(5) *Validity period.* (i) When a PRC End-User Statement is required to support one or more license applications, an applicant must submit the first license application within the validity period shown on the PRC End-User Statement or 6 months from the date the PRC End-User Statement was signed, whichever is shorter.

(ii) All subsequent license applications supported by the same PRC End-User Statement must be submitted to BIS within one year from the date the first license application supported by the same PRC End-User Statement was submitted to BIS.

(e) *Recordkeeping*—(1) *General requirement.* Original PRC End-User Statements used to support license applications must be retained on file by the applicant. All recordkeeping provisions in part 762 apply to this requirement, except that reproductions may not be substituted for the officially authenticated, original PRC End-User Statement.

(2) *Returning PRC End-User Statement to foreign importer.* A foreign importer may request that an unused or partially used PRC End-User Statement be returned. In such circumstances, the PRC End-User Statement may be returned to the foreign importer provided that the applicant makes a copy of the PRC End-User Statement and attaches to it a printout or copy of each license covered by the PRC End-User Statement as well as a letter of explanation citing the foreign importer's request for return of the PRC End-User Statement, the license number(s) that have been issued against the PRC End-User Statement (including both outstanding and expired licenses), and a statement that the PRC End-User Statement cannot be used in connection with another license application. The copies of the PRC End-User Statement, license(s), and attached letter of explanation must be retained on file along with the correspondence with the foreign importer in accordance with the recordkeeping provisions in part 762 of the EAR.

■ 9. Revise § 748.11 to read as follows:

§ 748.11 Statement by Ultimate Consignee and Purchaser.

(a) *Requirement to obtain document*—(1) *General requirement for all countries excluding the PRC.* Unless an exception in § 748.9(d) or paragraph (a)(3) of this section applies, a Statement by Ultimate Consignee and Purchaser is required if:

(i) The license application includes item(s) requiring a license for any reason on the Commerce Control List and such item(s) are valued at over $50,000; and

(ii) The items are destined for a country or territory other than the PRC or the ''Americas'' (see § 772.1 for the definition of ''Americas'').

(2) *Permissive substitute of Statement by Ultimate Consignee and Purchaser in place of PRC End-User Statement.* The requirement to obtain a support document for license applications involving the PRC is generally determined by § 748.10(a) of the EAR. However, a Statement by Ultimate Consignee and Purchaser may be substituted in place of a PRC End-User Statement when the commodities to be exported (i.e., replacement parts and sub-assemblies) are valued at $75,000 or less and are for servicing previously exported commodities.

(3) *Exception to general requirement.* The general requirement described in paragraph (a)(1) of this section does not apply if the applicant is the same person as the ultimate consignee, provided the required statements are contained in Block 24 on the license application. This exemption does not apply, however, where the applicant and consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms.

Note 1 to paragraph (a): If an order meets the destination and value requirements listed above, then a Statement by Ultimate Consignee and Purchaser is required. An order may not be split into multiple license applications solely to avoid a requirement to obtain a Statement by Ultimate Consignee and Purchaser.

Note 2 to paragraph (a): On a case-by-case basis, BIS may require license applicants to obtain a Statement by Ultimate Consignee and Purchaser for a license application that would not otherwise require a Statement by Ultimate Consignee and Purchaser under the requirements of paragraph (a) of this section.

(b) *Obtaining the document.* (1) The ultimate consignee and purchaser must complete either a statement on company letterhead, as described in paragraph (c)(1) of this section, or Form BIS–711, Statement by Ultimate Consignee and Purchaser, as described in paragraph (c)(2) of this section. Unless otherwise specified, any reference in this section to ''Statement by Ultimate Consignee and Purchaser'' applies to both the statement on company letterhead and to Form BIS–711.

(2) If the consignee and purchaser elect to complete the statement on letterhead and both the ultimate consignee and purchaser are the same entity, only one statement is necessary.

(3) If the ultimate consignee and purchaser are separate entities, separate statements must be prepared and signed.

(4) If the ultimate consignee and purchaser elect to complete Form BIS–711, only one Form BIS–711 (containing the signatures of the ultimate consignee and purchaser) need be completed.

(5) Whether the ultimate consignee and purchaser sign a written statement or complete Form BIS–711, the following constraints apply:

(i) Responsible officials representing the ultimate consignee or purchaser must sign the statement. ''Responsible official'' is defined as someone with personal knowledge of the information included in the statement, and authority to bind the ultimate consignee or purchaser for whom they sign, and who has the power and authority to control the use and disposition of the licensed items.

(ii) The authority to sign the statement may not be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his or her official position with the ultimate consignee or purchaser for whom he or she signs. The signing official may be located in the United States or in a foreign country. The official title of the person signing the statement must also be included.

(iii) The consignee and/or purchaser must submit information that is true and correct to the best of their knowledge and must promptly send a new statement to the applicant if changes in the facts or intentions contained in their statement(s) occur after the statement(s) have been forwarded to the applicant. Once a statement has been signed, no corrections, additions, or alterations may be made. If a signed statement is incomplete or incorrect in any respect, a new statement must be prepared, signed and forwarded to the applicant.

(c) *Content of the document.* If a statement on company letterhead will be obtained to meet the requirement of paragraph (a) of this section, follow the requirements described in paragraph (c)(1) of this section. If Form BIS–711 will be obtained to meet the requirement of paragraph (a) of this section, follow the requirements described in paragraph (c)(2) of this section.

(1) *Statement on company letterhead.* Information in response to each of the following criteria must be included in the statement. If any information is unknown, that fact should be disclosed in the statement. Preprinted information supplied on the statement, including the name, address, or nature of business of the ultimate consignee or purchaser appearing on the letterhead or order form is acceptable but will not constitute evidence of either the signer's identity, the country of ultimate destination, or end use of the items described in the license application.

(i) *Paragraph 1.* One of the following certifications must be included depending on whether the statement is proffered in support of a single license application or multiple license applications:

(A) *Single.* This statement is to be considered part of a license application submitted by [name and address of applicant].

(B) *Multiple.* This statement is to be considered a part of every license application submitted by [name and address of applicant] until two years from the date this statement is signed.

(ii) *Paragraph 2.* One or more of the following certifications must be included. Note that if any of the facts related to the following statements are unknown, this must be clearly stated.

(A) The items for which a license application will be filed by [name of applicant] will be used by us as capital equipment in the form in which received in a manufacturing process in [name of country] and will not be reexported or incorporated into an end product.

(B) The items for which a license application will be filed by [name of applicant] will be processed or incorporated by us into the following product(s) [list products] to be manufactured in [name of country] for distribution in [list name of country or countries].

(C) The items for which a license application will be filed by [name of applicant] will be resold by us in the form in which received for use or consumption in [name of country].

(D) The items for which a license application will be filed by [name of applicant] will be reexported by us in the form in which received to [name of country or countries].

(E) The items received from [name of applicant] will be [describe use of the items fully].

(iii) *Paragraph 3.* The following two certifications must be included:

(A) The nature of our business is [possible choices include: broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.].

(B) Our business relationship with [name of applicant] is [possible choices include; contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.] and we have had this business relationship for [number of years].

(iv) *Paragraph 4.* The final paragraph must include all of the following certifications:

(A) We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and we do not know of any additional facts that are inconsistent with the above statements. We shall promptly send a replacement statement to [name of the applicant] disclosing any material change of facts or intentions described in this statement that occur after this statement has been prepared and forwarded to [name of applicant]. We acknowledge that the making of any false statement or concealment of any material fact in connection with this statement may result in imprisonment or fine, or both, and denial, in whole or in part, of participation in U.S. exports or reexports.

(B) Except as specifically authorized by the U.S. Export Administration Regulations, or by written approval from the Bureau of Industry and Security, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement:

(*1*) To any country not approved for export as brought to our attention by the exporter; or

(*2*) To any person if there is reason to believe that it will result directly or indirectly in disposition of the items contrary to the representations made in this statement or contrary to the U.S. Export Administration Regulations.

(C) We understand that acceptance of this statement as a support document cannot be construed as an authorization by BIS to reexport or transfer (in country) the items in the form in which received even though we may have indicated the intention to reexport or transfer (in country), and that authorization to reexport (or transfer in country) is not granted in an export license on the basis of information

provided in the statement, but as a result of a specific request in a license application.

(2) *Form BIS–711.* Form BIS–711 is available at *http://www.bis.doc.gov/index.php/component/rsform/form/21-request-bis-forms?task=forms.edit.* Instructions on completing Form BIS–711 are contained in Supplement No. 3 to this part. The ultimate consignee and purchaser may sign a legible copy of Form BIS–711. It is not necessary to require the ultimate consignee and purchaser to sign an original Form BIS–711, provided all information contained on the copy is legible.

(d) *Procedures for using document with license application*—(1) *Timing for obtaining Statement by Ultimate Consignee and Purchaser and submitting license application*—(i) A license application may be submitted upon receipt of a facsimile or other legible copy of the signed statement.

(ii) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(2) *Information necessary for license application.* (i) Applicants are not required to submit a copy of the statement with the application. The applicant should, however, mark the correct Box in Block 7 of the license application to notify BIS that a copy of the statement is on file with the applicant.

(ii) If a license application is submitted without either the correct Block or Box marked on the application and no exception request is made pursuant to § 748.13, the license application will be immediately returned without action.

(3) *Validity period.* (i) When a Statement by Ultimate Consignee and Purchaser is required to support one or more license applications, an applicant must submit the first license application within 6 months from the date the statement was signed, whichever is shorter.

(ii) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(e) *Recordkeeping.* The applicant must, upon receipt, retain the signed statement, and both the ultimate consignee and purchaser should retain a copy of the statement in accordance with the recordkeeping provisions contained in part 762 of the EAR.

■ 10. Revise § 748.12 to read as follows:

§ 748.12 Firearms Convention (FC) Import Certificate.

(a) *Requirement to obtain document.* Unless an exception in § 748.9(d) applies, an FC Import Certificate is required for license applications for firearms and related commodities, regardless of value, that are destined for member countries of the Organization of American States (OAS). This requirement is consistent with the OAS Model Regulations described in § 742.17.

(1) *Items subject to requirement.* Firearms and related commodities are those commodities controlled for ''FC Column 1'' reasons under ECCNs 0A984, 0A986, or 0A987.

(2) *Countries subject to requirement.* (i) OAS member countries include: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

(ii) [Reserved]

(3) *Equivalent official document in place of FC Import Certificate.* For those OAS member countries that have not yet established or implemented an FC Import Certificate procedure, BIS will accept an equivalent official document (e.g., import license or letter of authorization) issued by the government of the importing country as supporting documentation for the export of firearms.

(b) *Obtaining the document.* Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the FC Import Certificate or an equivalent official document from the government of the importing country, and that it be issued covering the quantities and types of firearms and related items that the applicant intends to export. (See Supplement No. 6 to this part for a list of the OAS member countries' authorities administering the FC Import Certificate System.) Upon receipt of the FC Import Certificate or its official equivalent, the importer must provide the original or a certified copy of the FC Import Certificate or the original or a certified copy of the equivalent official document to the license applicant. The license applicant shall obtain the required documents prior to submitting a license application, except as provided in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(c) *Content of the document.* The FC Import Certificate or its official equivalent must contain the following information:

(1) Applicant's name and address. The applicant may be either the exporter, supplier, or order party.

(2) FC Import Certificate Identifier/Number.

(3) Name of the country issuing the certificate or unique country code.

(4) Date the FC Import Certificate was issued, in international date format (e.g., 24/12/12 (24 December 2012), or 3/1/99 (3 January 1999)).

(5) Name of the agency issuing the certificate, address, telephone and facsimile numbers, signing officer name, and signature.

(6) Name of the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial or government body, citizenship, and signature.

(7) Name of the end user(s), if known and different from the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial (authorized distributor or reseller) or government body, citizenship, and signature. Note that BIS does not require the identification of each end user when the firearms and related commodities will be resold by a distributor or reseller if unknown at the time of export.

(8) Description of the commodities approved for import including a technical description and total quantity of firearms, parts and components, ammunition and parts.

Note to paragraph (c)(8): You must furnish the consignee with a detailed technical description of each commodity to be given to the government for its use in issuing the FC Import Certificate. For example, for shotguns, provide the type, barrel length, overall length, number of shots, the manufacturer's name, the country of manufacture, and the serial number for each shotgun. For ammunition, provide the caliber, velocity and force, type of bullet, manufacturer's name and country of manufacture.

(9) Expiration date of the FC Import Certificate in international date format (e.g., 24/12/12) or the date the items must be imported, whichever is earlier.

(10) Name of the country of export (i.e., United States).

(11) Additional information. Certain countries may require the tariff classification number, by class, under the Brussels Convention (Harmonized Tariff Code) or the specific technical description of a commodity. For example, shotguns may need to be described in barrel length, overall length, number of shots, manufacturer's name and country of manufacture. The technical description is not the Export Control Classification Number (ECCN).

(d) *Procedures for using document with license application*—(1) *Timing for obtaining FC Import Certificate and submitting license application.* An FC Import Certificate or equivalent official document can only be used to support one license application. An applicant may submit an application before obtaining the original or certified copy of the FC Import Certificate, or the official original or certified copy of the equivalent document, provided that:

(i) The applicant has received a facsimile or other legible copy of the FC Import Certificate or equivalent official document at the time the license application is filed; and

(ii) The applicant states on the application that a facsimile of the FC Import Certificate or equivalent official document has been received and that no export will be made against the license prior to obtaining the original or certified copy of the FC Import Certificate or the original or certified copy of the equivalent official document issued by the importing country and retaining it on file. Generally, BIS will not consider any license application for the export of firearms and related commodities if the application is not supported by an FC Import Certificate or its official equivalent. If the government of the importing country will not issue an FC Import Certificate or its official equivalent, the applicant must supply the information described in paragraphs (c)(1) and (c)(6) through (8) of this section on company letterhead.

(2) *Information necessary for license application.* The license application must include the same commodities as those listed on the FC Import Certificate or the equivalent official document. The applicant must clearly note the number and date of the FC Import Certificate or equivalent official document in Block 13 for all export license applications supported by that Certificate or equivalent official document. The applicant must also indicate in Block 7 of the application that the FC Import Certificate or equivalent official document has been received and will be retained on file.

(3) *Alterations.* After an FC Import Certificate or official equivalent document is used to support the issuance of a license, no corrections, additions, or alterations may be made on the FC Import Certificate by any person. If an applicant desires to explain any information contained on the FC Import Certificate or official equivalent document, the applicant may submit a signed statement with a copy of the Import Certificate or official equivalent.

(4) *Validity period.* FC Import Certificates or equivalent official documents issued by an OAS member country will be valid for a period of one year or less. Although licenses generally are valid for four years, an applicant's ability to export may be affected by the validity of the FC Import Certificate or equivalent official document.

(e) *Recordkeeping*—(1) *General requirement.* The applicant must obtain and retain on file either the original or certified copy of the FC Import Certificate, or an original or certified copy of equivalent official document issued by the government of the importing country in support of any license application for export of firearms and related commodities classified as ECCN 0A984, 0A986, or 0A987. Unless otherwise provided in this paragraph, all other recordkeeping provisions of part 762 of the EAR apply to this requirement.

(2) *Returning FC Import Certificate to foreign importer.* A foreign importer may request that an unused or partially used FC Import Certificate or equivalent official document be returned. In such circumstances, the FC Import Certificate or equivalent official document may be returned to the foreign importer provided that you make a copy of the FC Import Certificate (or official equivalent) and attach to it a copy of the license covered by the FC Import Certificate (or official equivalent) as well as a letter of explanation citing the foreign importer's request for return of the FC Import Certificate (or official equivalent), the license number that has been issued against the FC Import Certificate (or official equivalent), and a statement that the FC Import Certificate (or official equivalent) cannot be used in connection with another license application. The copies of the FC Import Certificate (or official equivalent), license, and attached letter of explanation must be retained on file along with correspondence with the importer in accordance with the recordkeeping provisions in part 762 of the EAR.

■ 11. Revise § 748.13 to read as follows:

§ 748.13 Granting of exceptions to the support documentation requirements.

(a) *Overview.* An exception to obtaining the required support documentation will be considered by BIS; however, an exception will not be granted contrary to the objectives of the U.S. export control program. A request for exception may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions. If satisfied by the evidence presented, BIS may waive the support document requirement and accept the license application for processing. Favorable consideration of a request for exception generally will be given in instances where the support document requirement:

(1) Imposes an undue hardship on the applicant or ultimate consignee (e.g., refusal by the foreign government to issue the requisite support document and such refusal constitutes discrimination against the applicant and/or ultimate consignee);

(2) Cannot be complied with (e.g., the commodities will be held in a foreign trade zone or bonded warehouse for subsequent distribution in one or more countries); or

(3) Is not applicable to the transaction (e.g., the items will not be imported for consumption into the named country of destination).

(b) *Procedures for requesting an exception.* (1) Requests for exception must be submitted with the license application to which the request relates. Where the request relates to more than one license application, it should be submitted with the first license application and referred to in Block 24 on any subsequent license application. The request for exception must be submitted in writing on the applicant's letterhead.

(2) In instances where the applicant is requesting an exception from obtaining a PRC End-User Statement under § 748.10 or an FC Import Certificate under § 748.12, the request must be accompanied by a Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part.

(3) At a minimum, the letter request must include:

(i) Name and address of ultimate consignee;

(ii) Name and address of purchaser, if different from ultimate consignee;

(iii) Location of foreign trade zone or bonded warehouse if the items will be exported to a foreign trade zone or bonded warehouse;

(iv) Type of request, i.e., whether for a single transaction or multiple transactions;

(v) Full explanation of the reason(s) for requesting the exception;

(vi) Nature and duration of the business relationship between the applicant and ultimate consignee and purchaser shown on the license application;

(vii) Whether the applicant has previously obtained or submitted to BIS a support document issued in the name of the ultimate consignee or purchaser, and a list of the Application Control Number(s) to which the certificate(s) applied; and

(viii) Any other facts to justify granting an exception.

(4) *Action by BIS*—(i) *Single transaction request.* Where a single transaction is involved, BIS will act on the request for exception at the same time as the license application with which the request is submitted. In those instances where the related license application is approved, the issuance of the license will serve as an automatic notice to the applicant that the exception was approved. If any restrictions are placed on granting of the exception, these will appear on the approval. If the request for exception is not approved, BIS will advise the applicant.

(ii) *Multiple transactions request.* Where multiple transactions are involved, BIS will advise the applicant of the action taken on the exception request. The response from BIS will contain any conditions or restrictions that BIS finds necessary to impose (including an exception termination date if appropriate). In addition, a written acceptance of these conditions or restrictions may be required from the parties to the transaction.

■ 12. Remove and reserve § 748.14.

■ 13. Revise supplement No. 4 to part 748 to read as follows:

Supplement No. 4 to Part 748—Guidance on Support Document Requirements for License Applications

Unless an exception under § 748.9(d) applies, a support document may be required for license applications in the following circumstances.

Support document	Destination	Commodity/value requirements	Regulatory citation(s)
None (unless FC Import Certificate or equivalent official document required below for OAS-member countries).	Countries and territories located in the ''Americas'' (see definition in § 772.1 of the EAR; definition specifically excludes Cuba).		
FC Import Certificate or equivalent official document.	*Organization of American States:* Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.	Firearms and related commodities, regardless of value, controlled under ECCNs 0A984, 0A986, or 0A987.	§ 748.12.
PRC End-User Statement	People's Republic of China (PRC)	6A003 cameras valued above $5,000 Computers regardless of value. Commodities requiring a license for any reason on the CCL and valued above $50,000	§ 748.10 (see also § 748.11(a)(2)).
Statement by Ultimate Consignee and Purchaser.	All other destinations not listed in this table.	Commodities requiring a license for any reason on the CCL and valued above $50,000.	§ 748.11.

■ 14. Remove and reserve supplement No. 5 to part 748.

PART 762—[AMENDED]

■ 15. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 16. Section 762.2 is amended by:

■ a. Revising paragraphs (b)(22) and (b)(24); and

■ b. Removing and reserving paragraph (b)(25).

The revisions read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(22) § 748.10, PRC End-User Statement;

* * * * *

(24) § 748.12, FC Import Certificate;

* * * * *

PART 772—[AMENDED]

■ 17. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 18. Section 772.1 is amended by adding the definition for ''Americas'' in alphabetical order to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Americas. (Part 748) For purposes of part 748 of the EAR, the term Americas includes the following countries and territories: Anguilla, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Bonaire, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Curaçao, Dominica, Dominican Republic, Ecuador, El Salvador, Falkland Islands, French Guiana, Greenland, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Nicaragua, Panama, Paraguay, Peru, Saint Barthélemy, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, Sint Maarten, Suriname, Trinidad and Tobago, Turks and Caicos, United

States, Uruguay, and Venezuela. This definition also includes locations not listed above that are part of the French West Indies, Leeward and Windward Islands, or Leeward Antilles, but this definition intentionally omits Cuba.

* * * * *

Dated: April 3, 2014.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

[FR Doc. 2014–07918 Filed 4–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 270

[Release Nos. 33–9570; 34–71861; IC–31004; File No. S7–12–10]

RIN 3235–AK50

Investment Company Advertising: Target Date Retirement Fund Names and Marketing

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; request for additional comment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is reopening the period for public comment on rule amendments it proposed in 2010, Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9126 (June 16, 2010). Among other things, the proposed amendments would, if adopted, require marketing materials for target date retirement funds (''target date funds'') to include a table, chart, or graph depicting the fund's asset allocation over time, *i.e.,* an illustration of the fund's so-called ''asset allocation glide path.'' In 2013, the Commission's Investor Advisory Committee (''Committee'') recommended that the Commission develop a glide path illustration for target date funds that is based on a standardized measure of fund risk as a replacement for, or supplement to, the proposed asset allocation glide path illustration. The Commission is reopening the comment period to seek public comment on this recommendation.

DATES: The comment period for the proposed rule published on June 23, 2010 (75 FR 35919), is reopened. Comments should be received on or before June 9, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–12–10 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–10. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: J. Matthew DeLesDernier, Senior Counsel, at (202) 551–6792, Investment Company Rulemaking Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is reopening the period for public comment on proposed rule amendments that are intended to provide enhanced information to investors concerning target date funds and reduce the potential for investors to be confused or misled regarding these funds.[1] In particular, the Commission is requesting comment on the recommendations of the Committee relating to the development of a risk-based glide path illustration.

I. Background

A target date fund is designed to make it easier for investors to hold a diversified portfolio of assets that is rebalanced automatically among asset classes over time without the need for each investor to rebalance his or her own portfolio repeatedly, and is typically intended for investors whose retirement date is at or about the fund's stated target date. Target date funds generally invest in a diverse mix of asset classes, including stocks, bonds, and cash and cash equivalents (such as money market instruments). As the target date approaches and often continuing for a significant period thereafter, a target date fund shifts its asset allocation in a manner that generally is intended to become more conservative—usually by decreasing the percentage allocated to stocks. Target date funds have become more prevalent in 401(k) plans as a result of the designation of these funds as a qualified default investment alternative by the Department of Labor pursuant to the Pension Protection Act of 2006.[2] In 2013, assets of target date funds registered with the Commission exceeded $500 billion, having grown from about $250 billion at the beginning of 2010.[3]

In June 2010, the Commission proposed rule amendments intended to provide enhanced information to investors concerning target date funds and to reduce the potential for investors to be confused or misled regarding these funds. Among other things, the proposal would, if adopted, amend rule 482[4] under the Securities Act of 1933 (''Securities Act'')[5] and rule 34b–1[6] under the Investment Company Act of 1940 (''Investment Company Act'')[7] to require certain marketing materials for target date funds to include a table, chart, or graph depicting the fund's asset allocation over time, *i.e.,* an illustration of the fund's so-called ''asset allocation glide path.''[8] The proposed

[1] Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9126 (June 16, 2010) [75 FR 35920 (June 23, 2010)] (''Proposing Release'').

[2] *See* Default Investment Alternatives Under Participant Directed Individual Account Plans, 72 FR 60452, 60452–53 (Oct. 24, 2007).

[3] Morningstar Fund Research, Target Date Series Research Paper: 2013 Survey, available at *https://corporate.morningstar.com/us/documents/ResearchPapers/2013TargetDate.pdf* (last visited Feb. 27, 2014).

[4] 17 CFR 230.482.

[5] 15 U.S.C. 77a–z–3.

[6] 17 CFR 270.34b–1.

[7] 15 U.S.C. 80a.

[8] We also proposed amendments to rule 482 under the Securities Act and rule 34b–1 under the Investment Company Act to require that certain target date fund marketing materials disclose information about the risks and considerations that are important for an investor who is deciding whether to invest in a target date fund. We

table, chart, or graph requirement was intended to ensure that investors who receive target date fund marketing materials also receive basic information about the glide path. In April 2012, we reopened the rulemaking comment period and asked for public comment in light of empirical research undertaken by a consultant on the Commission's behalf relating to individual investors' understanding of target date funds.[9]

In April 2013, the Investor Advisory Committee [10] recommended, among other things, that the Commission develop a glide path illustration for target date funds that is based on a standardized measure of fund risk as either a replacement for, or supplement to, the proposed asset allocation glide path illustration. The Committee also recommended that the Commission adopt a standard methodology or methodologies to be used in the risk-based glide path illustration.[11] The Committee stated that much of the differences in risk among target date funds can be explained by differences in asset allocation models and glide paths, but that choices of assets within the various asset classes and other risk management practices can also have a significant impact on fund risk levels. The Committee also stated that asset allocation may mask significant differences in the risk levels of funds with apparently similar or even identical asset allocation glide paths, particularly when the asset classes are defined broadly. The Committee therefore opined that a glide path illustration based on an appropriate, standardized measure of fund risk would be more accurate than an illustration based on asset allocation alone. The Committee suggested that, to promote comparability, risk-based illustrations should be based on a standardized measure of risk. The Committee did not recommend a particular risk measure or methodology for a risk-based glide path for target date funds, but suggested that the Commission focus on factors such as volatility of returns or maximum exposure to loss, which the Committee stated are directly relevant to the primary concerns of those approaching retirement.

II. Request for Comment

The Commission has decided to reopen the comment period to address the Committee's recommendation that the Commission develop a risk-based glide path illustration for target date funds. We also invite additional comment on any other aspect of the recommendations and accompanying material submitted by the Committee, on our proposal, and on any other matters that may have an effect on the proposal.

In our target date fund proposal, we asked for comment on whether the proposed disclosure requirements would adequately convey the risks associated with a target date fund. For example, we asked if the proposed disclosure of asset allocation would effectively convey the level of a fund's investment risk to investors, and if the emphasis on asset allocation might cause investors to prioritize investment risk over longevity risk, inflation risk, or other risks.[12] We also asked whether fund managers might take on more risk than the asset allocation would reflect.[13] We also sought comment on whether the rule should require disclosure of a risk rating based on a scale or index that could be compared to other target date funds.[14]

The comments that we received on this issue, however, were limited. Some commenters suggested alternative approaches to the glide path illustration that would require a risk-based illustration, rather than an illustration of the fund's changing investments in asset classes over time. For example, commenters recommended that we require: (i) Portfolio risk-related information, data, or graphs along with asset allocation information; [15] (ii) the planned risk level in the glide path disclosure, for example, by presenting the planned standard deviation of returns over the life of the fund; [16] (iii) a color- and number-coded risk spectrum showing a fund's position relative to an appropriate target date fund index; [17] or (iv) whether the fund reflects aggressive, moderate, or conservative risk characteristics, based on certain benchmarks.[18] Another commenter expressed skepticism about the feasibility of establishing a standardized risk rating for target date funds, and stated that developing such a rating would be ''an enormous undertaking with questionable benefit that is significantly beyond the scope'' of the rulemaking.[19]

Because of the limited nature of the comments received, and in light of the Committee's recommendation, we believe further comment in this area would be helpful. As set out further below, we request comment on whether we should develop a glide path illustration for target date funds that is based on a standardized measure of risk as either a replacement for, or supplement to, our proposed asset allocation glide path. We ask that any comment provide specific examples and available data in support of the comment.

Management of Target Date Funds According to Risk. We request comment on the degree to which managers of target date funds use measures of risk as part of their investment strategy.

- Are target date fund strategies primarily based on a changing target risk level or a changing target asset

proposed amendments to these rules to require a target date fund that includes the target date in its name to disclose its allocation of assets at the fund's target date immediately adjacent to the first use of the fund's name in marketing materials. Finally, we proposed amendments to rule 156 under the Securities Act to provide more guidance about statements that could be misleading in marketing materials for target date funds and other investment companies. 17 CFR 230.156.

[9] Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9309 (Apr. 3, 2012) [77 FR 20749 (Apr. 6, 2012)].

[10] Section 911 of the Dodd-Frank Wall Street Reform and Consumer Protection Act added section 39 to the Securities Exchange Act of 1934, which establishes the Investor Advisory Committee. The Committee advises and consults with the Commission on regulatory priorities, issues, and initiatives and submits findings and recommendations to the Commission. 15 U.S.C. 78pp(a). The Commission reviews the findings and recommendations of the Committee and determines what action, if any, to take. 15 U.S.C. 78pp(g).

[11] Recommendation of the Investor Advisory Committee: Target Date Mutual Funds (Apr. 11, 2013), available at *http://www.sec.gov/spotlight/investor-advisory-committee-2012/iac-recommendation-target-date-fund.pdf.* The Committee also recommended that the Commission (i) adopt a standard methodology or methodologies to be used in the asset allocation glide path illustration; (ii) require target date fund prospectuses to disclose and clearly explain the policies and assumptions used to design and manage the target date offerings to attain the target risk level over the life of the fund; (iii) consider testing various approaches to providing disclosure that a target date fund is not guaranteed in order to determine the most effective approach and then mandate that approach; and (iv) amend the fee disclosure requirements for target date funds to provide better information about the likely impact of fund fees on total accumulations over the expected holding period of the investment. *Id.*

[12] Proposing Release, *supra* note 1, at 35926–27.

[13] *Id.* at 35927 (''Would a fund manager's investment strategy, portfolio construction, selection of asset categories disclosed, and marketing change as a result of the proposal's required disclosure of target date (or current) asset allocation? For example, might fund managers compose the fund's fixed-income allocation differently to take on additional investment risk, in order to seek higher returns, while showing a lower equity allocation at or after the target date?'').

[14] *Id.* at 35928.

[15] *See* Comment Letter of Chao & Company, Ltd. (July 6, 2012).

[16] *See* Comment Letter of Folio*fn* Investments Inc. (Mar. 28, 2011); Comment Letter of Folio*fn* Investments Inc. (May 21, 2012).

[17] *See* Comment Letter of Wells Fargo (May 21, 2012).

[18] *See* Comment Letter of SST Benefits Consulting (Apr. 9, 2012).

[19] *See* Comment Letter of the Investment Company Institute (Aug. 23, 2010).

allocation over time, or some combination of these approaches? If target risk levels are used, what risk measures are generally employed?

• Do managers instead first set an asset allocation strategy and then monitor the risks that follow from the asset allocation? If so, what risk measures do they generally monitor?

• Are there other ways in which target date fund managers use risk measures? If so, please describe those ways and the particular risk measures used.

Usefulness and Understandability of Risk Measures. We request comment on whether there are quantitative measures of risk that would be useful to and understandable by investors as the basis for a target date fund risk-based glide path illustration.[20] We note that there are a variety of quantitative measures of risk used in the financial services industry. Some target date funds already provide quantitative risk measures in certain materials on a historical basis.[21] For example, the risk associated with a portfolio can be captured by the variability of its returns, measured by the standard deviation [22] (or volatility) or semi-variance of those returns.[23] Both of these risk measures are ''total risk measures'' that quantify the total variability of a portfolio's returns around, or below, its average return. Another risk measure is ''beta,'' which specifically measures the sensitivity of the portfolio's return to the market's return. The market's beta is by definition equal to 1. Portfolios with betas greater than 1 tend to move more than one-for-one with the market's return, and portfolios with betas less than 1 tend to move less than one-for-one with the market's return. Determination of a fund's beta requires the selection of a benchmark market index to which one compares the portfolio's returns.

• Is there a particular quantitative risk measure, or group of risk measures, that are helpful in evaluating the risks of target date funds? Would fund investors be likely to understand these risk measures and be able to effectively use them in making investment decisions?

• The Committee recommended that the Commission, in determining an appropriate risk measure, focus on factors such as maximum exposure to loss or volatility of returns that are directly relevant to the primary concerns of those approaching retirement. Do commenters agree with this approach? If so, what are the primary concerns of those approaching retirement and what specific measures of risk would be directly relevant to those concerns? Are there other risk factors that are relevant to target date fund investors, including longevity risk and inflation risk? In determining an appropriate measure of risk, how should various aspects of risk be considered? How should concerns of investors at different points in the cycle of accumulating and distributing retirement assets be addressed?

• If we require disclosure of a risk measure, should we require such disclosure at only a single point in time, such as the target date, or should we require disclosure of the measure at multiple points over the life of the fund? If the latter, which specific points over the life of the fund?

• Should a target date fund be required to disclose the same measure or measures that the fund's manager uses to guide its management of the fund, or would other measures be more appropriate?

• Should the risk measure reflect the variance, or volatility, in returns around the fund's average return? Should the measure, instead, reflect the sensitivity of the portfolio's return to the market's return? Or should some other type of risk measure be used? Should these risk measures reflect the characteristics of nominal returns or real returns, which account for the effect of inflation?

Illustration of Risk Measures. We request comment on whether the Commission should develop a glide path illustration for target date funds that is based on a standardized measure of fund risk as either a replacement for, or supplement to, its proposed asset allocation glide path illustration and adopt a standard methodology or methodologies to be used in the risk-based glide path illustration.

• Should the rules require a glide path illustration for target date funds that is based on a standardized measure of fund risk as either a replacement for, or supplement to, the proposed asset allocation glide path illustration? Would the inclusion of two glide path illustrations in the same document tend to confuse investors, and, if so, how could the information be presented in a way that would minimize any confusion?

• Would the proposed asset allocation glide path illustration, without a risk-based glide path illustration, adequately convey risk information to investors? If not, would an asset allocation glide path illustration alone adequately convey risk information if we specify the particular asset categories required to be shown? If so, how narrow should those asset categories be, and what particular asset categories should we specify? Could risk information be adequately conveyed to investors using narrative disclosures in lieu of a glide path illustration?

• What are the advantages and disadvantages of asset allocation glide paths and risk-based glide paths relative to each other? If the rules should require a risk-based glide path, what risk measure(s) should be prescribed and how should the risk measures be presented? Please provide specific examples.

• Should a risk-based glide path illustration be required for all target date

[20] In 1995, the Commission issued a release requesting comment on how to improve risk disclosure for investment companies, including ways to increase the comparability of fund risk levels. Improving Descriptions of Risk by Mutual Funds and Other Investment Companies, Investment Company Act Release No. 20974 (Mar. 29, 1995) [60 FR 17172 (Apr. 4, 1995)] (''Risk Concept Release''). In particular, the Risk Concept Release requested comment on whether quantitative risk measures—such as standard deviation, beta, and duration—would help investors evaluate and compare fund risks. We received over 3,700 comment letters, mostly from individual investors. Commenters confirmed the importance of risk disclosure to investors when evaluating and comparing funds and highlighted the need to improve risk disclosures in fund prospectuses. Although more than half of the individual commenters and some industry members expressed a desire for some form of quantitative risk information, commenters did not broadly support any one risk measure, and the Commission acknowledged that investors have a wide range of ideas of what ''risk'' means. *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Release No. 23064 (Mar. 13, 1998) [63 FR 13916, 13929 (Mar. 23, 1998)] (''Registration Form Adopting Release''). In 1997, the Commission proposed a requirement that a fund's prospectus include a bar chart showing the fund's annual returns for 10 calendar years, noting that over 75% of individual investors responding to the Risk Concept Release favored a bar chart presentation of fund risks. *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 22528 (Feb. 27, 1997) [62 FR 10898, 10904 (Mar. 10, 1997)]. The Commission subsequently adopted the bar chart requirement, which was intended to illustrate graphically the variability of a fund's returns and thus provide investors with some idea of the risk of an investment in the fund. *See* Registration Form Adopting Release, at 13922.

[21] Based on a staff review of target date fund marketing materials.

[22] *See, e.g., Morningstar Investing Glossary: Standard Deviation,* Morningstar, *http://www.morningstar.com/InvGlossary/standard_deviation.aspx* (last visited Jan. 17, 2014) (''Investors use the standard deviation of historical performance to try to predict the range of returns that are most likely for a given fund. When a fund has a high standard deviation, the predicted range of performance is wide, implying greater volatility.'').

[23] Standard deviation measures both ''good'' and ''bad'' outcomes, *i.e.,* the variability of returns both above and below the average return. Semi-variance, which can be used to measure the variability of returns *below* the average return, reflects a view of risk as synonymous with ''bad'' outcomes.

funds, regardless of a fund's investment objective or strategies? Should a risk-based glide path illustration instead be required only for target date funds with an investment objective or strategy of managing to a target risk level?

• Should a risk-based glide path illustration be backward-looking (showing past actual risk measures of a target date fund or group of target date funds) or forward-looking (showing projected risk targets for a target date fund or family of target date funds)? Commenters are asked to address, with specificity, how each of these approaches could be applied to a single target date fund or group of target date funds. What are the advantages and disadvantages of each approach, *e.g.,* ease of construction, understandability, or potential to confuse or mislead?

• If we require a risk-based glide path illustration, should we prescribe the format of the risk-based glide path illustration in order to enhance comparability for investors? For example, would one form (*e.g.,* graph) be more easily understandable by investors than another (*e.g.,* table)?

• If we require a risk-based glide path illustration, should we require it to be prominent within the materials where it is included? Are there other presentation requirements that would be more appropriate?

• Should there be differences in requirements for marketing materials that relate to a single target date fund, as compared with those that relate to multiple target date funds? Should a risk-based glide path illustration for a single target date fund be required to show the fund's actual historical risk levels? Would the use of actual historical risk levels be helpful or confusing to investors in cases where a fund has changed its previous glide path? Should the risk-based glide path illustration for a single target date fund instead be permitted to show the current glide path that is common to all target date funds in a fund family? Would it be misleading for marketing materials for a single target date fund to omit the fund's historical risk levels?

• Should the risk-based glide path illustration for a single target date fund be required to clearly depict the current risk level? Should we require the risk level as of the most recent calendar quarter ended prior to the submission of the marketing materials for publication? Are there any circumstances where we should permit the risk-based glide path illustration for a single target date fund to exclude risk levels for past periods? If we permit a single target date fund to exclude past risk levels in any circumstances, should we nonetheless prohibit a fund from excluding past risk levels if the marketing materials contain past performance information for the fund? Are past risk levels helpful to allow an investor to assess the performance of the target date fund relative to the risk taken? Would disclosure of past performance information without disclosure of past risk levels confuse or mislead investors?

• What is the appropriate maximum interval for depicting a fund's risk level over time? Is the maximum five-year interval that we proposed for an asset allocation glide path appropriate? Should it be shorter (*e.g.,* 1 year or 3 years) or longer (*e.g.,* 10, 15, or 20 years)? Are there any periods for which intervals of shorter duration should be shown? For example, should the risk-based glide path illustration depict the five years before the target date and/or landing point (*i.e.,* the date at which the asset allocation becomes static) using one-year intervals? Is it necessary to require any particular interval? Is it appropriate to require risk levels at the fund's inception, target date, and landing point?

• Would a required explanatory statement preceding or accompanying the risk-based glide path illustration be helpful to investors? What information would be necessary? Should we prescribe the particular content of the statement? Should any of the following information be required in an explanatory statement: (i) The investment risk level changes over time; (ii) the landing point; (iii) an explanation that the investment risk level becomes fixed at the landing point and the projected risk level at the landing point; (iv) whether, and the extent to which, the intended risk levels may be modified without a shareholder vote; and (v) an explanation of risks that are not captured by the illustration? Should the statement be required to use particular language? Should any particular presentation requirements, such as font size or style, apply to the statement that is required to accompany the risk-based glide path illustration?

• Should radio and television advertisements be required to include information about a target date fund's risk-based glide path? What information should be required to be included in radio and television advertisements? For example, is there a means of effectively communicating information comparable to that contained in a risk-based glide path illustration in radio or television advertisements?

• Should information about a target date fund's risk-based glide path be required in marketing materials that are submitted for use on or after the landing point?

• Are there alternative presentations of risk-based measures that would be more helpful to target date fund investors than a risk-based glide path? For example, would it be more helpful to require disclosure of risk measure targets at particular points in time (*e.g.,* target date, landing point) rather than requiring an illustration over the whole life of a target date fund? If so, which points in time would be most important to investors? Should the measures, for example, focus on the target date, landing point, and/or the time period within 5 to 10 years before and after the target date?

Placement of Risk-Based Glide Path Illustration. We request comment on the materials, if any, in which a risk-based glide path illustration for target date funds should be included.

• Are marketing materials for target date funds an appropriate location for inclusion of a risk-based glide path illustration or other information about risk measures? Should illustrations instead be part of the mandated disclosures in a fund's summary prospectus, statutory prospectus, statement of additional information, shareholder reports, or other reports to the Commission?

Calculation of Risk Measures. We request comment on whether required risk measures, if adopted in final rules, should be based on a standardized methodology or methodologies developed by the Commission.

• Should we try to enhance comparability among target date funds by prescribing a standardized methodology for computing a fund's historical and/or projected risk levels?

• What are the parameters and assumptions that the Commission would need to specify in order to prescribe a standardized methodology, *e.g.,* the measures to be used, benchmarks, time periods over which calculated?

• For risk measures that are calculated using a benchmark index (*e.g.,* beta), what issues, if any, are associated with the selection of an appropriate benchmark? Do any quantitative risk measures rely on assumptions, other than a benchmark, that could lead to lack of standardization if not specified by the Commission? Can quantitative risk measures be manipulated, and how do the various measures differ in their susceptibility to manipulation? How can the potential for such manipulation be reduced or eliminated?

• Should the risk measures reflect the target date fund's predictions about

future risk or goals related to future risk? In what manner should these risk measures incorporate historical data from a particular target date fund or group of target date funds? To what extent can historical data predict future risk?

• If a forward-looking risk measure is used, should the risk measure be calculated using portfolio-based computation, which calculates a portfolio risk measure at each point in time based on the historical behavior of the securities or asset classes that the portfolio is expected to include at that point in time? Should the risk measure instead be a risk objective or target? Do the merits of each approach differ among funds or groups of funds with significant operating histories, new funds, and/or funds that have flexibility to change their risk-based glide paths?

• If a standard based on historical risk characteristics were adopted, what requirements should be imposed on funds with a short operating history?

• Persons submitting comments are also asked to describe as specifically as possible the computation method they would recommend for any quantitative risk measure they favor. For example, persons favoring standard deviation should specify whether monthly returns, quarterly returns, or returns over some other period should be used. As another example, persons favoring beta should describe the benchmark or benchmarks that should be used. Persons submitting comments are also asked to discuss the benefits and limitations associated with their recommended method of computation.

Impact on Investors. We request comment on the impact that disclosure of risk measures and risk-based glide paths would have on investors.

• Would investors in target date funds be likely to understand risk measures, or any related illustrations based on those measures? What means could be used to present risk measures for target date funds in a way that would be understandable to investors? Could investors interpret risk-based illustrations as predicting the future returns of the fund? Can future risk levels of a target date fund be projected in a manner that is likely to be accurate? Could the use of projected or target risk measures be misleading and, if so, under what circumstances?

• Would investors be confused if a measure of risk is characterized as ''risk''? Should the disclosure of risk measures use the term ''risk,'' or some other term such as volatility, variance, or variability? Should the terminology distinguish investment risk from other risks, *e.g.,* inflation risk or longevity risk?

• How would investor behavior be affected by disclosure of a particular risk measure? Could disclosure of risk measures influence investors to choose investments that better align with their individual investment objective or could it reduce alignment between investment objectives and investor behavior? For example, could disclosure of risk measures influence investors to choose lower or higher risk investments than would be consistent with their goals for accumulating retirement assets? Commenters are asked to provide their views and any supporting data about the impact of risk measures on investor behavior.

• One potential effect of risk disclosures may be to cause investors or fund managers to place too much importance on the prospect of investment loss. This effect could potentially be offset by counterbalancing information on the prospect of investment gains. To what extent should investors receive information on future expected returns on investment to accompany information on risk? Would investors understand what the information would portray? Would such information cause investors to believe that the expected returns imply some level of guarantee or projection of future performance? How should this expected return be computed if it is required? If investors are to receive this information, how best should it be disclosed or presented? Should expected return information be provided as a statistic separate from risk measures or integrated with risk measures as with a confidence interval for returns?

• Would forward-looking disclosures such as projected future volatility (or other risk measures) or expected returns give rise to potential liability concerns? If so, what relief would be necessary to allow funds to provide such disclosures?

• To what extent might special emphasis on investment risk level or asset allocation cause investors to prioritize investment risk at a particular moment in time over longevity risk, inflation risk, or other risks? Should we require additional disclosure to focus investor attention on inflation risks and longevity risks? Are there useful measures of risk that reflect longevity and inflation risk as well as investment risk?

Effects on Portfolio Management. We recognize that required disclosures may affect the management of a fund, such as by causing a fund to adopt investment strategies that result in disclosure that could be perceived more favorably by investors.

• Comments are requested regarding whether, and how, disclosure of a quantitative risk measure or risk-based glide path for target date funds might influence portfolio management. What would be the associated benefits and detriments? For example, might disclosure of a risk measure by target date funds cause those funds to become more conservative either throughout their glide paths or at certain points on the glide path? If so, how would this affect investors, including investors who are accumulating assets for retirement? Commenters are asked to provide data about the impact of risk measures on portfolio management decisions.

Benefits and Costs. We request comment on the benefits and costs of possible risk disclosure requirements.

• What would be the benefits and costs of requiring a glide path illustration for target date funds that is based on a standardized measure of fund risk as either a replacement for, or supplement to, our proposed asset allocation glide path illustration and adopting a standard methodology or methodologies to be used in the risk-based glide path illustration? What effects would such a requirement have on efficiency, competition, and capital formation? For instance, would such disclosure increase allocative efficiency by increasing the transparency of the underlying risks of target date investing? Would it have an effect on competition among target date funds or between target date funds and other types of investment options? Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

• If we were to require disclosure of a risk-based glide illustration, what changes in behavior by either investors or target date fund managers may result, and what would be the associated benefits and costs?

• To what extent do target date fund managers already undertake risk analysis in the course of prudent risk management? Do target date funds already calculate the types of risk measures discussed above? If so, how and in what form? Is there an industry standard for calculation of risk measures, and, if so, what is it?

• If a target date fund does not already calculate the risk measures discussed above, what would the costs—such as programming costs—of calculating such measures be?

• How would the costs and the effects on efficiency, competition, and capital formation of requiring disclosure of a risk-based glide path compare with the

costs and effects of the proposed requirements? For example, would a risk-based glide path enhance comparability across different target date funds?

Dated: April 3, 2014.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07869 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket Number USCG–2013–0874]

RIN 1625–AA00

Safety Zones, Facilities on the Outer Continental Shelf in the Gulf of Mexico

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones around four Chevron North America (Chevron) facilities located on the Outer Continental Shelf (OCS) in the Gulf of Mexico. The facilities are as follows: The Jack & St Malo Semi-Sub Facility located in Walker Ridge Block 718; The Petronius Compliant Tower Facility located in Viosca Knoll Block 786; The Blind Faith Semi-Sub Facility located in Mississippi Canyon Block 650; and The Tahiti SPAR Facility located in Green Canyon Block 641.

The purpose of these safety zones is to protect each facility from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around each facility will significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: Comments and related material must be received by the Coast Guard on or before May 9, 2014.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0874 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 proposed rule, call or email Mr. Rusty Wright, U.S. Coast Guard, District Eight Waterways Management Branch; telephone 504–671–2138, *rusty.h.wright@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
USCG United States Coast Guard
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
OCS Outer Continental Shelf

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–2013–0874] 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–2013–0874) 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. Basis and Purpose

Under the authority provided in 14 U.S.C. 85, 43 U.S.C. 1333, and Department of Homeland Security Delegation No. 0170.1, Title 33, CFR Part 147 permits the establishment of

safety zones for facilities located on the OCS for the purpose of protecting life, property and the marine environment. Chevron requested that the Coast Guard establish safety zones around four of its facilities located in the deepwater area of the Gulf of Mexico on the OCS. Placing a safety zone around each of these four facilities will significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

For the purpose of safety zones established under 33 CFR Part 147, the deepwater area is considered to be waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the vicinity of each safety zone consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways.

C. Discussion of Proposed Rule

Each of the proposed safety zones will extend 500 meters from each point on the facility structure's outermost edge. The location of each facility is as follows:

(1) The Jack & St Malo Semi-Sub Facility is located in Walker Ridge Block 718 with a center point at 26°14′5.94″ N 91°15′39.99″ W;

(2) The Petronius Compliant Tower Facility is located in Viosca Knoll Block 786 with a center point at 28°13′44″ N/−87°47′51″ W;

(3) The Blind Faith Semi-Sub Facility is located in Mississippi Canyon Block 650 with a center point at 28°20′29.5279″ N/−88°15′56.4728″ W; and

(4) The Tahiti SPAR Facility is located in Green Canyon Block 641 with a center point at 27°19′33.3″ N/−90°42′50.9″ W.

The requests for these safety zones were made due to safety concerns for both the personnel aboard the facilities and the environment. Chevron indicated that it is highly likely that any allision with one of these facilities would result in a catastrophic event. In evaluating these requests, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to, (1) the level of shipping activity around each facility, (2) safety concerns for personnel aboard each facility, (3) concerns for the environment, (4) the likeliness that an allision would result in a catastrophic event based on each facility's proximity to shipping fairways, offloading operations, and production levels, (5) the volume of traffic in the vicinity of each facility and proposed zone, (6) the types of vessels navigating in the vicinity of each facility and proposed zone, and (7) the structural configuration of each facility.

Results from a thorough and comprehensive examination of these criteria, International Maritime Organization guidelines, and existing regulations warrant the establishment of a safety zone around each facility. The proposed safety zones will reduce significantly the threat of allisions, oil spills, and releases of natural gas and increase the safety of life, property, and the environment in the Gulf of Mexico by prohibiting entry into each zone unless specifically authorized by the Commander, Eighth Coast Guard District or a designated representative.

D. 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. This rule is not a significant regulatory action due to the location of each facility on the OCS and the distance between each facility and both land and fairways. Vessel traffic can pass safely around each safety zone using alternate routes. Exceptions to this proposed rule include vessels measuring less than 100 feet in length overall and not engaged in towing. Deviation to transit through each safety zone may be requested. Such requests will be considered on a case-by-case basis and may be authorized by the Commander, Eighth Coast Guard District or a designated representative.

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 would not have a significant economic impact on a substantial number of small entities.

This proposed 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; Walker Ridge Block 718; Viosca Knoll Block 786; Mississippi Canyon Block 650; and Green Canyon Block 641.

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around each safety zone using alternate routes. Use of alternate routes may cause minimal delay in reaching a final destination, depending on other traffic in the area and vessel speed. Additionally, exceptions to this proposed rule include vessels measuring less than 100 feet in length overall and not engaged in towing. And, vessels may request deviation from this proposed rule to transit through each safety zone. Such requests will be considered on a case-by-case basis and may be authorized by the Commander, Eighth Coast Guard District or a designated representative. Therefore, the Coast Guard expects any impact of this proposed rulemaking establishing safety zones around OCS facilities to be minimal, with no significant economic impact on 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 (Public Law 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 will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This 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 will 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 the establishment of safety zones around OCS Facilities to protect life, property and the marine environment. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. Preliminary environmental analysis checklists supporting this determination and Categorical Exclusion Determinations 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 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add §§ 147.851, 147.853, 147.855, and 147.857 to read as follows:

§ 147.851 Jack & St Malo Semi-Sub Facility Safety Zone.

(a) *Description.* The Jack & St Malo Semi-Sub facility is in the deepwater area of the Gulf of Mexico at Walker Ridge block 718. The facility is located at 26°14′5.94″ N, 91°15′39.99″ W and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

§ 147.853 Petronius Compliant Tower Facility Safety Zone.

(a) *Description.* The Petronius Compliant Tower facility is in the deepwater area of the Gulf of Mexico at Viosca Knoll Block 786. The facility is located at 28°13′44″ N/ − 87°47′51″ W and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

§ 147.855 Blind Faith Semi-Sub Facility Safety Zone.

(a) *Description.* The Blind Faith Semi-Sub facility is in the deepwater area of the Gulf of Mexico at Mississippi Canyon Block 650. The facility is located at 28°20′29.5279″ N/ − 88°15′56.4728″ W and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

§ 147.857 Tahiti SPAR Facility Safety Zone.

(a) *Description.* The Tahiti SPAR facility is in the deepwater area of the Gulf of Mexico at Tahiti SPAR. The facility is located at 27°19′33.3″; N/ − 90°42′50.9″ W and the area within 500 meters (1640.4 feet) from each point on the facility structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District or a designated representative.

Dated: March 10, 2014.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2014–07838 Filed 4–8–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2014–0201]

RIN 1625–AA00

Safety Zone for Fireworks Display, Patapsco River, Northwest Harbor (East Channel); Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone encompassing certain waters of the Patapsco River. This action is necessary to provide for the safety of life on navigable waters during a fireworks display launched from a barge located adjacent to the East Channel of Northwest Harbor at Baltimore, MD on August 5, 2014. This safety zone is intended to protect the maritime public in a portion of the Patapsco River.

DATES: Comments and related material must be received by the Coast Guard on or before May 9, 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, Sector Baltimore Waterways Management Division, Coast Guard; 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–2014–0201] 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–2014–0201) 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 rule involves a fireworks display associated with an event that will take place in Baltimore, MD, on August 5, 2014. The launch site for the fireworks display is from a discharge barge located in the Patapsco River. The permanent safety zones listed in the Table to 33 CFR 165.506 do not apply to this event.

C. Basis and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway before, during and after the scheduled event.

D. Discussion of Proposed Rule

The State Legislative Leaders, of Centerville, MA, will sponsor a fireworks display launched from a barge located adjacent to the East Channel of Northwest Harbor in Baltimore, MD, scheduled on August 5, 2014 at approximately 9:30 p.m.

Through this regulation, the Coast Guard proposes to establish a temporary safety zone. The proposed zone will encompass all waters of the Patapsco River, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 39°15′48″ N, longitude 076°34′37″ W, located adjacent to the East Channel of Northwest Harbor at Baltimore, Maryland, MD. The temporary safety zone will be enforced from 8:30 p.m. through 10:30 p.m. on August 5, 2014.

The effect of this temporary safety zone will be to restrict navigation in the regulated area immediately before, during, and immediately after the fireworks display. Vessels will be allowed to transit the waters of the Patapsco River outside the safety zone.

This rule requires that entry into or remaining in this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone. To seek permission to transit the area of the safety zone, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the safety zone can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the safety zone. The Coast Guard will issue notices to the maritime community to further publicize the safety zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

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 would restrict access to this area, the effect of this proposed rule will not be significant because: (i) The safety zone will only be in effect from 8:30 p.m. through 10:30 p.m. on August 5, 2014, (ii) the Coast Guard will give advance notification via maritime advisories so mariners can adjust their plans accordingly, and (iii) although the safety zone will apply to certain portions of Baltimore Harbor, vessel traffic will be able to transit safely around the safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate or transit through or within, or anchor in, the safety zone during the enforcement period. This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the reasons provided under Regulatory Planning and Review.

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 temporary safety zone for a fireworks display. The fireworks are launched from navigable waters of the United States and may negatively impact the safety or other interests of waterway users and near shore activities in the event area. The activity includes fireworks launched from barges near the shoreline that generally rely on the use of navigable waters as a safety buffer to protect the public from fireworks fallouts and premature detonations. 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0201 to read as follows:

§ 165.0201 Safety Zone for Fireworks Display, Patapsco River, Northwest Harbor (East Channel); Baltimore, MD.

(a) *Location.* The following area is a safety zone: All waters of the Patapsco River, within a 200 yards radius of a fireworks discharge barge in approximate position latitude 39°15′48″ N, longitude 076°34′37″ W, located adjacent to the East Channel of Northwest Harbor at Baltimore, Maryland. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05.0201.

(1) All persons are required to comply with the general regulations governing safety zones found in 33 CFR 165.23.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. All vessels underway within this safety zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the safety zone 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). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed as directed while within the zone.

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

(c) *Definitions.* As used in this section:

Captain of the Port Baltimore means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

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

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. through 10:30 p.m. on August 5, 2014.

Dated: March 27, 2014.

Kevin C. Kiefer,

Captain, U.S. Coast Guard, Captain of the Port Baltimore.

[FR Doc. 2014–07930 Filed 4–8–14; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–36

[FMR Case 2012–102–4; Docket No. 2012–0014; Sequence No. 1]

RIN 3090–AJ30

Federal Management Regulation; Disposal and Reporting of Federal Electronic Assets (FEA)

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Correction.

SUMMARY: GSA published a proposed rule in the **Federal Register** on March 6, 2014 (79 FR 12681), regarding the disposal and reporting of Federal Electronic Assets (FEA). GSA is making a correction to the Supplementary Information section of the document.

DATES: *Effective:* April 9, 2014.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Robert Holcombe, Office of Government-wide Policy, Office of Asset and Transportation Management (MA), at 202–501–3828 or by email at *robert.holcombe@gsa.gov.* For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite FMR Case 2012–102–4.

SUPPLEMENTARY INFORMATION: GSA is making a correction to the **SUPPLEMENTARY INFORMATION** section in the proposed rule that was published on March 6, 2014. This correction clarifies that FEA may be sent to recyclers conforming to either of the two recycling standards identified in the proposed rule until GSA makes publically available the full list of criteria to be used to evaluate recycling standards.

Correction

In the FR Doc. 2014–04585 published in the **Federal Register** at 79 FR 12681, March 6, 2014, make the following correction to the Supplementary Information section. On page 12682, in the second column, in the first full paragraph, remove the last sentence, ''Recyclers that conform to either of these two standards would be considered a ''certified recycler'' under the proposed rule.'' and add ''Recyclers that conform to either of these two standards will be considered a ''certified recycler'' until GSA makes publically available the full list of criteria, which will be developed.'' in its place.

Dated: April 3, 2014.

Carolyn Austin-Diggs,

Acting Deputy Associate Administrator, Office of Asset and Transportation Management, Office of Government-wide Policy.

[FR Doc. 2014–07903 Filed 4–8–14; 8:45 am]

BILLING CODE 6820–14–P

Notices

Federal Register

Vol. 79, No. 68

Wednesday, April 9, 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.

UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of April 14 President's Global Development Council

AGENCY: United States Agency for International Development.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the President's Global Development Council (GDC).

Date: Monday, April 14, 2014.

Time: 9:00 a.m.–11:00 a.m.

Location: The National Press Club Ballroom, National Press Club Building, 13th Floor, 529 14th Street NW., Washington, DC.

Agenda

The purpose of the meeting is to solicit public input on key global development issues. The meeting will begin with opening remarks, followed by a panel presentation from GDC members on initial recommendations for U.S. development policies and practices, and the opportunity for public comment. The full meeting agenda will be forthcoming on *www.whitehouse.gov*.

Stakeholders

The meeting is free and open to the public. RSPVs are required. Persons wishing to attend should register online at *http://www.whitehouse.gov/webform/presidents-global-development-council-meeting* by April 10. Please note that capacity is limited.

SUPPLEMENTARY INFORMATION: This notice is provided less than 15 calendar days prior to the meeting (see 41 CFR 102–3.150(b)) due to logistical difficulties involved in coordinating high-level schedules.

FOR FURTHER INFORMATION CONTACT: Jayne Thomisee, 202–712–5506.

Dated: April 2, 2014.

Jayne Thomisee,

Executive Director, Global Development Council, U.S. Agency for International Development.

[FR Doc. 2014–07933 Filed 4–8–14; 8:45 am]

BILLING CODE 6116–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 4, 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 May 9, 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.

Farm Service Agency

Title: Disaster Assistance—General (7 CFR part 1945–A)

Omb Control Number: 0560–0170

Summary of Collection: The regulation at 7 CFR 1945–A, defines the responsibilities of the Secretary of Agriculture in making disaster area determinations, the types of incidents that can result in a disaster area determination, and the factors used in making disaster area determinations. The determination of a disaster area is prerequisite to authorizing emergency (EM) loans to qualified farmers as outlined in 7 CFR part 764. EM loan funds may be used to restore or replace essential property, pay all or part of production costs incurred by the farmer or rancher in the year of the disaster, pay for essential family living expenses, pay to reorganize the farming operation or refinance USDA and non-USDA creditors. The information collection occurs when the Secretary receives a letter from the Governor requesting a Secretarial natural disaster determination. Supporting documentation of losses for all counties having disaster is provided by the County Emergency Boards in the form of a report entitled ''Loss Assessment Report'' (LAR).

Need and Use of the Information: The Farm Service Agency will collect the following information to determine if the county is eligible to qualify for a natural disaster designation: (1) The nature and extent of production losses; (2) the number of farmers who have sustained qualifying production losses; and (3) the number of farmers that have sustained qualifying production losses that other lenders in the county have indicated that they will not be in a position to finance. The information will be used by FSA to process State Governor requests for Secretarial natural disaster designations.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 907.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 506.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–07959 Filed 4–8–14; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 4, 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 and Nutrition Service

Title: WIC Local Agency Directory.

OMB Control Number: 0584–0431.

Summary of Collection: The Supplemental Nutrition Program for Women, Infants, and Children (WIC) is authorized by Section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies (generally State health departments). The State agencies award sub-grants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. As part of their State Plan submission, State agencies identify the local agencies that will provide WIC services. Local agencies authorized to furnish WIC participants with supplemental foods, nutrition education, breastfeeding promotion and support activities and referral to related health services are subject to change. New local agencies may be selected to operate the WIC Program and local agencies already in operation may be disqualified for continued operation. FNS will collect information using form FNS–648 to report additions and deletions of local agencies operating the WIC Program and local agency address changes, when such changes occur.

Need and Use of the Information: FNS will collect information to maintain a local agency directory that lists the names and addresses of all WIC local agencies. The FNS–648 WIC local agency directory serves as the primary source of data on the number and location of local agencies and is published annually. It is used to refer individuals to the nearest source of WIC Program services and to maintain continuity of program services to migrant and other transient participants. It is also used as a mailing list to provide local agencies with technical assistance manuals and other information.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 90.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–07961 Filed 4–8–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Transfer of Farm Records Between Counties

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from interested individuals and organizations on an extension with a revision of a currently approved information collection associated with transferring of farm records from one administrative county office to another.

DATES: We will consider comments that we receive by June 9, 2014.

ADDRESSES: We invite you to submit comments on this Notice. In your comment, include volume, date and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to: www.regulations.gov. Follow the online instructions for submitting comments.
- Mail: Melonie Sullivan, Agricultural Program Specialist, Program Policy Branch, 1400 Independence Avenue SW., STOP 0512, Washington, DC 20250–0512.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Melonie Sullivan.

FOR FURTHER INFORMATION CONTACT: Melonie Sullivan; (202) 690–1003.

SUPPLEMENTARY INFORMATION:

Title: Transfer of Farm Records Between Counties.

OMB Control Number: 0560–0253.

Type of Request: Extension with a revision.

Abstract: Farm owners or operators may elect to transfer farm records between FSA county offices when the principal dwelling of the farm operator has changed; a change has occurred in the operation of the land; or there has been a change that would cause the receiving administrative county office to be more accessible, such as the construction of a new highway, relocation of the county office building site, etc. The transfer of farm records is also required when an FSA county office closes. The FSA County Committees from both the transferring and receiving counties must approve or disapprove all proposed farm record transfers. In some cases, the State Committee and/or the National Office must also approve or disapprove proposed farm record transfers.

The revision is due to the reduction in number of FSA County Offices. FSA currently has 2,140 county offices, whereas there were 2,300 county offices at the time of the previous request. The

total annual burden hours are reduced by 2,053 hours in the request.

Estimated Average Time to Respond: Public reporting burden for collection of this information is estimated to average 10 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Type of Respondents: Owners and operators.

Estimate of Burden: Average 10 minutes per response. The average travel time, which is included in the total annual burden, is estimated to be 1 hour per respondent.

Estimated Number of Respondents: 21,240.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Number of Responses: 21,240.

Estimated Total Annual Burden on Respondents: 24,780.

We are requesting comments on all aspects of this information collection to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden 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.

All responses to this notice, including name and addresses when provided, will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed on April 2, 2014.

Juan M. Garcia,

Administrator, Farm Service Agency.

[FR Doc. 2014–07867 Filed 4–8–14; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

South Central Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The South Central Idaho Resource Advisory Committee will meet in Jerome, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review project applications for funding.

DATES: The meeting will be held June 23, 2014, 9:00 a.m.

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

ADDRESSES: The meeting will be held at the Idaho Department of Fish and Game, 319 S 417 E, Jerome, Idaho 83338.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, Idaho. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Julie Thomas, Designated Federal Official, Sawtooth National Forest by phone at 208–737–3200 or via email at *jathomas@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://fs.usda.gov/sawtooth.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 9, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Julie Thomas, Designated Federal Official, Sawtooth National Forest, 2647 Kimberly Road East, Twin Falls, Idaho, 83301; or by email to *jathomas@fs.fed.us*, or via facsimile to 208–737–3236.

Dated: March 18, 2014.

Sarah A Lau,

Acting Forest Supervisor.

[FR Doc. 2014–07938 Filed 4–8–14; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–106–2013]

Authorization of Production Activity; Foreign-Trade Subzone 37D; Xylem Water Systems USA LLC (Centrifugal, Submersible Pumps and Related Components); Auburn, New York

On December 2, 2013, Xylem Water Systems USA LLC, operator of Subzone 37D, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board for its facilities in Auburn, New York.

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 77649, 12–24–2013). 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: April 2, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–07962 Filed 4–8–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD224

Marine Mammals; File No. 18537

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that the Alaska Department of Fish and Game (ADF&G), Division of Wildlife Conservation, Juneau, AK, (Principal Investigator: Michael Rehberg), has applied in due form for a permit to take marine mammals for purposes of scientific research in Alaska.

DATES: Written, telefaxed, or email comments must be received on or before May 9, 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 home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18537 from the list of available applications.

These documents are also available upon written request or by appointment in the 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 the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education 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: Tammy Adams or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This application supports continuation of ADF&G's long-term Steller sea lion (SSL) research program. The applicant requests takes during research activities that incorporate improved methodology based on previous work authorized under permit No. 14325 and subsequent modifications, including: incidental disturbance during aerial, skiff- and ground-based count and brand resight surveys; captures supporting marking, external instrument attachment, and physiology, toxicology, feeding ecology and health sampling; and permanent marking of pups and older age classes for describing vital rates and intra-/inter-Discrete Population Segment (DPS) movement. The applicant also requests takes by incidental disturbance of northern fur seals (*Callorhinus ursinus*), California sea lions (*Zalophus californianus*), and harbor (*Phoca vitulina*), spotted (*Phoca largha*), ribbon (*Histriophoca fasciata*), ringed (*Pusa hispida*) and bearded seals (*Erignathus barbatus*) are also requested due to proximity of isolated individuals to the study area. See tables in permit application for numbers of takes by species, stock and activity. Authorization for annual unintentional mortality of 5 SSL from the Western DPS and 10 SSL from the Eastern DPS is requested.

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 effects of the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007) and that issuance of the permit would not have a significant adverse impact on the human environment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 3, 2014.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–07844 Filed 4–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV92

Marine Mammals; File No. 14610

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given the Alaska Department of Fish and Game (ADFG), Division of Wildlife Conservation, Juneau, AK (Principal Investigator: Lori Quakenbush), has applied for an amendment to Scientific Research Permit No. 14610–02.

DATES: Written, telefaxed, or email comments must be received on or before May 9, 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 home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 14450–01 from the list of available applications.

These documents are also available upon written request or by appointment in the 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 the File No. 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: Tammy Adams or Courtney Smith, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 14610–02 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

On April 20, 2010, notice was published in the **Federal Register** (75 FR 20565) that a request for a permit to conduct research on beluga whales

(*Delphinapterus leucas*), endangered bowhead whales (*Balaena mysticetus*), gray whales (*Eschrictius robustus*), and endangered humpback whales (*Megaptera novaeangliae*) had been submitted by the above-named applicant. The requested permit was issued on May 21, 2010 (75 FR 30383) for the beluga whale and gray whale projects 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). A decision on the bowhead whale and humpback whale projects was deferred pending completion of consultation under section 7 of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*).

An amended permit (No. 14610–01) was issued on August 3, 2010 (75 CFR 50748) under the authority of the MMPA, the regulations governing the taking and importing of marine mammals, the ESA, and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226) to include remote biopsy and instrument attachment for bowhead and humpback whales. The amended permit is valid through the expiration date of the original permit, May 31, 2015.

The permit holder is requesting the permit be amended to include authorization for takes during photo-identification efforts to determine stock or feeding group affiliation of gray whales encountered in Alaskan waters (Chukchi and western Beaufort seas). Photo-identification, in addition to currently authorized tagging and biopsy efforts, will allow larger sample sizes to increase knowledge of gray whale movements, habitat use, and behavior relative to industrial activities including oil and gas and shipping in the Arctic. The permit holder is requesting to take up to 300 gray whales per year by harassment during photo-identification efforts, including opportunistic encounters during tagging and biopsy activities, and increase incidental harassment of gray whales by 50 per year. The permit holder is also requesting to alter a current tag attachment method to allow for the attachment of a temporary acoustic tag using a two-anchor system on bowhead whales. This request is to allow for two much shorter anchors with one set of barbs each to be used for the short-term attachment of a base-plate for a temporary acoustic tag. The two anchor attachment is similar to that used by the LIMPET tag that has been used successfully on 13 species of whales. No additional takes are requested for tagging activities. The expiration date of the permit would not change.

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 potential environmental impacts of the proposed activity are consistent with the effects in the Environmental Assessment and Finding of No Significant Impact prepared for issuance of a prior version of the permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 4, 2014.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–07956 Filed 4–8–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD141

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Northwest Atlantic Ocean Offshore New Jersey, May to August 2014

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

ACTION: Notice; proposed incidental harassment authorization; extension of comment period.

SUMMARY: On March 17, 2014, NMFS announced notice of a proposed issuance of an Incidental Harassment Authorization (Authorization) to the Lamont Doherty Earth Observatory in collaboration with the National Science Foundation, to take marine mammals, by harassment incidental to conducting a marine geophysical (seismic) survey in the northwest Atlantic Ocean May through August, 2014. The **Federal Register** notice indicated that written comments were due by April 16, 2014. However, in response to a request to extend the public comment period, NMFS has decided to extend the public comment period by an additional 30 calendar days.

DATES: NMFS has extended the public comment period for this action from April 16 to May 16, 2014. NMFS must receive written comments and information on or before May 16, 2014.

ADDRESSES: Address comments on the application to Jolie Harrison, Supervisor, Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Cody@noaa.gov.* Please include 0648–XD141 in the subject line. Comments sent via email to *ITP.Cody@noaa.gov,* including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for email comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

On March 17, 2014, NMFS published a **Federal Register** notice (79 FR 14779, March 17, 2014) announcing proposed issuance of an Authorization to the Lamont Doherty Earth Observatory to take marine mammals, by harassment incidental to conducting a seismic survey in the northwest Atlantic Ocean May through August, 2014. The 30-day public comment period for the **Federal Register** notice (79 FR 14779, March 17, 2014) ends on April 16, 2014.

This is the first time that NMFS has proposed to issue an Authorization for harassment incidental to a scientific

seismic survey in federal waters approximately 25 to 85 kilometers (km) (15.5 to 52.8 miles (mi)) off the New Jersey coast. NMFS does not have the authority under Section 101(a)(5)(D) of the MMPA to permit, authorize, or prohibit the Lamont Doherty Earth Observatory's seismic survey activities.

On March 25, 2004, Clean Ocean Action, based in New Jersey, requested an extension of the public comment period to aid in their review of the proposed Authorization. NMFS has considered the request and will extend the comment period to May 16, 2014. This extension provides a total of 60 days for public input and continuing Federal agency reviews to inform NMFS' final decision to issue or deny the Authorization. NMFS does not anticipate that this 30-day extension will delay its decision on whether to issue or deny the Authorization.

NMFS refers the reader to the March 17, 2014, notice of proposed Authorization (79 FR 14779, March 17, 2014) for background information concerning the proposed Authorization as this notice does not repeat the information here. For additional information about the Lamont Doherty Earth Observatory's request and the National Science Foundation's environmental analyses, please visit the Web site at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Dated: April 4, 2014.

Perry F. Gayaldo,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–07974 Filed 4–8–14; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0093]

Submission for OMB Review; Comment Request—Consumer Opinion Forum

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) announces that the CPSC has submitted to the Office of Management and Budget (OMB), a request for extension of approval of a collection of information from persons who may voluntarily register and participate in a Consumer Opinion Forum on the CPSC Web site, *www.cpsc.gov*. In the **Federal Register** of January 28, 2014 (79 FR 4454), the CPSC published a notice to announce the CPSC's intention to seek extension of approval of the information collection under OMB Control No. 3041–0135. The CPSC received no comments.

DATES: Written comments on this request for extension of approval of information collection requirements should be submitted by May 9, 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–2009–0093.

FOR FURTHER INFORMATION CONTACT: For further information contact: Robert H. Squibb, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Consumer Opinion Forum.

OMB Number: 3041–0135.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Persons who volunteer to participate in Consumer Opinion Forum.

Estimated Number of Respondents: 3,489 respondents annually.

Estimated Time per Response: 156 hours annually.

Total Estimated Annual Burden: $4,560.

General Description of Collection: The CPSC solicits consumer opinions and perceptions about consumer products, on a voluntary basis, through questions posted on the CPSC's Consumer Opinion Forum. Consumers, 18 years and older, who have access to the Internet and email, who voluntarily register to participate through a participant registration process, may respond to the posted questions.

Dated: April 4, 2014.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2014–07917 Filed 4–8–14; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0048]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a System of Records Notice.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The notice is DFMP 24, Joint Service Review Activity File (JSRA) (February 22, 1993, 58 FR 10227).

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective on the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/*.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the

submission of a new or altered system report.

Dated: April 4, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

DFMP 24

Joint Service Review Activity File (JSRA) (February 22, 1993, 58 FR 10227).

REASON:

It has been determined that the ''Joint Service Review Activity Files'' are accessed and maintained via the ''Military Departments Board for Correction of Military Records information systems.''

The applicable systems of records notices for the Military Departments are as follows:

Department of the Army—A0015–185 SFMR, Correction of Military Records Cases (July 6, 2011, 76 FR 39392).

Department of the Navy—NM01000–1, Board for Correction of Naval Records Tracking System (BCNRTS) and Case Files (January 31, 2008, 73 FR 5828).

Department of the Air Force –

F036 SAFCB A, Air Force Correction Board Records (November 12, 2008, 73 FR 66870).

F036 ARPC C, Correction of Military Records of Officers and Airmen (June 11, 1997, 62 FR 31793).

Since these records are maintained under the cognizance of the Military Departments with published systems of records notices, the JSRA system of records notice is no longer required and is being deleted.

[FR Doc. 2014–07920 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0047]

Privacy Act of 1974; System of Records

AGENCY: Defense Health Agency, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Defense Health Agency proposes to alter an existing system of records, EDHA 10, entitled ''DoD Women, Infants, and Children Overseas Participant Information Management System'' in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This system will be used to determine whether applicants are eligible for enrollment in the WIC Overseas Program, provide benefits to participants, and evaluate the effectiveness of those benefits.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* Federal Rulemaking Portal: *http://www.regulations.gov*

Follow the instructions for submitting comments.

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received should include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Linda S. Thomas, Chief, Defense Health Agency Privacy and Civil Liberties Office, Defense Health Agency, Defense Health Headquarters, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or by telephone at (703) 681–7500.

SUPPLEMENTARY INFORMATION: The Defense Health Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 10, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

EDHA 10

SYSTEM NAME:

DoD Women, Infants, and Children Overseas Participant Information Management System (November 18, 2013, 78 FR 69076).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Choctaw Contracting Services, 2161 NW Military Highway, Suite 214, San Antonio, TX 78213–1844, and at Department of Defense (DoD) installations located outside the United States. For a complete listing of facility addresses that maintain records, contact the system manager.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Members of the Armed Forces, civilian employees, and DoD contractors, and their family members, who apply for the DoD Women, Infants, and Children (WIC) Overseas Program.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Records about the applicant or participant may include: Name; truncated Social Security Number (SSN) and/or DoD Identification Number (DoD ID Number); contact information (telephone numbers, mailing addresses, and email addresses); demographic information (gender, race, ethnicity, date of birth, and marital status); household income; spousal information (name, contact, and education information); information about children (number, names, and dates of birth); education of primary caregiver; employment information; primary household languages; medical history and conditions related to nutritional needs; nutrition information; and WIC Overseas Program benefits or other nutritional services received.

Records about the sponsor may include: Name; truncated SSN and/or DoD ID Number; contact information; military status; military records; spouse's name and contact information; and other family members' names and contact information.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 1060a, Special supplemental food program; 42 U.S.C. Chapter 13A,

Child Nutrition; 7 CFR Part 246, Special Supplemental Nutrition Program for Women, Infants and Children; 32 CFR 199.23, Special Supplemental Food Program; HA Policy 09–004, Policy Memorandum for Women, Infants, and Children Overseas Program; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To determine whether applicants are eligible for enrollment in the WIC Overseas Program, provide benefits to participants, and evaluate the effectiveness of those benefits.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records may be specifically disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses may apply to this system of records.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper files and/or electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Individual's name, truncated SSN and/or DoD ID Number.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in access controlled facilities. Physical entry is restricted by the use of locks, guards, or administrative procedures to officials who require access to perform their official duties. Computer terminals are located in supervised areas with access control. Electronic system access requires either a Common Access Card and personal identification number or a unique logon identification and password that must be frequently changed. Access to the electronic system is further restricted based on user responsibility. Proper data protection training is required for all personnel whose official duties require access to the records.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records maintained in electronic format are considered a duplicate copy of the hard copy record and will be destroyed when no longer needed for business purposes/functions. Electronic files stored at the Choctaw Contracting Services system location (consolidated files) will be destroyed three years after termination (no longer active) and electronic files stored at DoD installations located outside the United States will be deleted one year after termination.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Program Manager, WIC Overseas Program, TRICARE Overseas Program Office, Defense Health Agency, Defense Health Headquarters, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Freedom of Information Act (FOIA) Service Center, Defense Health Agency Privacy and Civil Liberties Office, Defense Health Headquarters, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.

Requests should contain the individual's full name, truncated SSN or DoD ID Number, current address, and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief, FOIA Service Center, Defense Health Agency Privacy and Civil Liberties Office, Defense Health Headquarters, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101.

Requests should contain the individual's full name, truncated SSN or DoD ID Number, current address, telephone number, and signature. Records should also include the name and number of this system of records notice.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Office of the Secretary of Defense (OSD) rules for accessing records, contesting contents, and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR Part 311; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''WIC Overseas Program applicants, participants, and sponsors.''

* * * * *

[FR Doc. 2014–07870 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0044]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DWHS E06 DoD, entitled ''Correspondence and Task Management System (CATMS)'', in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system is comprised of the Correspondence Management Division module (CMD module) and the Task Management Tracker tool (TMT) which support the functions of the Department of Defense by maintaining a record of actions taken and responses to the President, White House staff, other Cabinet officials, Congress, state and local officials, corporate officials, members of the Department of Defense and the public. The CMD module supports the Secretary of Defense for the control and tracking of actions taken and responses from the Secretary to the President, White House staff, other Cabinet officials, Congress, state and local officials, corporate officials, members of the Department of Defense and the public. This includes full life-cycle management from receipt, control of metadata and image, tasking the OSD Components, Joint Staff, Services and other DoD agencies for action and records management. The TMT is used by component Offices of the Secretary of Defense to process and manage the staffing and coordination of actions to, from, and within components in the conduct of official daily business.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.* The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 18, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E06

SYSTEM NAME:

Enterprise Correspondence Control System (ECCS) (September 13, 2012, 77 FR 56629).

CHANGES:

SYSTEM NAME:

Delete entry and replace with ''Correspondence and Task Management System (CATMS).''

SYSTEM LOCATION:

Delete entry and replace with ''Correspondence Management Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who either initiated, or are the subject of communications with the Office of the Secretary of Defense and individuals who are the subject of personnel and staffing packages coordinated in CATMS.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''The Correspondence Management Division module (CMD module) may contain the name (last name and first initial) and contact information (mailing address, telephone number, fax number, email address) of individuals writing to the Secretary of Defense. Types of correspondence typically include inquiries and other communications pertaining to any matter under the cognizance of the Secretary of Defense such as complaints, appeals, grievances, requests for investigations, alleged improprieties, personnel actions, medical reports, intelligence, and related matters associated with the mission and business activities of the department. They may be either specific or general in nature and include such personal information as an individual's name, Social Security Number (SSN), date and place of birth, description of events or incidents of a sensitive or privileged nature, commendatory or unfavorable data.

The Task Management Tracker tool (TMT) tracks the tasking and coordination of responses for CMD module as well as staff packages pertaining to members of the military, civilian DoD employees and contractors. Examples of such packages include assignment requests, awards, nominations, promotions, and presidential support letters; condolence letters, retirement letters and letters of appreciation; Senior Executive Service letters and pay adjustments, appointment letters, certificates, Secretary of Defense letters of appreciation, travel requests, military airlift requests, and similar staff actions.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 113, Secretary of Defense; DoD Directive 5105.53, Director of Administration and Management (DA&M); DoDD 5110.04, Washington Headquarters Services (WHS); and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''The CATMS is comprised of the CMD and the TMT which support the functions of the Department of Defense by maintaining a record of actions taken and responses to the President, White House staff, other Cabinet officials, Congress, state and local officials, corporate officials, members of the Department of Defense and the public. The CMD module supports the Secretary of Defense for the control and tracking of actions taken and responses from the Secretary to the President, White House staff, other Cabinet officials, Congress, state and local officials, corporate officials, members of the Department of Defense and the public. This includes full life-cycle management from receipt, control of metadata and image, tasking the OSD Components, Joint Staff, Services and other DoD agencies for action and records management.

The TMT is used by component Offices of the Secretary of Defense to process and manage the staffing and coordination of actions to, from, and within components in the conduct of official daily business.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to the disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system.''

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Delete entry and replace with ''Electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled

facility. Physical entry is restricted by the use of multiple locks, guards, intrusion detection system, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Multi-factor authentication is required to access CATMS. Role-based security is in place to allow only the person(s) associated with the specific staff action access to the data. Records are protected with strong Secure Socket Layer encryption and backups are encrypted and stored off-site. Periodic security audits are conducted. All users are required to complete Information Assurance and Privacy training annually.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Routine Personnel Staff Actions: 1–7 years and destroyed.

Mission Related Significant Correspondence Actions: 7 years-Permanent. Permanent records are generally retained for a minimum of 25 years before being transferred to NARA.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Correspondence Management Division, Executive Services Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

The requests should contain the individual's last name and first initial, subject, and document date.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act, Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should include the individuals last name and first initial, subject, date of document (date of correspondence) and the name and number of this system of records notice.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individuals sending correspondence to the Secretary of Defense and other high level DoD officials and official records used in developing responses or staff packages.''

* * * * *

[FR Doc. 2014–07846 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0043]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DHRA 09, entitled ''National Security Education Program Records'', in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will provide U.S. citizens with the resources and encouragement needed to acquire skills and experiences in areas of the world critical to the future security of nations in exchange for a commitment to seek work in the Federal Government. This will enable the National Security Education Program (NSEP) to select qualified applicants to be awarded Boren Scholarships, Boren Fellowships, and English for Heritage Language Speakers program Scholarships.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site *http://dpclo.defense.gov/. http://dpclo.defense.gov/privacy/SORNs/component/osd/index.html.*

The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 20, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHRA 09

SYSTEM NAME:

National Security Education Program Records (June 17, 2011, 76 FR 35421).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Language and National Security Education Office, National Security Education Program, 1101 Wilson Blvd., Suite 1210, Arlington, VA 22209–2248.

Institute of International Education, 1400 K Street NW., Suite 650 Washington, DC 20005–2403.

Carpathia Hosting, Inc., 21000 Atlantic Boulevard, Suite 500, Sterling, Virginia 20166–2499.

Advanced Software Systems, Inc., 22866 Shaw Rd., Sterling, VA 20166–9400.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Title; full name; other names used; current address, city, state, and zip code; permanent address, city, state and zip code; Social Security Number (SSN); current telephone number and permanent telephone number; email address; congressional voting district; date of birth; country or state of birth; naturalization information; educational information; military records; region, country, and language to be studied under award; other languages spoken; proficiency in language studied at time of award; overseas experience; relevant activities; honors and awards; government agencies of interest; proposed study abroad program information and budget; other scholarship funding information; gender; ethnicity. Service obligation information includes truncated SSN, employer name and employer address; supervisor name, title, and telephone number; position title; employment dates and hours; language used in position; security clearance held for position. Curriculum vitae information includes award type; date of award completion; graduation date; length of service requirement; date of availability for work; information on veterans preference, federal employment history, and preferences with regard to being contacted by intelligence agencies; degree information; foreign language information; job history; overseas experience; other information e.g., special recognitions or memberships; special skills and qualifications; fieldwork or volunteer experience; description of job duties.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''50 U.S.C., Chapter 37, the David L. Boren National Security Education Act of 1991; DoD Instruction (DoDI) 1025.02, National Security Education Program; DoDI 1025. 6, National Security Education Program (NSEP) Service Agreement; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To provide U.S. citizens with the resources and encouragement needed to acquire skills and experiences in areas of the world critical to the future security of nations in exchange for a commitment to seek work in the Federal Government. This will enable the National Security Education Program (NSEP) to select qualified applicants to be awarded Boren Scholarships, Boren Fellowships, and English for Heritage Language Speakers program Scholarships.

A record is maintained in the system, NSEPnet, for each student who receives an award. The progress that each student makes toward fulfilling their federal service obligation is tracked within this system.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To authorized federal hiring officials for the purpose of recruiting of NSEP award recipients into federal service, and assisting NSEP award recipients in fulfilling their Congressionally-mandated service requirement.

To the Boren Forum, an independent 501(c)3 NSEP alumni organization to confirm the name, award year, and type of award of NSEP award recipients.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (14 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, typically to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (SSN); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

The DoD Blanket Routine Uses published at the beginning of the Office of the Secretary of Defense compilation of systems of records notices may apply to this system.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Physical access to records is restricted to those who require the data in the performance of their official duties. Physical entry is restricted by the use of locks, guards, and administrative procedures. Currently the system servers are held in a separate locked facility. Once the system is redesigned the server will be stored off site in a facility with security guards and requires identification badges to access the system. The government office has a key card entry.

Access to information is further restricted by using Common Access Card (CAC) and PIN to access the computer system and program passwords that are changed every 180 days to access system and online databases. The following technical controls are also applied to restrict access to those who require the data in the performance of their official duties: intrusion detection system; encryption; external Certificate Authority (CA) certificate; firewall; and, DoD Public Key Infrastructure (PKI) certificates. PII is encrypted when transmitted electronically.

The following administrative controls are also applied to restrict access to those who require the data in the performance of their official duties: periodic security audits; regular monitoring of users' security practices; methods to ensure only authorized personnel have access to Personally Identifiable Information (PII); encryption of backups containing sensitive data; and, backups secured off-site. Additionally, contract officers are required to incorporate all appropriate Privacy Act clauses and contractor personnel are required to sign non-disclosure documents holding them to all provisions of the Privacy Act.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Deputy of Operations, Defense Language and National Security Education Office, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Arlington, VA 22209–2248.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Director of Operations Defense Language and National Security Education Office, National Security Education Program, 1101 Wilson

Boulevard, Suite 1210, Arlington, VA 22209–2248.

Signed, written requests should include individuals full name, address, award year and type and SSN.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should contain the name and number of this system of records notice along with individual's full name, address, award year and type and SSN.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual.''

* * * * *

[FR Doc. 2014–07845 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0049]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete a System of Records Notice.

SUMMARY: The Defense Information Systems Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The notice is entitled ''K890.10, Joint Enterprise Directory Services (JEDS)''.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jeanette Weathers-Jenkins, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/*.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 4, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

K890.10, Joint Enterprise Directory Services (JEDS) (January 31, 2008, 73 FR 5825).

Reason: Based on a recent review of DISA systems of records K890.10, Joint Enterprise Directory Services (JEDS) (January 31, 2008, 73 FR 5825), was decommissioned in September 2013; any new records are now covered by the DMDC 02 DoD, Defense Enrollment Eligibility Reporting System (DEERS) (November 21, 2012, 77 FR 69807) and therefore can be deleted.

[FR Doc. 2014–07932 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0046]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records, DWHS M01, entitled ''WHS Living Disaster Recovery Planning System (LDRPS) Records'', in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will assist ODA&M WHS directorates in notifying personnel via an automated notification system (e.g., Notifind) during a COOP exercise or event and to match key personnel with essential functions.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/.*

The proposed system report, as required by U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 12, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and

Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P43

SYSTEM NAME:

Emergency Personnel Locator Records (December 18, 2007, 72 FR 71664).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''DWHS M01''

SYSTEM NAME:

Delete entry and replace with ''WHS Living Disaster Recovery Planning System (LDRPS) Records.''

SYSTEM LOCATION:

Delete entry and replace with ''Washington Headquarters Services (WHS), Enterprise Information Technology Services Directorate (EITSD), 1155 Defense Pentagon, Washington, DC 20301–1155.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Office of Director of Administration and Management (ODA&M) (minus Pentagon Force Protection Agency (PFPA)) and WHS civilian, military, and contractor personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name; directorate; agency; type (civilian, military or contractor); duty title; division; sub-division; work shift; fax; pager; short message service (SMS); work blackberry; work location; room number; work phone and email; personal email; personal cell number; home phone number; emergency contact first and last name; emergency contact relationship; emergency contact phone number; emergency contact alternate phone number; key card; WHS Emergency Support Function (ESF); ESF number; ESF training certificate and date; and Continuity of Operations (COOP) deployer.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Executive Order 12656, Assignment of Emergency Preparedness Responsibilities, November 18, 1988, as amended; Presidential Decision Directive 67, Enduring Constitutional Government and Continuity of Government Operations, October 21, 1998; Federal Preparedness Circular 65, Federal Executive Branch Continuity of Operations, June 15, 2004; DoD Directive 3020.26, Department of Defense Continuity Programs, January 9, 2009; DoDD 5110.04, Washington Headquarters Services (WHS), March 27, 2013.''

PURPOSE(S):

Delete entry and replace with ''To assist ODA&M WHS directorates in notifying personnel via an automated notification system (e.g., Notifind) during a COOP exercise or event and to match key personnel with essential functions.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Blanket Routine Uses set forth at the beginning of the OSD compilation of systems of records notices may apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Individual's name, work location and directorate.''

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a DoD controlled facility. Physical entry is restricted by the use of locks, guards and is accessible only to authorized personnel. Access to records is limited to personnel responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by Common Access Card.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Temporary. Cut off when superseded or obsolete, destroy immediately after cut off.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Washington Headquarters Services, Continuity of Operations and Emergency Management Program Manager, 9600 Defense Pentagon, Washington, DC 20301–0001.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquires to the Washington Headquarters Services, Continuity of Operations and Emergency Management Program Manager, 9600 Defense Pentagon, Washington, DC 20301–0001.

Requests should contain individual's full name, office name where they were assigned or affiliated, and office address and telephone number applicable to the period during which the records were maintained.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Signed, written requests should contain individual's full name, office name where they were assigned or affiliated, and office address and telephone number applicable to the period during which the records were maintained.''

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Individual, supervisors, and emergency personnel coordinators.''

* * * * *

[FR Doc. 2014–07868 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2014–OS–0045]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to delete a System of Records notice.

SUMMARY: The Office of the Secretary of Defense is deleting a system of records notice in its existing inventory of record

systems subject to the Privacy Act of 1974, as amended. The notice is DGC 16, Political Appointment Vetting Files (March 16, 1995, 60 FR 14273).

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mrs. Cindy Allard at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/.*

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
DGC 16

Political Appointment Vetting Files (March 16, 1995, 60 FR 14273).

REASON:

Based on a recent review of DGC 16, Political Appointment Vetting Files, it was determined that this system of records is covered under DGC 20, DoD Presidential Appointee Vetting Files. DGC 16 is duplicative and can therefore be deleted.

[FR Doc. 2014–07856 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0050]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete a System of Records Notice.

SUMMARY: The Defense Information Systems Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The notice is K270–01, DoD Digital Certificate Records (October 9, 2001, 66 FR 51404).

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• Federal Rulemaking Portal: *http://www.regulations.gov.*

Follow the instructions for submitting comments.

• Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jeanette Weathers-Jenkins, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/.*

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 4, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS:

K270–01, DoD Digital Certificate Records (October 9, 2001, 66 FR 51404).

Reason: Based on a recent review of DISA systems of records notices K270–01, DoD Digital Certificate Records (October 9, 2001, 66 FR 51404), is covered by the DMDC 02 DoD, Defense Enrollment Eligibility Reporting System (DEERS) (November 21, 2012, 77 FR 69807) and therefore can be deleted.

[FR Doc. 2014–07943 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2014–0007]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Commander, United States Transportation Command announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (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.

DATES: Consideration will be given to all comments received by June 9, 2014

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

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.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Commander, United States Transportation Command. ATTN: Mr. Thomas E Thompson, (J4–PI), USTRANSCOM–J4, 508 Scott Dr., AFB IL, 62225–1437, (618) 220–4804.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Tender of Service for Personal Property Household Goods and Unaccompanied Baggage Shipments, DD Form 619; OMB Control Number 0701–XXXX.

Needs and Uses: The information collection requirement is necessary to private sector commercial Transportation Service Providers, who are under contract with the DOD for shipment/storage of personal property, to identify ownership, schedule pickup and delivery of personal property, to include privately owned vehicles, motorcycles, and house trailers/motor homes, Bill of Lading for services rendered, personal property counseling checklist.

To U.S. Customs and Border Protection Declaration for personal property shipments, re-weigh of personal property, shipment evaluation and inspection reports, receipt for unaccompanied baggage, mobile home inspection record, temporary commercial storage at Government expense, accessorial services-mobile home, report of contractor services, and claims for loss and damage.

To manifest individuals and personal property being transported in the DTS.

To provide emergency contact information to the designated authorized carrier under DoD contract and DoD authorizing activity, emergency contact information in the event of an emergency.

To disclose information to other Federal agencies in order to manage an optimize DoD transportation resources, and to provide customs, immigration, and transportation security screening.

To the designated authorized carrier under DoD contract and DoD authorizing activity, emergency contact information in the event of an emergency.

To the Department of State to locate individuals in the DTS.

To General Service Administration and Defense Government Accounting Activities for processing government Bills of Lading, and post-payment audits as required.

Affected Public: Business of Other For-Profit.

Annual Burden Hours: 18,980 hours.

Number of Respondents: 876.

Responses Per Respondent: 260.

Total Annual Responses: 227,760.

Average Burden Per Response: 5 minutes.

Frequency: On occasion.

The Tender of Service is the contractual agreement between the DOD and the Transportation Service Provider (TSP), under which the TSP agrees to provide services in accordance with the conditions cited in the Tender of Service. In accordance with the provisions of DOD 4500.9–R, the DD Form 619 is used by the household goods TSP industry to itemize accessorial services and other charges for billing purposes on household goods and unaccompanied baggage shipments.

Dated: April 4, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–07946 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2014–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records notice, F036 AF PC M, entitled ''Officer Promotion and Appointment'' in its existing inventory of records systems subject to the Privacy Act of 1974, as amended. This system will be used to ensure completeness, legality, and processing of the timeliness actions required for promotion or to delay or disqualify the officer's promotion; and to remove individual's name from the promotion list.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at *http://dpclo.defense.gov/*.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on March 28, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB)

pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: April 4, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF PC M

SYSTEM NAME:

Officer Promotion and Appointment (June 11, 1997, 62 FR 31793).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''F036 AFPC S.''

SYSTEM NAME:

Delete entry and replace with ''Officer Promotion Propriety Actions.''

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters, Air Force Personnel Center, Directorate of Personnel Services, Officer Promotion Management, 550 C Street West, Suite 8, Randolph Air Force Base, TX 78150–6001.

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center, DISA Ogden, Building 891, Hill AFB, UT 84056–5824.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force active duty officers selected/nonselected for active duty promotion; officers projected as eligible for promotion.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), Department of Defense Identification Number (DoD ID Number), source of commission, date of Regular Air Force acceptance, date of birth, promotion, category (line, medical corps, etc.), temporary grade history, dates of rank, any commissioned service dates; removal actions and delaying actions.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 36, Promotion, Separation and Involuntary Retirement of Officers on the Active Duty List; Department of Defense Instruction 1320.14, Commissioned Officer Promotion Program; Air Force Policy Directive 36–25, Military Promotion and Demotion; Air Force Instruction 36–2501, Officer Promotions and Selective Continuation; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''To ensure completeness, legality, and processing the timeliness of actions required for promotion or to delay a promotion or disqualify the officer's promotion; and to remove individual's name from the promotion list.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD Blanket Routine Uses published at the beginning of the Air Force's compilation of systems of records notices may apply to this system.''

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''Retrieved by name, SSN and/or DoD ID number.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by the custodian of the record system and by person(s) responsible for servicing the record system in the performance of their official duties that are properly screened and cleared for need-to-know. Records are stored electronically and/or in locked cabinets or rooms. Electronic media is accessed by a Common Access Card (CAC). Access to the building is controlled by Security Access Badge.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Paper records are destroyed five years after case is closed. Electronic records are destroyed when agency determines they are superseded, obsolete, or no longer needed for administrative, legal, audit, or other operational purposes. Paper records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Electronic records are destroyed by erasing, deleting, or overwriting.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant Deputy Chief of Staff/Manpower and Personnel, 550 C Street West, Randolph Air Force Base, TX 78150–6001.

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center, DISA Ogden, Building 891, Hill AFB, UT 84056–5824.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the system manager or visit agency officials at the respective system location.

Headquarters, Air Force Personnel Center, Directorate of Personnel Services, Officer Promotion Management, 550 C Street West, Suite 8, Randolph Air Force Base, TX 78150–6001.

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center, DISA Ogden, Building 891, Hill AFB, UT 84056–5824.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system should address written inquiries to the system manager or to agency officials at the respective system location.

Headquarters, Air Force Personnel Center, Directorate of Personnel Services, Officer Promotion Management, 550 C Street West, Suite 8, Randolph Air Force Base, TX 78150–6001.

Defense Information Systems Agency (DISA), Defense Enterprise Computing Center, DISA Ogden, Building 891, Hill AFB, UT 84056–5824.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records, contesting contents, and appealing initial agency determinations are published in Air Force Instruction 33–332, Air Force Privacy Program; 32 CFR part 806b; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Data is extracted from the Headquarters Air Force Master Personnel File; Headquarters Air Force and major command officer selection folders; special orders; oath of office signed by the individual; memorandums from the Secretary of the Air Force Board for Correction of Military Records; selection board reports; and official correspondence submitted by the individual.''

* * * * *

[FR Doc. 2014–07910 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2014–0008]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Air Force proposes to alter a system of records, F036 AF DP A, entitled ''Air Force Family Integrated Results and Statistical Tracking'' in its existing inventory of records systems subject to the Privacy Act of 1974, as amended. This system maintains a record of customer service data to determine the effectiveness of Airman and Family Readiness Center activities and services and provide reports reflecting impact of services on mission and family readiness to leadership.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective on the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571)256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/.*

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, as amended were submitted on March 28, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: April 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AF DP A

SYSTEM NAME:

Air Force Family Integrated Results and Statistical Tracking (January 19, 2011, 76 FR 3115).

* * * * *

CHANGES:

SYSTEM ID:

Delete entry and replace with ''F036 AFPC Z''.

SYSTEM NAME:

Delete entry and replace with ''Air Force Family Integrated Results and Statistical Tracking (AFFIRST).''

SYSTEM LOCATION:

Delete entry and replace with ''Headquarters Air Force Personnel Center, Directorate of Airman and Family Care, Airman and Family Care Division, (HQ AFPC/DPFF), 550 C. Street West, Randolph Air Force Base, TX 78150–4739.

Installation Airman and Family Centers. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Military personnel and family members, DoD civilians, and individuals of the general public who are authorized to use Air Force Family Readiness facilities.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), Department of Defense Identification number (DoD ID number), gender, date of birth, home address, home and work phone, work email, unit, branch of service, rank, squadron, client visit/service notes of services provided and referrals to other agencies.''

* * * * *

PURPOSE(S):

Delete entry and replace with ''To maintain a record of customer service data determining the effectiveness of Airman and Family Readiness Center activities and services and provide reports reflecting impact of services on

mission and family readiness to leadership. Also used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Name, SSN and/or DoD ID number.''

SAFEGUARDS:

Delete entry and replace with ''Records are accessed by person(s) responsible for servicing the record system in the performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are only accessed by authorized personnel with Common Access Card (CAC) and need-to-know.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Electronic Records are destroyed after one year or when no longer needed whichever is later. Electronic records are destroyed by erasing, deleting, or overwriting.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Air Force Family Integrated Results and Statistical Tracking system (AFFIRST) Program Manager, Headquarters Air Force Personnel Center (AFPC), Airman and Family Division, Directorate of Airman and Family Care, (AFPC/DPFF), 550 C Street West, Suite 10, Randolph Air Force Base, TX 78150–4712.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the system manager, or the installation Airman and Family Center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system should address written requests to the system manager, or the installation Airman and Family Center. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

For verification purposes, individual should provide their full name, SSN and/or DoD ID Number, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Air Force Privacy Program; 32 CFR part 806b; or may be obtained from the system manager.''

RECORD SOURCE CATEGORIES:

Delete entry and replace with ''Information obtained from individual, unit of assignment, referral agencies and personnel records.''

* * * * *

[FR Doc. 2014–07874 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2014–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter the system of records, NM05512–2, Badge and Access Control System Records, in its inventory of record systems subject to the Privacy Act of 1974, as amended. This system will be used to control physical access to DoD, Department of the Navy (DON) or U.S. Marine Corps Installations/Units controlled information, installations, facilities, or areas over which DoD, DON or USMC has security responsibilities by identifying or verifying an individual through the use of biometric databases and associated data processing/information services for designated populations for purposes of protecting U.S./Coalition/allied government/national security areas of responsibility and information; to issue badges, replace lost badges and retrieve passes upon separations; to maintain visitor statistics; collect information to adjudicate access to facility; and track the entry/exit times of personnel.

DATES: Comments will be accepted on or before May 9, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

* Mail: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Patterson, Head, PA/FOIA Office (DNS–36), Department of the Navy, 2000 Navy Pentagon, Washington, DC 20350–2000, or by phone at (202) 685–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal**

Register and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Web site at *http://dpclo.defense.gov/.*

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 12, 2014, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 3, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM05512–2

SYSTEM NAME:

Badge and Access Control System Records (May 6, 2010, 75 FR 24932).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''All organization elements of the Department of the Navy. Official mailing addresses are published in the Standard Navy Distribution List available as an appendix to the Navy's compilation of system of records notices or may be obtained from the system manager.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name, Social Security Number (SSN), case number, visit requests for permission to transact commercial business, visitor clearance data for individuals to visit a Navy/Marine Corps base/activity/contractor facility, barring lists and letters of exclusion, badge/pass issuance records, information that reflects time of entry/exit from facility, physical description including height/weight/hair color/eye color, biometric data including, images and templates for fingerprints, iris, face and hand geometry; citizenship, date and place of birth, gender, passport number, identification card issue and expiration dates, government-issued and personal weapons registration information to include type, serial number, manufacturer, caliber, firearm registration date, and storage location data to include unit, room, building and phone number, vehicle information, such as manufacturer, model, year, color and vehicle type, vehicle identification number (VIN), license plate type and number, decal number, current registration, automobile insurance data and driver's license data, DoD ID Number or credential barcode, home and work addresses, marital status, home and work telephone numbers, and home and work email address(es).''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; OPNAVINST 5530.14E, Navy Physical Security and Law Enforcement Program; Marine Corps Order P5530.14, Marine Corps Physical Security Program Manual; and E.O. 9397 (SSN), as amended.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To designated contractors, Federal agencies, and foreign governments for the purpose of granting Department of the Navy officials access to their facility.

The DoD Blanket Routine Uses set forth at the beginning of the Department of Navy's compilation of system of records notices may apply to this system.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Name, SSN, biometric template, (fingerprints, face and iris scan), case number, company's name, DoD Identification number, and registered vehicle.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Badges and passes are destroyed three months after return to issuing office. Records of issuance are destroyed six months after new accountability system is established or one year after final disposition of each issuance record is entered in retention log or similar record, whichever is earlier. Visit request records are destroyed two years after final entry or two years after date of document, whichever is later. Collection forms, paper and/or plastic badges/passes are shredded or incinerated using DOD approved procedures. If any IT system or data storage media fails and must be replaced, the data storage component (e.g., disks/hard drives) is removed from the hardware and degaussed with DOD approved degaussing systems and are then mechanically shredded prior to disposal.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the activity in question. Official mailing addresses are published in the Standard Navy Distribution List available as an appendix to the Navy's compilation of system of records notices or may be obtained from the system manager.

For verification purposes, individual should provide full name, SSN and/or DoD ID Number, sufficient details to permit locating pertinent records and notarized signature. Failure to provide a notarized document may result in your request not being processed.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system should address written inquiries to Commanding Officer of the activity in question or the local Provost Marshals Office at United States Marine Corps installation/units. Official mailing addresses are published in the Standard Navy Distribution List available as an appendix to the Navy's compilation of system of records notices or may be obtained from the system manager.

For verification purposes, individual should provide full name, SSN and/or DoD ID Number, sufficient details to permit locating pertinent records and notarized signature. Failure to provide a notarized document may result in your request not being processed.''

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[FR Doc. 2014–07843 Filed 4–8–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0009]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Financial Status and Program Performance Final Report for State and Partnership for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before May 9, 2014.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2014–ICCD–0009 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sariane Leigh, 202–502–7806.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Financial Status and Program Performance Final Report for State and Partnership for the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP).

OMB Control Number: 1840–0782.

Type of Review: A revisions of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 125.

Total Estimated Number of Annual Burden Hours: 5,625.

Abstract: The purpose of this information collection is to determine whether recipients of Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) have made substantial progress towards meeting the objectives of their respective projects, as outlined in their grant applications and/or subsequent work plans. In addition, the final report will enable the Department to evaluate each grant project's fiscal operations for the entire grant performance period, and compare total expenditures relative to federal funds awarded, and actual cost-share/matching relative to the total amount in the approved grant application. This report is a means for grantees to share the overall experience of their projects and document achievements and concerns, and describe effects of their projects on participants being served; project barriers and major accomplishments; and evidence of sustainability. The report will be GEAR UP's primary method to collect/analyze data on students' high school graduation and immediate college enrollment rates.

Summary of Changes

If grantees choose to serve students for 7 years, they must report on the 7th year of activities which include following GEAR UP students into the first year of postsecondary education and any students still in high school. The 5 hour burden increase is due to the additional time required to collect data on GEAR UP students enrolled in postsecondary education.

Dated: April 3, 2014.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–07857 Filed 4–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information

Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers

Notice inviting applications for new awards for fiscal year (FY) 2014

Catalog of Federal Domestic Assistance (CFDA) Number: 84.328M.

DATES:

Applications Available: April 9, 2014.

Deadline for Transmittal of Applications: May 27, 2014.

Deadline for Intergovernmental Review: July 23, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priority: This competition has one absolute priority. In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 671 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this

priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

Background

The purpose of this priority is to fund 24 Parent Training and Information Centers (PTIs) designed to meet the information and training needs of parents of infants, toddlers, children, and youth with disabilities, ages birth through 26 (collectively, ''children with disabilities''), and the information and training needs of youth with disabilities living in the States served by the centers.

More than 35 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by strengthening the ability of parents to participate fully in the education of their children at school and at home (see section 601(c)(5)(B) of IDEA). Since the Department first funded PTIs over 35 years ago, they have helped parents set high expectations for their children with disabilities and provided parents with the information and training they need to help their children meet those expectations. The following Web site provides further information on the work of currently funded PTIs: *www.parentcenterhub.org.*

PTIs, consistent with section 671(b) of IDEA, have successfully helped families: (a) Navigate systems that provide early intervention, special education, general education, postsecondary options, and related services; (b) understand the nature of their children's disabilities; (c) learn about their rights and responsibilities under IDEA; (d) expand their knowledge of evidence-based education practices to help their children succeed; (e) strengthen their collaboration with professionals; (f) locate resources available for themselves and their children, which connects them to their local communities; and (g) advocate for improved student achievement, increased graduation rates, and improved postsecondary outcomes for all children through participation in school reform activities. In addition, PTIs have helped youth with disabilities have high expectations for themselves, understand their rights and responsibilities, and learn self-advocacy skills. PTIs have been valuable partners to Federal, State, and local agencies, providing expertise on how to better support families and youth with disabilities so that they can effectively and efficiently access IDEA services.

The PTIs to be funded through this priority will build on the strong history of the program by helping youth become effective self-advocates and by providing parents with information, individual assistance, and training to enable them to: (a) Ensure that their children are included in general education classrooms and extracurricular activities with their peers; (b) help their children meet developmental and academic goals; (c) help their children meet challenging expectations established for all children, including college- and career-ready academic standards; and (d) prepare their children to achieve positive postsecondary outcomes that lead to lives that are as productive and independent as possible.

Priority

The Department intends to fund 24 grants to establish and operate 24 PTIs. Based on the quality of applications received, the Department intends to fund one PTI in each of the following States: [1] Arizona, Delaware, District of Columbia, Hawaii, Iowa, Idaho, Indiana, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Virginia, Virgin Islands, Washington, West Virginia, and Wyoming.

At a minimum, the PTIs must: (a) Increase parents' [2] capacity to help their children with disabilities [3] improve their early learning, school-aged, and postsecondary outcomes; and (b) increase youth with disabilities' capacity to be effective self-advocates.

To be considered for funding under this priority, an applicant must meet the application, programmatic, and administrative requirements of this priority. The requirements are as follows:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will, within its State—

(1) Address the needs of parents of children with disabilities for high-quality services that increase parents' capacity to help their children with disabilities improve their early learning, school-aged, and postsecondary outcomes. To meet this requirement the applicant must—

(i) Present appropriate information on the needs of parents, including underserved parents, low-income parents, parents with limited English proficiency, parents of incarcerated youth with disabilities, and parents with disabilities;

(ii) Demonstrate knowledge of best practices on providing training and information to a variety of audiences, including underserved parents, low-income parents, parents with limited English proficiency, parents of incarcerated youth with disabilities, and parents with disabilities;

(iii) Demonstrate knowledge of best practices in outreach and family-centered services; and

(iv) Demonstrate knowledge of current evidence-based education practices and policy initiatives to improve outcomes in early intervention and early childhood, general and special education, transition services, and postsecondary options, including, if applicable to its State, the PROMISE initiative; and

(v) Demonstrate knowledge of how to identify and work with appropriate partners in the State, including local providers and lead agencies providing Part C services; State and local educational agencies; State child welfare agencies; disability-specific systems and entities serving families, such as the State's protection and advocacy system; and other nonprofits serving families in order to improve outcomes; and

(2) Address the needs of youth with disabilities for high-quality services that increase their capacity to be effective self-advocates. To meet this requirement the applicant must—

(i) Present appropriate information on the needs of youth with, including underserved youth, incarcerated youth, youth in foster care, and youth with limited English proficiency;

(ii) Demonstrate knowledge of best practices on providing training and information to youth with disabilities;

(iii) Demonstrate knowledge of current evidence-based education practices and policy initiatives in self-advocacy; and

(iv) Demonstrate knowledge of how to work with appropriate partners serving youth with disabilities, including State and local agencies, other nonprofits, and Independent Living Centers that are providing assistance such as postsecondary education options, employment training, and supports.

(b) Demonstrate, in the narrative section of the application, under ''Quality of the Project Services,'' how the proposed project will—

(1) Use a project logic model (see paragraph (f)(1) of this priority) to guide the development of project plans and activities within its State;

[1] Under section 602(31) of IDEA, the term ''State'' includes the District of Columbia and the Virgin Islands.

[2] The term ''parent'' includes natural, adoptive, and foster parents, and individuals acting in the role of parent as defined in section 602(23) of IDEA.

[3] The term ''disabilities'' refers to the full range of disabilities described in section 602(3) of IDEA.

(2) Develop and implement an outreach plan to inform parents of children with disabilities of how they can benefit from the services provided by the PTI, including—

(i) Parents of children who may be inappropriately identified as having a disability;

(ii) Underserved parents, including parents who are underserved based on race or ethnicity;

(iii) Parents with limited English proficiency;

(iv) Low-income parents; and

(v) Parents with disabilities;

(3) Develop and implement an outreach plan to inform youth with disabilities of how they can benefit from the services provided by the PTI;

(4) Provide high-quality services that increase parents' capacity to help their children with disabilities improve their early learning, school-aged, and postsecondary outcomes. To meet this requirement the applicant must include information as to how the services will—

(i) Increase parents' knowledge of—

(A) The nature of their children's disabilities, including their children's strengths, and academic, behavioral, and developmental challenges;

(B) The importance of having high expectations for their children and how to help them meet those expectations;

(C) The local, State, and Federal resources available to assist them and their children and local resources that strengthen their connection to their communities;

(D) IDEA, Federal IDEA regulations, and State implementation of IDEA, including:

(1) Their rights and responsibilities under IDEA, including procedural safeguards and dispute resolution;

(2) Their role on Individualized Family Service Plan (IFSP) and Individualized Education Program (IEP) Teams and how to effectively participate on IFSP and IEP Teams; and

(3) How services are provided under IDEA;

(E) Other relevant educational and health care legislation, including the Elementary and Secondary Education Act of 1965, as amended (ESEA); Section 504 of the Rehabilitation Act of 1973, as amended (Section 504); and the Americans with Disabilities Act (ADA);

(F) Transition services at all levels, including: Part C early intervention to Part B preschool, preschool to elementary school, elementary school to secondary school, secondary school to postsecondary education and workforce options, and re-entry of incarcerated youth to school and the community;

(G) How their children can have access to the general education curriculum, including access to college- and career-ready academic standards and assessments, extracurricular and enrichment opportunities available to all children, and other initiatives to make students college- and career-ready;

(H) How their children can have access to inclusive early learning programs, inclusive general education classrooms and settings, and extracurricular and enrichment opportunities available to all children;

(I) Evidence-based early intervention and education practices that improve early learning, school-aged, and postsecondary outcomes;

(J) School reform efforts to improve student achievement and increase graduation rates; and

(K) The use of data to inform instruction and advance school reform efforts;

(ii) Increase parents' capacity to—

(A) Effectively support their children with disabilities and participate in their children's education;

(B) Communicate effectively and work collaboratively in partnership with early intervention service providers, school-based personnel, related services personnel, and administrators;

(C) Resolve disputes effectively; and

(D) Participate in school reform activities to improve outcomes for children;

(5) Provide high-quality services that increase youth with disabilities' capacity to be effective self-advocates. To meet this requirement the applicant must include information as to how the services will—

(i) Increase the knowledge of youth with disabilities about—

(A) The nature of their disabilities, including their strengths, and of their academic, behavioral, and developmental challenges;

(B) The importance of having high expectations for themselves and how to meet those expectations;

(C) The resources available to support their success in secondary and postsecondary education and employment and full participation in their communities;

(D) IDEA, Section 504, ADA, and other legislation and policies that affect people with disabilities;

(E) Their rights and responsibilities while receiving services under IDEA and after transitioning to post-school programs, services, and employment;

(F) How they can participate on IEP Teams; and

(G) Supported decisionmaking necessary to transition to adult life; and

(ii) Increase the capacity of youth with disabilities to advocate for themselves, including communicating effectively and working collaboratively in partnership with providers;

(6) Use various methods to deliver services, including in-person and remotely through the use of technology;

(7) Use best practices for providing training and information to adult learners and youth;

(8) Establish cooperative partnerships with any Community Parent Resource Centers (CPRCs) and any other PTIs funded in the State under sections 672 and 671 of IDEA, respectively; and

(9) Network with local, State, and national organizations and agencies, such as protection and advocacy agencies that serve parents and families of children with disabilities, to better support families and children with disabilities to effectively and efficiently access IDEA services.

(c) Demonstrate, in the narrative section of the application, under ''Quality of the Evaluation Plan,'' how—

(1) The applicant will evaluate the effectiveness of the proposed project by undertaking a formative evaluation and a summative evaluation, including a description of how the applicant will measure the outcomes proposed in the logic model (see paragraph (f)(1) of this priority). The description must include—

(i) Proposed evaluation methodologies, including proposed instruments, data collection methods, and analyses;

(ii) Proposed criteria for determining effectiveness, to include, at a minimum, the effectiveness of strategies used to reach and serve youth with disabilities and parents, including underserved parents of children with disabilities; and

(2) The proposed project will use the evaluation results to examine the effectiveness of its implementation and its progress toward achieving intended outcomes.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed personnel, consultants, and contractors have the qualifications and experience to carry out the proposed activities and achieve the intended outcomes identified in the project logic model (see paragraph (f)(1) of this priority);

(2) The applicant will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, linguistic diversity, gender, age, or disability, as appropriate; and

(3) The applicant and key partners have adequate resources to carry out the proposed activities.

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the intended outcomes identified in the project logic model (see paragraph (f)(1) of this priority) will be achieved on time and within budget;

(2) The time of key personnel, consultants, and contractors will be sufficiently allocated to the project;

(3) The proposed management plan will ensure that the services provided are of high quality;

(4) The board of directors will be used to provide appropriate oversight to the project;

(5) The proposed project benefits from a diversity of perspectives, including those of parents, providers, and administrators in the State served by the center;

(6) The proposed project will ensure that the Annual Performance Reports submitted to the Department will—

(i) Be accurate and timely;

(ii) Include information on the projects' outputs and outcomes; and

(iii) Include, at a minimum, the number and demographics of parents and youth to whom the PTI provided information and training, the parents' and youth's unique needs, and the levels of service provided to them; and

(7) The project management and staff will—

(i) Make use of the technical assistance (TA) and products provided by the OSEP-funded Center on Parent Information and Resources (CPIR), Regional Parent Technical Assistance Centers (PTACs), Native American PTAC, Military PTAC, and other TA centers as appropriate, including the PROMISE TA Center (if funded), in order to serve parents of children with disabilities and youth with disabilities as effectively as possible;

(ii) Participate in developing individualized TA plans with the Regional PTAC as appropriate; and

(iii) Facilitate one site visit from the Regional PTAC during the grant cycle.

(f) In the narrative under ''Required Project Assurances'' or appendices as directed, the applicant must—

(1) Include in Appendix A a logic model that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project. A logic model communicates how a project will achieve its intended outcomes and provides a framework for both the formative and summative evaluations of the project.

Note: The following Web sites provide more information on logic models: *www.researchutilization.org/matrix/logicmodel_resource3c.html* and *www.tadnet.org/pages/589.*

(2) Include in Appendix A person-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(3) Include in the budget attendance by the project director at one OSEP meeting in Washington, DC annually, to be determined by OSEP; and

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director and other authorized representatives.

(4) Maintain a Web site that meets government or industry-recognized standards for accessibility and that includes, at a minimum, a current calendar of upcoming events, free informational publications for families, and links to Webinars or other online multimedia resources.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1471 and 1481.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 97, 98, and 99. (b) The Education Department debarment and suspension regulations in 2 CFR part 3485.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,645,988 for FY 2014.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Information concerning funding amounts for individual States for this competition is provided in the ''Maximum Award'' columns of the table in this section.

Estimated Average Size of Awards: See table.

Maximum Award: See table.

Estimated Number of Awards: See table.

Project Period: See table.

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Training and Information for Parents of Children with Disabilities--Parent Training and Information Centers
Application Notice for Fiscal Year 2014

CFDA Number and Name	Estimated Available Funds (See Note 2)	Estimated Average Size of Awards (See Note 2)	Maximum Award for FY 2014 (See Notes 1 and 3)	Maximum Award for FY 2015 (See Notes 1 and 3)	Maximum Award for FY 2016 (See Notes 1 and 3)	Maximum Award for FY 2017 (See Notes 1 and 3)	Maximum Award for FY 2018 (See Notes 1 and 3)	Estimated Number of Awards (See Note 2)	Project Period	Page Limit	Contact Person
84.328M Parent Training and Information Centers **(See Note 3)**	$6,645,988	$276,916						24	Up to 60 mos. (See Note 1)	50	Carmen Sanchez (202) 245-6595 PCP-4057
Arizona			$353,586	$408,588	$392,873	$392,873	$392,873				
Delaware			$200,000	$200,000	$200,000	$200,000	$200,000				
District of Columbia			$182,061	$200,000	$200,000	$200,000	$200,000				
Hawaii			$200,000	$200,000	$200,000	$200,000	$200,000				
Idaho			$200,000	$200,000	$200,000	$200,000	$200,000				
Indiana			$359,973	$415,969	$399,970	$399,970	$399,970				
Iowa			$201,543	$201,543	$201,543	$201,543	$201,543				
Louisiana			$262,901	$302,569	$290,932	$290,932	$290,932				
Massachusetts			$311,995	$360,527	$346,661	$346,661	$346,661				
Minnesota			$276,916	$319,991	$307,684	$307,684	$307,684				
Mississippi			$213,590	$213,590	$213,590	$213,590	$213,590				
Missouri			$322,252	$372,380	$358,058	$358,058	$358,058				
New Hampshire			$200,000	$200,000	$200,000	$200,000	$200,000				
North Carolina			$531,408	$614,071	$590,453	$590,453	$590,453				
Oklahoma			$215,942	$249,533	$239,936	$239,936	$239,936				
Pennsylvania			$625,712	$723,044	$695,235	$695,235	$695,235				
Rhode Island			$200,000	$200,000	$200,000	$200,000	$200,000				
South Dakota			$200,000	$200,000	$200,000	$200,000	$200,000				
Tennessee			$347,425	$401,469	$386,028	$386,028	$386,028				
Virgin Islands			$103,612	$103,612	$103,612	$103,612	$103,612				
Virginia			$416,541	$481,336	$462,823	$462,823	$462,823				
Washington			$346,032	$399,859	$384,480	$384,480	$384,480				
West Virginia			$200,000	$200,000	$200,000	$200,000	$200,000				
Wyoming			$174,500	$200,000	$200,000	$200,000	$200,000				

Note 1: Consistent with 34 CFR 75.104(b), we will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The

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Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note 2: The Department is not bound by any estimates in this notice.

Note 3: Maximum awards for each fiscal year vary due to the consolidation of the PTI competition schedule.

Project Period: In order to allocate resources equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Department is making awards to PTIs in five-year cycles for each State. In FY 2014, applications for five-year awards will be accepted for the following States: Arizona, Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, New Hampshire, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Virgin Islands, Virginia, Washington, West Virginia, and Wyoming. These projects will be funded for a period up to 60 months.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months.

The Department took into consideration current funding levels, population distribution, poverty rates, and low-density enrollment when determining the award amounts for grants under this competition. For the States listed in the funding table, one award may be made for up to the amounts listed in the table to a qualified applicant for a PTI Center to serve the entire State.

III. Eligibility Information

1. *Eligible Applicants:* Parent organizations.

Note: Section 671(a)(2) of IDEA defines a ''parent organization'' as a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention; and

(ii) Individuals with disabilities; and

(3) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other General Requirements:*

(a) Recipients of funding under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Each applicant for, and recipient of, funding under this program must involve individuals with disabilities, or parents of individuals with disabilities ages birth through 26, in planning, implementing, and evaluating the project (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, from the Education Publications Center (ED Pubs), or from the program office.

To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.328M.

To obtain a copy from the program office, contact: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, Potomac Center Plaza (PCP), Washington DC 20202–2600. Telephone: (202) 245–6595. If you use a TDD or TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to no more than 50 pages, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, reference citations, and captions, as well as all text in charts, tables, figures, graphs, and screen shots.
- Use a font that is 12 point or larger.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit and double-spacing requirement does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the abstract (follow the guidance provided in the application package for completing the abstract), the table of contents, the list of priority requirements, the resumes, the reference list, the letters of support, or the appendices. However, the page limit and double-spacing requirement does apply to all of Part III, the application narrative, including all text in charts, tables, figures, graphs, and screen shots.

We will reject your application if you exceed the page limit in the application narrative section; or if you apply standards other than those specified in the application package.

3. *Submission Dates and Times:*

Applications Available: April 9, 2014.

Deadline for Transmittal of Applications: May 27, 2014.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an

individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 23, 2014.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov. and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Parent Training and Information Centers competition, CFDA number 84.328M, must be submitted electronically using the Governmentwide Grants.gov Apply site at www.Grants.gov. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Parent Training and Information Centers competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.328, not 84.328M).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following

forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, Potomac Center Plaza (PCP), Washington, DC 20202–2600. FAX: (202) 245–7617.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328M) 550 12th Street SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your

grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Additional Review and Selection Process Factors:* In the past, the Department has had difficulty finding peer reviewers for certain competitions because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The standing panel requirements under section 682(b) of IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process, while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

4. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993 (GPRA), the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Training and Information for Parents of Children with Disabilities program. The measures focus on the extent to which projects provide high-quality products and services, the relevance of project products and services to educational and early intervention policy and practice, and the use of products and services to improve educational and early intervention policy and practice. Projects funded under this competition are required to submit data on these measures as directed by OSEP.

Grantees will be required to report information on their project's performance in annual and final performance reports to the Department (34 CFR 75.590).

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW., Room 4057, PCP, Washington, DC 20202–2600. Telephone: (202) 245–6595.

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

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–

7363. If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

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

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

Dated: April 4, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–07969 Filed 4–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Developing Hispanic-Serving Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Developing Hispanic-Serving Institutions (HSI) Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 2014

Catalog of Federal Domestic Assistance (CFDA) Number: 84.031S.

DATES: *Applications Available:* April 9, 2014.

Deadline for Transmittal of Applications: May 9, 2014.

Deadline for Intergovernmental Review: July 8, 2014.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The HSI Program provides grants to assist HSIs to expand educational opportunities for, and improve the academic attainment of, Hispanic students. The HSI Program grants also enable HSIs to expand and enhance their academic offerings, program quality, and institutional stability.

Background

In 2008, the Higher Education Act of 1965 (HEA) was amended by the Higher Education Opportunity Act of 2008 (HEOA). The HEOA made a number of changes to the HSI Program. The regulations for the HSI Program in 34 CFR part 606 have not been updated since before the HEA was amended by the HEOA. Therefore, we encourage applicants to carefully read this notice, which references the statutory provisions when the corresponding regulatory provisions for this program have not been updated.

For example, section 501 of the HEOA amended section 503(b) of the HEA to include, among the authorized activities under the HSI Program—

(1) Activities to improve student services, including innovative and customized instruction courses designed to help retain students and move the students into core courses;

(2) Articulation agreements and student support programs designed to facilitate the transfer of students from 2-year to 4-year institutions; and

(3) Providing education, counseling services, or financial information designed to improve the financial and economic literacy of students or their families.

The list of authorized activities in section 503(b) of the HEA was also amended to use the term ''distance education technologies'' in place of ''distance learning academic instruction capabilities.'' Therefore, notwithstanding the description of authorized activities in 34 CFR 606.10, applicants may include these activities in their proposals under this competition.

Priorities: This notice contains two competitive preference priorities. These priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Competitive Preference Priorities: For FY 2014 and any subsequent year in which we make awards from the list of unfunded applicants from the competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional four points to an application, depending on how well the application meets these competitive preference priorities.

Note: In order to receive any competitive preference priority points, applicants must address both priorities and may receive from zero to four points. In scoring these priorities, an applicant will receive up to two points per priority if it addresses the priority clearly and persuasively. An applicant that has successfully addressed both of the competitive priorities will receive the full four points. Applicants that do not address both of the competitive preference priorities will not receive any additional points.

These priorities are:

Competitive Preference Priority 1: Increasing Postsecondary Success

Projects that are designed to increase the number and proportion of high-need students (as defined in this notice) who persist in and complete college or other postsecondary education and training.

Note: Applicants that address this priority should identify the specific interventions that they intend to implement, provide documentation (in the form of research, data, or studies) that the planned activities have, in other circumstances, improved student persistence and completion, and demonstrate that the applicant has systems in place to track the activities and their effects on student persistence and completion. Applicants should also consider how all the activities described in the application will contribute to this priority.

Competitive Preference Priority 2: Improving Productivity

Projects that are designed to significantly increase efficiency in the use of time, staff, money, or other resources while improving student learning or other educational outcomes (i.e., outcome per unit of resource). Such projects may include innovative and sustainable uses of technology, modification of school schedules and teacher compensation systems, use of open educational resources (as defined in this notice), or other strategies.

Note 1: The types of projects identified in Competitive Preference Priority 2 are suggestions for ways to improve productivity. The Department recognizes that some of these examples, such as modifications of teacher compensation systems, may not be relevant for the context of this program. Accordingly, applicants that address this priority should respond to this competitive preference priority in a way that improves productivity in a relevant, higher education context. The Secretary is particularly interested in projects that improve student outcomes at lower costs.

Note 2: Applicants addressing this priority should identify the specific outcomes to be measured and demonstrate that they have the ability to collect accurate data on both project costs and desired outcomes. In addition, they should include a discussion of the expected cost-effectiveness of the practice compared with current practices.

Definitions: The following definitions are from the notice of final

supplemental priorities and definitions for discretionary grant programs published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637), and apply to the priorities in this notice:

High-need children and high-need students means children and students at risk of educational failure, such as children and students who are living in poverty, who are English learners, who are far below grade level or who are not on track to becoming college- or career-ready by graduation, who have left school or college before receiving, respectively, a regular high school diploma or a college degree or certificate, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who are pregnant or parenting teenagers, who have been incarcerated, who are new immigrants, who are migrant, or who have disabilities.

Open educational resources (OER) means teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use or repurposing by others.

Program Authority: 20 U.S.C. 1101–1101d; 1103–1103g.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 606. (d) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486), and corrected on May 12, 2011 (76 FR 27637).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants. Five-year Individual Development Grants and five-year Cooperative Arrangement Development Grants will be awarded in FY 2014. Planning grants will not be awarded in FY 2014.

Estimated Available Funds: $18,958,961.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2015 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $525,000–$650,000.

Estimated Average Size of Awards: Individual Development Grants: $513,000. Cooperative Arrangement Development Grants: $637,000.

Maximum Awards: Individual Development Grants: $525,000. Cooperative Arrangement Development Grants: $650,000. We will not fund any application at an amount exceeding these maximum amounts for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified, if we conclude, during our initial review of the application, that the proposed goals and objectives cannot be obtained with the specified maximum amount. The Assistant Secretary for Postsecondary Education may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Individual Development Grants: 20. Cooperative Arrangement Development Grants: 12.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the HSI Program Web site for further information. The address is: *www.ed.gov/programs/idueshsi/index.html.*

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the HSI Program. To be an eligible HSI, an IHE must—

(a) Have an enrollment of needy students, as defined in section 502(b) of the HEA (section 502(a)(2)(A)(i) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(i));

(b) Have, except as provided in section 522(b) of the HEA, average educational and general expenditures that are low, per full-time equivalent (FTE) undergraduate student, in comparison with the average educational and general expenditures per FTE undergraduate student of institutions that offer similar instruction (section 502(a)(2)(A)(ii) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(ii));

Note: To demonstrate an enrollment of needy students and low average educational and general expenditures per FTE undergraduate student, an IHE must be designated as an ''eligible institution'' in accordance with 34 CFR 606.3 through 606.5 and the notice inviting applications for designation as an eligible institution for the fiscal year for which the grant competition is being conducted.

For purposes of establishing eligibility for this competition, the notice inviting applications for designation as an eligible institution for FY 2014 was published in the **Federal Register** on January 13, 2014 (79 FR 2161). Only institutions that submitted the required application and received designation through this process before the deadline date are eligible to submit applications for this competition.

(c) Be accredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered, or making reasonable progress toward accreditation, according to such an agency or association (section 502(a)(2)(A)(iv) of the HEA; 20 U.S.C. 1101a(a)(2)(A)(iv));

(d) Be legally authorized to provide, and provide within the State, an educational program for which the institution awards a bachelor's degree (section 502(a)(2)(A)(iii) of the HEA or a junior or community college; 20 U.S.C. 1101a(a)(2)(A)(iii)); and

(e) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application (section 502(a)(5)(B) of the HEA; 20 U.S.C. 1101a(a)(5)(B)).

Note 1: Funds for the HSI Program will be awarded each fiscal year; thus, for this program, the ''end of the award year immediately preceding the date of application'' refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year.

Note 2: In considering applications for grants under this program, the Department will compare the data and documentation the institution relied on in its application with data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If different percentages or data are reported in these various sources, the institution must, as part of the 25 percent assurance verification, explain the reason for the differences. If the IPEDS data show that less than 25 percent of the institution's undergraduate FTE students are Hispanic, the burden is on the institution to show that the IPEDS data are inaccurate. If the IPEDS data indicate that the institution has an undergraduate FTE less than 25 percent, and the institution fails to demonstrate that the IPEDS data are inaccurate, the institution will be considered ineligible.[1]

[1] For purposes of making the determination described in paragraph (e) of the Eligibility Criteria

Continued

Relationship Between HSI and Title III, Part A Programs

Note 1: A grantee under the HSI Program, which is authorized by title V of the HEA, may not receive a grant under any HEA, title III, Part A or Part B program (section 505 of the HEA; 20 U.S.C. 1101D). The title III, Part A programs include: The Strengthening Institutions program; the American Indian Tribally Controlled Colleges and Universities program; the Alaska Native and Native Hawaiian-Serving Institutions programs; the Asian American and Native American Pacific Islander-Serving Institutions program; and the Native American-Serving Non-Tribal Institutions program. Furthermore, a current HSI Program grantee may not give up its HSI grant in order to receive a grant under any title III, Part A program (§ 606.2(c)(1)).

Note 2: An HSI that does not fall within the limitation described in *Note 1* may apply for a FY 2014 grant under all title III, Part A programs, for which it is eligible, as well as under the HSI Program. However, a successful applicant may receive only one grant.

Note 3: An eligible HSI that submits multiple applications may only be awarded one Individual Development Grant and/or one Cooperative Arrangement Development Grant in a fiscal year (34 CFR 606.9 and 606.13). In addition, the Secretary will not award a second Individual Development Grant to an HSI with a current five-year Individual Development Grant as described in 34 CFR 606.9(b)(1).

Note 4: An eligible HSI that submits a Cooperative Arrangement Development Grant with a partnering branch campus that is a part of the same institution will not be awarded a grant (see definition of branch campus at 34 CFR 606.7 (b)).

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds (section 503(c)(2) of the HEA; 20 U.S.C. 1101b(c)(2)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., Room 6038, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by email: *Carnisia.Proctor@ed.gov.*

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

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limits: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria and the competitive priorities that reviewers use to evaluate your application. We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. If your application addresses the competitive priorities you must limit the application narrative (Part III) to no more than 55 pages for the Individual Development Grant application and no more than 75 pages for the Cooperative Arrangement Development Grant application. Please include a separate heading when responding to the competitive priorities. If you do not wish to address the competitive priorities, you must limit your application narrative to no more than 50 pages for the Individual Development Grant application and no more than 70 pages for the Cooperative Arrangement Development Grant application using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

Note: For purposes of determining compliance with the page limits, each page on which there are words will be counted as one full page.

- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance (SF 424); the Department of Education Supplemental Information form (SF 424); Part II, Budget Information—Non-Construction Programs (ED 524); Part IV, the assurances and certifications; or the one-page project abstract, program activity budget detail form and supporting narrative, and the five-year plan. However, the page limit does apply to all of the application narrative section (Part III), including the budget narrative of the selection criteria and the competitive priorities. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative (Part III) for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

Note: The narrative response to the budget selection criteria is not the same as the activity detail budget form and supporting narrative. The supporting narrative for the activity detail budget form lists the requested budget items line by line.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:* Applications Available: April 9, 2014.

Deadline for Transmittal of Applications: May 9, 2014.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 8, 2014.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about

for this competition, IHEs must report their undergraduate Hispanic FTE percent based on the student enrollment count closest to, but not after, September 30, 2013.

Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *http://www2.ed.gov/fund/grant/apply/sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *http://www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the HSI Program, CFDA Number 84.031S, must be submitted electronically using the Government wide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the HSI Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.031, not 84.031S).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a

password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time, or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days; or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street NW., Room 6038, Washington, DC 20006–8513. FAX: (202) 502–7813.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031S) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 606.22. In addition to these selection criteria, we evaluate an applicant's performance under a previous development grant under 34 CFR 606.24.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

Additional factors we consider in selecting an application for an award are as follows:

(A) *Documentation of at least 25 Percent Hispanic Undergraduate FTE students.* Applicants must provide, as an attachment to the application, the documentation the IHE relied upon in determining that at least 25 percent of the IHE's undergraduate FTE students are Hispanic.

Note: The 25 percent requirement applies only to undergraduate Hispanic students and is calculated based upon FTE students as defined in section 502(a)(4) of the HEA. Instructions for formatting and submitting the verification documentation to *Grants.gov* are in the application package for this competition.

(B) *Tiebreaker for Development Grants.* In tie-breaking situations for development grants described in 34 CFR 606.23(b), the HSI Program regulations require that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable institutions that offer similar instruction. We also award one additional point to an application from an IHE that had expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction.

For the purpose of these funding considerations, we use 2011–2012 data.

If a tie remains after applying the tiebreaker mechanism above, priority will be given (1) for Individual Development Grants, to applicants that addressed the statutory priority found in section 521(d) of the HEA, as amended; and (2) for Cooperative Arrangement Development Grants, to applicants in accordance with section 524(b) of the HEA, under which the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant HSI.

If a tie still remains after applying the additional point(s) and the relevant statutory priority, we will determine the ranking of applicants based on the lowest endowment values per FTE enrolled student.

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms.html.*

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the HSI Program:

a. The percentage change, over the five-year grant period, of the number of full-time degree-seeking undergraduate students enrolled at HSIs.

b. The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same two-year Hispanic-serving institution.

c. The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same four-year Hispanic-serving institution.

d. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year HSIs graduating within six years of enrollment.

e. The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year HSIs graduating within three years of enrollment.

f. Federal cost per undergraduate and graduate degree at institutions in the HSI Program.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street NW., Room 6038, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by email: *Carnisia.Proctor@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

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

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

Dated: April 4, 2014.

Lynn B. Mahaffie,

Senior Director, Policy Coordination, Development, and Accreditation Service, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2014–07975 Filed 4–8–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Withdraw From Production and Distribution of the Radioisotope Germanium-68 Used for Calibration Sources

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of intent and request for comment.

SUMMARY: The Isotope Program of the Office of Science of the Department of Energy (Department or DOE) currently produces and distributes the radioisotope germanium-68 (Ge-68). There are two primary uses of the Ge-68: In the manufacture of calibration sources for Positron Emission Tomography (PET) scanners used for diagnostic medical imaging; and in the manufacture of germanium-68/gallium-68 (Ge-68/Ga-68) generators, which provide Ga-68 as a positron source in radiopharmaceuticals used in PET imaging.

The Department published in the **Federal Register** on March 8, 2013, a Notice of Inquiry and Request for Comment on its consideration of withdrawal from commercial production of Ge-68. The Department received numerous comments in response to this Notice of Inquiry, evaluated substantial information provided by one private domestic company seeking the Department's withdrawal, and assessed other information in reaching its conclusion. The Department has determined that Ge-68 is reasonably available from the commercial sector for use in the manufacture of calibration sources but not for use in Ge-68/Ga-68 generators. This Notice of Intent provides the public with notice and seeks any public comment on the Department's intent to withdraw from the production and distribution of Ge-68 used in the manufacture of calibration sources, while maintaining its current position in the production and distribution of Ge-68 for Ge-68/Ga-68 generators. The Department intends to ramp down its sales of Ge-68 to calibration source fabricators and such sales will end completely April 30, 2014. After that date, the Department's customers will be required to sign an end-use statement that the Ge-68 will be used in the fabrication of Ge-68/Ga-68 generators.

DATES: Interested persons must submit written comments by May 9, 2014.

ADDRESSES: Comments may be submitted by mail to: Dr. Marc Garland, Program Manager, Office of Nuclear Physics, Office of Science, U.S. Department of Energy, Germantown Building, SC–26.2, 1000 Independence Ave. SW., Washington, DC 20585–1290, or electronically by email to: *marc.garland@science.doe.gov.* We note that email submissions will avoid delay associated with security screening of U.S. Postal Service mail.

FOR FURTHER INFORMATION CONTACT: Dr. Jehanne Gillo, Director Facilities and Project Management Division, Office of Nuclear Physics, Office of Science, U.S. Department of Energy, Germantown Building, SC–26.2, 1000 Independence Ave. SW., Washington, DC 20585, Tel: 301–903–1455.

SUPPLEMENTARY INFORMATION: It is the Department's policy to refrain from competition with private industry in the commercial production and distribution of radioisotopes when those radioisotopes are reasonably available commercially. This policy was announced in the Notice published in the **Federal Register** in 1965, entitled Policies and Procedures for Transfer of Commercial Radioisotope Production and Distribution to Private Industry (''Statement of Policy''), 30 FR 3247 (March 9, 1965). The Statement of Policy provides criteria and guidance on withdrawal from the market and states that when the Department determines to voluntarily withdraw from the commercial production and distribution of particular radioisotopes, it will publish a notice of such intent for public comment.

Background

The Department currently produces and distributes the radioisotope Ge-68. Recently, it was made aware of domestic private industry development of commercial production and distribution of this radioisotope in the United States, in addition to the distribution in the United States of the radioisotope produced by foreign entities. In light of these circumstances, a Notice of Inquiry and Request for Comment entitled Consideration of Withdrawal from Commercial Production and Distribution of the Radioisotope Germanium-68 (''Notice of Inquiry'') was published in the **Federal Register** (78 FR 15009, March 8, 2013) announcing the Department's intent to conduct an evaluation and to request comments and information from the public for consideration in the evaluation. In summary, the Department's evaluation included consideration of: A demonstrable private capability to produce and distribute Ge-68; effective competition in the market for the production and distribution of Ge-68; assurance that private industry will not discontinue production or distribution of Ge-68 in a manner that would adversely impact the public interest; the Ge-68 will be available at reasonable prices consistent with its intended uses and the prices to be charged will also encourage further research and development; and comments and information from the public received in response to the Notice and Departmental inquiries.

Evaluation and Determination

The Department received numerous comments in response to the Notice of

Inquiry from private citizens affected by the use of Ge-68 in Ge-68/Ga-68 generators critical in medical imaging for certain cancers, and from some private companies involved in the manufacture of products for medical purposes. Responses from commenters focused on concerns such as pricing, monopolies, and discontinuation of isotope availability in the event of foreign or domestic supply disruption. A private U.S. company, Mallinckrodt Pharmaceuticals Inc., supplied a substantial amount of information in support of the Department's withdrawal from commercial production and distribution of Ge-68. The concerns and interests expressed by private citizens and affected industry are precisely those which comprise the factors the Department has evaluated to ensure there would be no adverse impacts in the event of DOE withdrawal from production.

While DOE is currently the only domestic producer of Ge-68, there are foreign producers of Ge-68 that distribute the radioisotope in the U.S. through U.S. distributors. Mallinckrodt has an existing facility in the U.S. that currently produces radioisotopes, with the capability to produce Ge-68 for domestic distribution. The information supplied by Mallinckrodt indicates it has a long history as a strong market participant in the production and sales of radioisotopes. Further, Mallinckrodt was judged to have the facilities, expertise, and management and financial resources necessary to produce sufficient quantities of Ge-68 to meet domestic demand. Production and distribution of radioisotopes is the core of the Mallinckrodt's business and Ge-68 is the latest product that they have developed to generate near-term sales and capture a share of a long-term growth market. Mallinckrodt has demonstrated capability to commercially produce Ge-68.

The Department has determined that there is sufficient evidence to conclude that, upon the Department's withdrawal from the production and distribution of Ge-68, Mallinckrodt would continue production of Ge-68, based upon the investments it's made in developing production capability, the fact that it has built a worldwide capability to engage in isotope production and distribution, and that such activities are at the core of their business. The Department has further concluded that if it were to withdraw from the market, Mallinckrodt would establish the price for the Ge-68 isotope on a fair and reasonable basis and within a range of the prices the Department currently charges. While Mallinckrodt did not explicitly state the price it would charge, its intention to maintain pricing consistent with the market suggests that there would not be catastrophic price changes if the Department withdraws from the market. With multiple private sector suppliers, pricing more likely than not would be controlled by market forces obviating the need for any Department mandate.

In light of the information provided by Mallinckrodt, input from private industry, and other information available to the Department, the Department intends to withdraw from the market for Ge-68 for the manufacture of PET calibration sources. The Department has concluded that Mallinckrodt has the capability and intent to meet market demand, and because there are multiple suppliers of Ge-68 suitable for use in the manufacturing of PET calibration sources (as well as multiple companies engaging in source fabrication), the Department has further concluded that the demand for the Ge-68 for calibration source manufacturing will be met and maintained at reasonable market-based pricing.

The Department has concluded that it will not withdraw from the market for Ge-68 for the manufacture of generators, however, because it has determined that there are no suppliers of bulk Ge-68 qualified for use in Ge-68/Ga-68 generators. This issue involves several concerns. First, if the Department were to exit the market, it appears that there would be no domestic producers of Ge-68 presently qualified for use in Ge-68/Ga-68 generators. These generators provide Ga-68 which is incorporated as a positron source in radiopharmaceuticals used in PET imaging medical applications currently under development. Qualification of other Ge-68 suppliers to serve the generator market would take time (in addition to potentially lengthy product testing, producers may have to change their production processes to provide Ge-68 that can be used on a generator for Ga-68 use in humans) and could impact researchers' achievement of Food and Drug Administration (FDA) approval for Ga-68-based medical imaging. Second, there is only one known foreign supplier of Ge-68/Ga-68 generators, which the Department does not believe is a dependable supply source for the U.S. market. The foreign supplier's production data does not provide adequate assurance the U.S. generator market would be adequately supplied by foreign suppliers. In the absence of a Department supply of Ge-68 for the manufacture of generators, Mallinckrodt would be the only immediate domestic source for generators, but only when or if the Mallinckrodt develops its own generator or its Ge-68 is qualified for use by other generator manufacturers. A single foreign supplier represents a risk that one domestic company, Mallinckrodt, could be the sole reliable domestic supplier of Ge-68 for generators and this could be problematic for the U.S. market for generators. If generator manufacturers were able to qualify Mallinckrodt's Ge-68 for use in generators, the Department's withdrawal from production would provide Mallinckrodt with a monopoly position in the marketplace for Ge-68 use in the manufacture of generators and other generator manufacturers would eventually be in a position of having to buy Ge-68 from their competitor.

In light of these circumstances, the Department has concluded that there is not effective competition in the market for Ge-68 for use in Ge-68/Ga-68 generators, and therefore it will continue to serve that segment of the Ge-68 market to provide competition. The Department's participation in that segment of the market will serve to reduce the potential for impediments to research and development leading to FDA approval of Ga-68 radiopharmaceuticals.

To help provide assurance of supply of Ge-68 for calibration source purposes, DOE proposes to maintain production capability, but not engage in sales to the marketplace, such that production would resume in a timely manner if Mallinckrodt and other suppliers are not be able to adequately serve the market or if private supplier pricing substantially increases and has a negative impact on the development and utilization of Ge-68 products.

Issued in Washington, DC, on April 2, 2014.

Jehanne Gillo,

Director, Facilities and Project Management Division, Office of Nuclear Physics, Office of Science.

[FR Doc. 2014–07865 Filed 4–8–14; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0212; FRL–9908–82]

Pesticide Experimental Use Permit; Receipt of Application, Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of an application 8917–EUP–R from J.R. Simplot Company requesting an experimental use permit (EUP) for the *Rpi-vnt1 gene* that expresses the VNT1 protein in Innate™ 2.0 branded potato varieties. The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

DATES: Comments must be received on or before May 9, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0212, 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 of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; email address: *bacchus.shanaz@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land, or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

Submitter: J.R. Simplot Company, 5369 West Irving Street, Boise, ID 83706, (8917–EUP–R).

Pesticide Chemical: Rpi-vnt1 gene that expresses the VNT1 protein in Innate™ 2.0 branded potato varieties.

Summary of Request: Simplot is proposing an experimental program to allow planting for the evaluation of the plant-incorporated protectant (PIP) *Rpi-vnt1 gene* that expresses the VNT1 protein in Innate™ 2.0 branded potato varieties. Simplot asserts that this plant trait confers resistance to the plant pathogen *Phytophthora infestans* (commonly known as late blight). Planting is expected to occur from spring 2014 through October 2014 on a total of 96.75 acres; testing will occur in 10 states: Idaho, Michigan, Nebraska, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Washington, and Wisconsin. The total amount of material expected to be used is 0.0088 pounds of VNT1 protein in 239,375 pounds of potatoes.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

List of Subjects

Environmental protection, Experimental use permits.

Dated: March 27, 2014.

Robert McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2014–07819 Filed 4–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9909–33–OA]

Notification of a Public Teleconference of the Science Advisory Board Chemical Assessment Advisory Committee Augmented for the Review of EPA's Draft Ammonia Assessment; Date Correction

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office previously announced in the **Federal Register** on March 25, 2014 (79 FR 16326–16327) an incorrect date for the teleconference of the SAB Chemical Assessment Advisory Committee Augmented for the Review of the Draft Ammonia Assessment (CAAC-Ammonia Panel).

DATES: The public teleconference will be held on June 2, 2014, from 1:00 p.m. to 5:00 p.m. (Eastern Time) *not* June 4, 2014 as previously announced.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meeting may contact Dr. Sue Shallal, Designated Federal Officer (DFO) for the CAAC-Ammonia Panel, by telephone at (202) 564–2057 or via email at *shallal.suhair@epa.gov*. Additional information about this advisory activity, can be found at the following URL: *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/IRIS%20Ammonia?OpenDocument*. A meeting agenda and other meeting materials will be posted at the above noted URL prior to the meeting.

Dated: April 3, 2014.

Christopher S. Zarba,

Acting Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–07923 Filed 4–8–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9909–21–OAR]

Notification of a Public Teleconference of the Chartered Clean Air Scientific Advisory Committee (CASAC) and the CASAC Ozone Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Chartered CASAC and the CASAC Ozone Review Panel to provide additional time, if needed, for the CASAC and Panel to complete deliberations announced for their May 28, 2014 teleconference.

DATES: If additional time is needed following the May 28, 2014 teleconference, CASAC and the CASAC Panel will hold a teleconference on Monday, June 2, 2014 from 1:00 p.m. to 5:00 p.m. (Eastern Time).

Location: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public teleconference may contact Dr. Holly Stallworth, Designated Federal Officer (DFO), via telephone at (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 ozone.

For purposes of the review of the ozone air quality criteria for health and welfare, the EPA established the CASAC Ozone National Ambient Air Quality Standards Review Panel. Pursuant to FACA and EPA policy, notice is hereby given that the Chartered CASAC augmented with additional experts, known as the CASAC Ozone Review Panel, will hold a public teleconference to provide additional time, if needed, for the CASAC and Panel to complete deliberations announced for their May 28, 2014 teleconference. As stated in the March 13, 2014 (79 FR 14246) **Federal Register** notice, the purpose of the May 28, 2014 teleconference is to review and finalize draft letters reviewing the three EPA draft documents cited in the March 13, 2014 notice. The EPA's draft documents were prepared as part of the agency's review of the National Ambient Air Quality Standards (NAAQS) for ozone. The CASAC and the Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Availability of Meeting Materials: There will be no additional meeting materials for the June 2, 2014 teleconference. It will be held only if additional time is needed following the May 28, 2014 teleconference. For the May 28, 2014 teleconference, CASAC's draft letters, agenda and other materials, including background materials from EPA, will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/casac/.*

Procedures for Providing Public Input: The two teleconferences will be conducted as one complete meeting. As stated in the March 13, 2014 notice, public comments will be taken for the May 28, 2014 teleconference according to the procedures enumerated therein. The June 2, 2014 teleconference time is being reserved only if insufficient time is available on the May 28, 2014 teleconference.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Holly Stallworth at (202) 564–2073 or *stallworth.holly@epa.gov*. To request accommodation of a disability, please contact Dr. Stallworth preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: April 1, 2014.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2014–07921 Filed 4–8–14; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2016–3001]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

Form Title: EIB 10–03 Notice of Claim and Proof of Loss, Export Credit Insurance Policies.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as part of its continuing effort to reduce

paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine eligibility of the export sales for insurance coverage. The Report of Premiums Payable for Financial Institutions Only is used to determine the eligibility of the shipment(s) and to calculate the premium due to Ex-Im Bank for its support of the shipment(s) under its insurance program. Export-Import Bank customers will be able to submit this form on paper or electronically.

By neutralizing the effect of export credit support offered by foreign governments and by absorbing credit risks that the private sector will not accept, Ex-Im Bank enables U.S. exporters to compete fairly in foreign markets on the basis of price and product. Under the Working Capital Guarantee Program, Ex-Im Bank provides repayment guarantees to lenders on secured, short-term working capital loans made to qualified exporters. The guarantee may be approved for a single loan or a revolving line of credit.

In the event that a buyer defaults on a transaction insured by Ex-Im Bank the insured exporter or lender may seek payment by the submission of a claim.

The information collection tool can be reviewed at: *http://www.exim.gov/pub/pending/eib10-03.pdf.*

DATES: Comments must be received on or before May 9, 2014 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, Attn: OMB 3048–10–03.

SUPPLEMENTARY INFORMATION:

Title and Form Number: EIB 10–03 Notice of Claim and Proof of Loss, Export Credit Insurance Policies.

OMB Number: 3048–0033.

Type of Review: Regular.

Need and Use: This collection of information is necessary, pursuant to 12 U.S.C. 635(a)(1), to determine if such claim complies with the terms and conditions of the relevant insurance policy.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 300.

Estimated Time per Respondent: 45 minutes.

Annual Burden Hours: 225 hours.

Frequency of Reporting of Use: As needed to request claim payment.

Government Expenses:

Reviewing time per year: 300 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $12,750, (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $15,300.

Toya Woods,

Program Analyst, Record Management Divisions, Office of the Chief Information Officer.

[FR Doc. 2014–07914 Filed 4–8–14; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FDIC Advisory Committee on Economic Inclusion (ComE-IN); Notice of Meeting

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Economic Inclusion, which will be held in Washington, DC The Advisory Committee will provide advice and recommendations on initiatives to expand access to banking services by underserved populations.

DATES: Thursday, April 24, 2014, from 9:00 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

SUPPLEMENTARY INFORMATION:

Agenda: The agenda will be focused on Safe Accounts, mobile financial services, financial education, and small dollar lending. The agenda may be subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

Type of Meeting: The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This ComE-IN meeting will be Webcast live via the Internet at: *https://fdic.primetime.mediaplatform.com/#/channel/1384299229422/Advisory+Committee+on+Economic+Inclusion.* Questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The ComE-IN meeting videos are made available on-demand approximately two weeks after the event.

Dated: April 4, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2014–07911 Filed 4–8–14; 8:45 am]

BILLING CODE 6714–01–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.: 012200–001.

Title: The G6/Zim Transpacific Vessel Sharing Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (operating as one Party); Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; and Orient Overseas Container Line, Limited; and OOCL (Europe) Limited (all operating as one party); and Zim Integrated Shipping Services Limited.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street, NW. Suite 1100; Washington, DC 20006.

Synopsis: The amendment would expand the geographic scope of the agreement to include all ports in the U.S. and would make other

corresponding changes relating to the services in the expanded scope.

Agreement No.: 012258.

Title: The G6/HSDG Atlantic Space Charter Agreement.

Parties: American President Lines, Ltd. and APL Co. Pte, Ltd. (operating as one party); Hapag-Lloyd AG and Hapag-Lloyd USA LLC (operating as one party); Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line, Limited; and OOCL (Europe) Limited (all operating as one party); and Hamburg Sud.

Filing Party: David F. Smith, Esq.; Cozen O'Connor; 1627 I Street, NW. Suite 1100; Washington, DC 20006.

Synopsis: The agreement would authorize the G6 lines to charter space to Hamburg Sud in the trade between North Europe and the United Kingdom, on the one hand, and the U.S. Atlantic Coast, on the other hand. The agreement would also authorize the parties to enter into arrangements related to the chartering of such space.

Agreement No.: 012059.

Title: COSCON/ELJSA Vessel Sharing Agreement.

Parties: COSCO Container Lines Company, Limited 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, Vietnam, and Canada, on the one hand, and the U.S. West Coast, on the other hand.

By Order of the Federal Maritime Commission.

Dated: April 4, 2014.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2014–07953 Filed 4–8–14; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2014–02; Docket 2014–0002; Sequence 15]

Announcement of the Publication of GSA PBS–P100, Facilities Standards for the Public Buildings Service

AGENCY: Office of Design and Construction Office of Public Buildings Service, General Services Administration.

ACTION: Notice of Publication of the GSA PBS–P100, Facilities Standards for the Public Buildings Service.

SUMMARY: On March 12, 2014, the PBS–P100, Facilities Standards for the Public Buildings Service (P100), was issued. The Facilities Standards for the Public Buildings Service establishes design standards and criteria for new buildings, repairs and alterations, modernizations, lease construction buildings with government option to purchase, and work in historic structures for the Public Buildings Service (PBS) of the U.S. General Services Administration (GSA). This lastest update to the document contains both performance based standards and prescriptive requirements to be used in the programming, design, and documentation of GSA buildings. The PBS–P100 2014 version is available at *http://www.gsa.gov/portal/category/106319* and at *http://gsap100.wbdg.org.*

DATES: April 9, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. Martin Weiland, 202–219–0634, U.S. General Services Administration, 1800 F Street NW., Suite 5400, Washington, DC 20405, or via email *pbsp100@gsa.gov.*

Dated: April 3, 2014.

David Insinga,

Acting Assistant Commissioner, Office of Design and Construction, General Services Administration.

[FR Doc. 2014–07901 Filed 4–8–14; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice of a decision to designate a class of employees from the Joslyn Manufacturing and Supply Company in Fort Wayne, Indiana as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On March 27, 2014, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked for Joslyn Manufacturing and Supply Co. at the covered facility in Fort Wayne, Indiana, from March 1, 1943, through July 31, 1948, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on April 26, 2014, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2014–07935 Filed 4–8–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Office of the Surgeon General of the United States Public Health Service, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled to be held for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the ''Advisory Group''). The meeting will be open to the public. Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.surgeongeneral.gov/initiatives/prevention/advisorygrp/index.html.*

DATES: The meeting will be held on April 28 and 29, 2014. Exact start and end times will be published closer to the meeting date at: *http://www.surgeongeneral.gov/initiatives/prevention/advisorygrp/index.html.*

ADDRESSES: The meeting will be held at 200 Independence Ave. SW., Room 505A, Washington, DC 20201 on April 28, 2014. The meeting will take place via teleconference on April 29, 2014.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, 200 Independence Ave. SW., Washington, DC 20201; 202–205–9517; *prevention.council@hhs.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Group is a non-discretionary federal advisory committee that was initially established under Executive Order 13544, dated June 10, 2010, to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. The Advisory Group was established to assist in carrying out the mission of the National Prevention, Health Promotion, and Public Health Council (the Council). The Advisory Group provides recommendations and advice to the Council.

The Advisory Group was terminated on September 30, 2012, by Executive Order 13591, dated November 23, 2011. Authority for the Advisory Group to be re-established was given under Executive Order 13631, dated December 7, 2012. Authority for the Advisory Group to continue to operate until September 30, 2015 was given under Executive Order 13652, dated September 30, 2013.

It is authorized for the Advisory Group to consist of not more than 25 non-federal members. The Advisory Group currently has 22 members who were appointed by the President. The membership includes a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine.

During this meeting, the Advisory Group will have round table discussions with representatives of Council member departments and develop recommendations for the Council for the upcoming year.

Members of the public who wish to attend the meeting on April 28, 2014 or to participate by phone in the April 29, 2014 meeting must register by 12:00 p.m. EST on April 21, 2014. Individuals should register for public attendance at *prevention.council@hhs.gov* by providing your full name and affiliation. Individuals who plan to attend the meeting and need special assistance and/or accommodations, i.e., sign language interpretation or other reasonable accommodations, should indicate so when they register. The public will have the opportunity to provide comments to the Advisory Group on April 28, 2014; public comment will be limited to 3 minutes per speaker. Registration via email (*prevention.council@hhs.gov*) is also required for the public comment session. Any member of the public who wishes to have printed materials distributed to the Advisory Group for this scheduled meeting should submit material to *prevention.council@hhs.gov* no later than 12:00 p.m. EST on April 21, 2014.

Dated: March 25, 2014.

Corinne M. Graffunder,

Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, Office of the Surgeon General.

[FR Doc. 2014–07848 Filed 4–8–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0194]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification Submissions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 9, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and the title ''Draft Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry and FDA Staff; Total Product Life Cycle: Infusion Pump—Premarket Notification [510(k)] Submissions—(OMB Control Number 0910–NEW)

This draft guidance is intended to assist industry in preparing premarket notification submissions for infusion pumps and to identify device features that manufactures should address throughout the total product life cycle. The draft guidance is available at (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm206153.htm*).

In the **Federal Register** of April 26, 2010 (75 FR 21632), FDA published a notice seeking comment on the proposed information collection activity. Given the lapse in time since its publication, FDA is reissuing this notice, responding to a single comment and providing the public an additional opportunity to comment on this proposed information collection activity, prior to the issuance of the final guidance document.

In the April 26, 2010, notice, FDA estimated it will receive 31 infusion pump submissions annually. The Agency reached this estimate by averaging the number of premarket notifications for infusion pumps submitted to FDA over the past 5 years. The draft guidance identifies 56 potential hazards FDA recommends addressing if applicable to a particular device. Although there may be additional hazards identified by a manufacturer, the Agency believes these hazards may offset FDA identified hazards not applicable to a particular device. FDA estimates it will take infusion pump manufactures approximately 56 hours (approximately 1 hour per hazard) to complete the case assurance report described in section 6 of the draft guidance. FDA reached this estimate based on its expectation of the amount of information that will be contained in the report.

However, based on a single public comment provided to FDA, related to the FDA burden estimate, we are

adjusting the burden associated with this collection. The public comment is summarized as follows: ''It will take significantly longer than one hour to conduct assurance case reports for each of the 56 potential hazards identified * * *. For instance, due to the iterative nature of the assurance case report process, each of the applicable hazards will need to be re-evaluated at multiple stages of the development process. In addition, it will be difficult to estimate the time required to conduct an assurance case report without specific guidance on the assurance case reports.''

While the commenter believes the reporting burden is greater than 1 hour, and FDA agrees, it is also important to note that the burden associated with this new recommendation to present data is the time and effort necessary to comply with submitting a new 510(k) or 510(k) supplements for legally marketed infusion pumps for which no assurance case exists. The Agency has revised the burden estimate, by averaging the number of premarket notifications for infusion pumps submitted to FDA over the past 5 years. The draft guidance identifies 56 potential hazards FDA recommends addressing if applicable to a particular device. Although there may be additional hazards identified by a manufacturer, the Agency believes the reporting of these hazards may be offset by FDA identified hazards not applicable to a particular device. FDA has revised the estimate of time it will take infusion pump manufactures from approximately 56 hours to 112 hours (approximately 2 hours per hazard) to submit the case assurance report described in section 6 of the draft guidance. FDA reached this estimate based on its expectation of the amount of information that will be contained in the report and the public comment received.

The respondents to this collection of information are infusion pump manufacturers subject to FDA's laws and regulations.

In the **Federal Register** of March 18, 2013 (78 FR 16676), FDA published a 60-day notice requesting public comment on the proposed collection of information to which two comments were received.

One commenter had created their own assurance case and used their results to assist in answering the 60-day notice. The commenter developed an Infusion Pump Assurance Case (IPAC) report template and conducted an informal survey of infusion pump manufacturers asking them to estimate the time and resources required to prepare their assurance case submissions in man months. Based on company responses, the average in man months for development of an assurance case was 12.83 man months. The highest response was 36 man months. Even with use of a least burdensome template similar to the IPAC, we would anticipate that the number of hours to prepare an assurance case submission would be significant. The commenter does not provide the methodology used in their estimate of man months, including details regarding the number of hours in a man month. Therefore, we decline to adjust our burden hour estimate at this time.

Another commenter estimates the time that it takes infusion pump manufacturers to complete an assurance case report is approximately 560 hours for a manufacturer with experience completing assurance case reports, which is substantially longer than FDA's estimate of approximately 112 hours. Increased knowledge and experience in creating assurance case reports has reduced the number of hours required, and the commenter estimates that this equates to approximately 10 hours needed for each of the 56 hazards identified in the draft guidance, or 560 hours allotted for an experienced team.

Though the commenter's assurance case was comprehensive, it included activities that should already be conducted under their existing design controls (e.g., gathering data from all aspects of product development and performing a cross-functional review). These activities are already covered under the Quality Systems ICR (OMB control number 0910–0073) and, to avoid double-counting the burden, should not be counted as burden in this information collection request.

FDA has been engaged over the past 2 years in the creation of an assurance case argument structures for use in the final infusion pump guidance and the Association for the Advancement of Medical Instrumentation Technical Information Reports. These are certainly time-intensive efforts. However, in our own experience, much of the effort is focused on correct and complete identification of hazards and effective mitigation strategies. Again, these activities, while used to support the bulk of the assurance case, are already required and should therefore not be counted as burden in this information collection request.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Guidance Title: Infusion Pumps—Premarket Notification 510(k) Submissions	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Guidance Section 6—Assurance Case Report	31	1	31	112	3,472

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07915 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1496]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Food and Drug Administration Generic Rapid Response Surveys (Generic Clearance)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 9, 2014.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0500. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food and Drug Administration Generic Rapid Response Surveys—(OMB Control Number 0910–0500)—Extension

Section 505 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the FD&C Act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the FD&C Act. Under section 519 of the FD&C Act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA; to require user facilities to report device-related deaths directly to FDA and to manufacturers; and to report serious injuries to the manufacturer. Section 522 of the FD&C Act (21 U.S.C. 360*l*) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the FD&C Act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the FD&C Act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the FD&C Act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process. FDA's regulations governing application for Agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions. Currently, FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA Forms 3500 and 3500A (OMB control number 0910–0291) and the vaccine adverse event reporting system.

FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities. FDA will use the information gathered from these surveys to quickly obtain vital information about medical product risks and interventions to reduce risks so the Agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

FDA projects six emergency risk related surveys per year with a sample of between 50 and 10,000 respondents per survey. FDA also projects a response time of 0.5 hours per response. These estimates are based on the maximum sample size per questionnaire that FDA may be able to obtain by working with health care professional organizations. The annual number of surveys was determined by the maximum number of surveys per year FDA has ever conducted under this collection.

In the **Federal Register** of December 24, 2013 (78 FR 77686), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA Rapid Response Survey	10,000	6	60,000	0.5 (30 minutes).	30,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 21, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07931 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1064]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Application for Participation in the Medical Device Fellowship Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Application for Participation in the Medical Device Fellowship Program; Form FDA 3608'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: On January 24, 2014, the Agency submitted a proposed collection of information entitled ''Application for Participation in the Medical Device Fellowship Program; Form FDA 3608'' to OMB for review and clearance under 44 U.S.C. 3507. 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 now approved the information collection and has assigned OMB control number 0910–0551. The approval expires on March 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: April 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07916 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0233]

Center for Drug Evaluation and Research; Use of Innovative Packaging, Storage, and/or Disposal Systems To Address the Misuse and Abuse of Opioid Analgesics; Request for Comments; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a docket to receive suggestions, recommendations, and comments on innovative packaging, storage, and disposal systems, technologies or designs (''designs'') that could be used to prevent or deter misuse and abuse of opioid analgesics by patients and others. FDA is interested in receiving comments on new designs as well as enhancements to existing designs, and is particularly interested in comments from academic institutions, regulated industry, technology companies (e.g., those producing technologies for medication adherence, disposal, or tracking), healthcare professionals, patient representatives, clinical trial service providers, and other interested organizations. Comments submitted in response to this notice will help the Agency determine whether innovative designs for opioid analgesic packaging, storage, and/or disposal systems could help prevent or deter misuse and abuse without diminishing access for patients with legitimate prescriptions.

DATES: Submit either electronic or written comments by June 9, 2014.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–301), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Colleen Brennan, Center for Drug Evaluation and Research, Office of Surveillance and Epidemiology, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4410, Silver Spring, MD 20993–0002, 301–796–2316, email: *Colleen.Brennan@fda.hhs.gov,* with the subject line identified as ''Packaging Abuse Deterrence Strategies.''

SUPPLEMENTARY INFORMATION:

I. Background

Prescription opioid analgesics are important medications that are widely prescribed for the treatment of both non-cancer and cancer-related pain. When used properly for their approved indications, opioid drugs provide significant benefits for patients. However, they also carry a risk of misuse, abuse, addiction, overdose, and death. According to an analysis from the Centers for Disease Control and Prevention, in 2010, prescription opioid drugs were involved in 16,651 overdose deaths, which represented a 313 percent increase over the past decade (Ref. 1). The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that for each overdose death, there were an additional 11 treatment admissions (Ref. 2), 33 emergency department visits (Ref. 3), and 880 non-medical users of these drugs (Ref. 4).

Although inappropriate or illicit use, such as sharing the drug with family and friends or using drugs stolen from home medicine cabinets account for some of the problems with prescription opioids, legitimate use of opioids for pain may also lead to adverse events, addiction, and death. FDA plays a central role in the development, review, and approval of opioid drug products and must strike a balance between their benefit in the legitimate treatment of patients with pain and the risks to those patients and others associated with misuse, abuse, and addiction.

Combating opioid misuse, abuse, and addiction has long been both a public health priority and a priority for the Agency. FDA has taken many steps to address these problems; however, we recognize that more can be done and have established a task force that has embarked on a multi-pronged approach, building upon existing initiatives and developing new initiatives (*http://www.fda.gov/Drugs/DrugSafety/InformationbyDrugClass/ucm337852.htm*). Exploring innovative designs for drug packaging, storage, and/or disposal is one of the many initiatives targeted by the task force.

Designs for drug packaging, storage, and disposal have evolved considerably in the past decade to include many technology-based features such as electronic systems for monitoring, assessing, and improving adherence to medication regimens. For example, these systems may include functionality to remind patients to take a dose, track

when a dose is taken and how much is taken, and limit further access until it is time for the next dose. Additionally, many of these drug-device combinations electronically encrypt and capture the accumulated adherence data, which can be downloaded directly from the device or wirelessly transmitted to the prescriber. These technologies have not only been used in clinical management and monitoring of protocol compliance in clinical trials, but have also been applied to combat the problem of prescription opioid misuse and abuse.

Other potentially relevant technologies include ''track and trace'' capabilities, radio-frequency identification-based systems, microchips embedded within tablets, and in-home medication deactivation and/or disposal systems.

FDA is interested in further exploring the role of existing and innovative designs for drug product packaging, storage, and/or disposal in mitigating opioid misuse, abuse, and addiction. For example, many of the features of medication adherence monitoring technologies could be used or adapted to help prevent serious complications (e.g., overdose, addiction) by supporting proper dosage and administration, and could also help prescribers monitor for signs of abuse or medication sharing by facilitating effective patient management and followup. Additionally, medication packaging and/or storage designs that limit access could help prevent use of the medication by someone for whom it was not prescribed, thereby, preventing accidental exposure (e.g., by a child or other household contact) or theft. Finally, medication packaging, storage, and/or disposal designs could be applied or adapted to help ensure safe disposal, including chemical deactivation, of any unused or residual medication.

II. Establishment of a Docket

FDA is announcing the establishment of a public docket to provide an opportunity for interested persons to share information, research, and ideas on how drug product packaging, storage, and/or disposal systems could be designed or adapted to address problems associated with prescription opioid abuse and misuse. These comments will help the Agency explore whether existing or innovative designs can be applied or adapted to prevent or deter misuse and abuse, while ensuring that patients in pain have appropriate access to opioid analgesics.

III. Suggestions for Those Submitting Comments in Response to This Notice

Proposed packaging, storage, and/or disposal designs should be feasible to implement, and should not impair access for patients who have legitimate prescriptions. Comments about specific system or technology designs should include a description of the following: (1) Design features and functionality; (2) results of any formative or summative human factors assessments conducted; (3) applications to date, including information on the effectiveness and acceptability of those applications (with literature references or other documentation); (4) recommendations for how the system/technology design could be applied or adapted (either alone and/or in combination with other systems/technologies) to help prevent or deter misuse and abuse, and any limitations of that application; (5) specific problems that could be addressed (e.g., serious complications such as addiction or overdose due to improper dosage and/or administration, improper disposal, accidental use by someone for whom the medication was not prescribed); and (6) to the extent possible, considerations for implementation into routine dispensing and clinical use (e.g., how the solution would impact the workflow in a retail pharmacy).

To help FDA prioritize among proposed approaches, the Agency is also interested in receiving feedback about methods that could be used to assess a system or technology's potential abuse-deterrent characteristics and real-world impact (e.g., actual ability to prevent or deter misuse and abuse, effect on access for appropriate patients, patient confidentiality, burden on the healthcare system, feasibility of implementation, whether the design could create unintended medication errors). Finally, FDA is interested in receiving feedback on methods for encouraging further research and development in this area, and, if promising technologies are identified, incentivizing the pharmaceutical industry (e.g. via patent extensions) to adopt such technologies.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.* The Agency will carefully consider all comments submitted. FDA generally will not respond directly to the person or organization submitting the comment.

V. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Centers for Disease Control and Prevention. ''Opioids drive continued increase in drug overdose deaths'' [Press Release] (2013). *http://www.cdc.gov/media/releases/2013/p0220_drug_overdose_deaths.html.*

2. SAMHSA, Center for Behavioral Health Statistics and Quality. Treatment Episode Data Set (TEDS): 2001–2011. *National Admissions to Substance Abuse Treatment Services.* BHSIS Series S–65, HHS Publication No. (SMA) 13–4772. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

3. SAMHSA, Center for Behavioral Health Statistics and Quality, ''Drug Abuse Warning Network,'' 2011. *http://samhsa.gov/data/dawn/nations/Nation_2011_AllMA.xls.*

4. Substance Abuse and Mental Health Services Administration, *Results from the 2012 National Survey on Drug Use and Health,* detailed table 1.1A, NSDUH Series H–46, HHS Publication No. (SMA) 13–4795. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2013.

Dated: April 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07909 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2006–P–0207]

Draft Guidance for Industry: Proper Labeling of Honey and Honey Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for industry entitled ''Guidance for Industry: Proper Labeling

of Honey and Honey Products.'' FDA developed this draft guidance to advise firms on the proper labeling of honey and honey products to help ensure that honey and honey products are not adulterated or misbranded.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 9, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Nutrition, Labeling, and Dietary Supplements (HFS–820), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: April Kates, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2371.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Proper Labeling of Honey and Honey Products'' dated February 2014. On March 8, 2006, the American Beekeeping Federation and several other honey-related associations submitted a citizen petition requesting that FDA adopt a U.S. standard of identity for honey based on the 2001 Revised Codex Alimentarius Commission's Standard for Honey. The petitioners asserted that a U.S. standard of identity for honey would achieve the following goals: (1) Clarify what the term ''honey'' means with respect to the food's composition and therefore promote honesty and fair dealing in the interest of consumers; (2) combat economic adulteration of honey by aiding enforcement and industry compliance; and (3) promote honesty and fair dealing within the food trade in general, where pure honey is used as an ingredient in other food. In a letter dated October 5, 2011, we denied the petition because the petition did not provide reasonable grounds for FDA to adopt the Codex standard for honey. We also concluded that the petitioners' goals can be achieved by FDA's existing authorities and that a standard of identity for honey would not promote honesty and fair dealing in the interest of consumers.

To address the labeling issues relevant to the petition, we developed this draft guidance to advise the regulated food industry on the proper labeling of honey and honey products to help ensure that honey and honey products are not adulterated or misbranded under sections 402 and 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342 and 343, respectively).

We are issuing this draft guidance document consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on the labeling of honey and honey products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 101.4, 101.22, and 102 have been approved under OMB control number 0910–0381.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*.

Dated: April 4, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07925 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0310]

Draft Guidance for Industry on Immunogenicity-Related Considerations for the Approval of Low Molecular Weight Heparin for New Drug Applications and Abbreviated New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Immunogenicity-Related Considerations for the Approval of Low Molecular Weight Heparin for NDAs and ANDAs.'' This guidance discusses how applicants for low molecular weight heparin (LMWH) products should provide information on impurities and the potential impact on immunogenicity.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 9, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniela Verthelyi, Center for Drug Evaluation and Research (HFD–122), Food and Drug Administration, 9000 Rockville Pike, N29A, Rm. 3B19, Bethesda, MD 20892, 301–827–1702.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Immunogenicity-Related Considerations for the Approval of Low Molecular Weight Heparin for NDAs and ANDAs.'' This draft guidance provides recommendations to applicants for new drug applications (NDAs) and abbreviated new drug applications (ANDAs) regarding impurities and their potential effect on immunogenicity for LMWH. The draft guidance also includes recommendations on meeting the requirement for active ingredient sameness for ANDAs. A demonstration of active ingredient sameness helps to address immunogenicity in the context of ANDAs.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on immunogenicity-related considerations for low molecular weight heparin for NDAs and ANDAs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to a previously approved collection of information that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in 21 CFR part 314 has been approved under OMB control number 0910–0001.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: April 3, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07896 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1445]

Blood Glucose Monitoring Test Systems for Prescription Point-of-Care Use; Draft Guidance for Industry and Food and Drug Administration Staff; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 7, 2014, the comment period for the notice that appeared in the **Federal Register** of January 7, 2014 (79 FR 830). In the notice, FDA requested comments on a draft guidance document entitled ''Blood Glucose Monitoring Test Systems for Prescription Point-of-Care Use.'' The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the draft guidance entitled ''Blood Glucose Monitoring Test Systems for Prescription Point-of-Care Use.'' Submit either electronic or written comments by May 7, 2014.

ADDRESSES: Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1601, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Patricia Bernhardt, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5654, Silver Spring, MD 20993–0002.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 7, 2014 (79 FR 830), FDA published a notice announcing the availability of the draft guidance entitled ''Blood Glucose Monitoring Test Systems for Prescription Point-of-Care Use.'' Interested persons were invited to submit comments by April 7, 2014. At this time the Agency is extending the comment period until May 7, 2014, to continue to receive public comments. Comments submitted to the docket will assist in identifying issues to be addressed in the finalized guidance document.

II. Request for Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: April 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07898 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1446]

Self-Monitoring Blood Glucose Test Systems for Over-the-Counter Use; Draft Guidance for Industry and Food and Drug Administration Staff; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to May 7, 2014, the comment period for the notice that appeared in the **Federal Register** of January 7, 2014 (79 FR 829). In the notice, FDA requested comments on the draft guidance document entitled ''Self-Monitoring Blood Glucose Test Systems for Over-the-Counter Use.'' The Agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the draft guidance entitled ''Self-Monitoring Blood Glucose Test

Systems for Over-the-Counter Use.'' Submit either electronic or written comments by May 7, 2014.

ADDRESSES: Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1601, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Patricia Bernhardt, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5654, Silver Spring, MD 20993–0002, 301–796–6136.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 7, 2014 (79 FR 829), FDA published a notice announcing the availability of the draft guidance entitled ''Self-Monitoring Blood Glucose Test Systems for Over-the-Counter Use.'' Interested persons were invited to submit comments by April 7, 2014. At this time the Agency is extending the comment period until May 7, 2014, to continue to receive public comments. Comments submitted to the docket will assist in identifying issues to be addressed in the finalized guidance document.

II. Request for Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: April 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07899 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0313]

Draft Guidance for Industry, Researchers, Patient Groups, and Food and Drug Administration Staff on Meetings With the Office of Orphan Products Development; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry, researchers, patient groups, and FDA staff entitled ''Meetings With the Office of Orphan Products Development.'' This draft guidance provides recommendations to industry, researchers, patient groups, and other stakeholders (collectively referred to as ''stakeholders'') interested in requesting a meeting with FDA's Office of Orphan Products Development (OOPD) on issues related to orphan drug designation requests, humanitarian use device (HUD) designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related topics of concern. This draft guidance document is intended to assist these groups with requesting, preparing, scheduling, conducting, and documenting meetings with OOPD.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance or proposed collection of information by June 9, 2014.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5271, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document. OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: James Bona, Office of Orphan Products Development, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5271, Silver Spring, MD 20993, 301–796–8660.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry, researchers, patient groups, and FDA staff entitled ''Meetings With the Office of Orphan Products Development.'' Each year, OOPD staff participates in meetings with stakeholders who seek guidance or clarification relating to orphan drug or HUD designation requests, OOPD grant programs, or other rare disease issues. These meetings can be ''informal'' or ''formal'' and help build a common understanding on FDA's thoughts on orphan products, which include drugs, biological products, devices, or medical foods. These meetings may represent critical points in the orphan product development process and may even have an impact on the eventual availability of products for patients with rare diseases and conditions. It is important that these meetings be scheduled within a reasonable time, conducted effectively, and documented where appropriate. This guidance is intended to provide consistent procedures to promote well managed meetings between OOPD and stakeholders.

Topics addressed in this guidance include: (1) Clarification of what constitutes an ''informal'' or ''formal'' meeting, (2) program areas within OOPD that may be affected by this draft guidance, (3) procedures for requesting and scheduling meetings with OOPD, (4) description of what constitutes a meeting package, and (5) procedures for the conduct and documentation of meetings with OOPD.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on meetings with OOPD. It does not create or confer any rights for or on any

person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques and other forms of information technology, when appropriate.

Title: Draft Guidance for Industry, Researchers, Patients Groups, and Food and Drug Administration Staff on Meetings With the Office of Orphan Products Development.

Description: FDA is issuing a draft guidance on the procedures for requesting meetings with OOPD on issues related to orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related topics of concern. The draft guidance describes procedures for requesting, scheduling, conducting, and documenting such meetings.

The draft guidance describes three collections of information: (1) The submission of a meeting request (for informal and formal meetings), (2) the submission of a meeting package (for formal meetings), and (3) the submission of draft meeting minutes (for formal and certain informal meetings). These collections of information will be used by the Agency to schedule and prepare for meetings on the issues described previously in this document and will provide for more productive meetings with stakeholders. This draft guidance refers to previously approved collections of information found in FDA regulations. Agency regulations at part 316 (21 CFR part 316) describe information that should be submitted in support of an orphan drug designation request. The information collection provisions of part 316 have been approved under OMB control number 0910–0167. Agency regulations at § 814.102 (21 CFR 814.102) describe information that should be submitted in support of a HUD designation request. The information collection provisions of § 814.102 have been approved under OMB control number 0910–0332.

A. Request for a Meeting

Under the draft guidance, a stakeholder interested in meeting with OOPD should submit a meeting request:

- For specific designation requests or grant applications, by emailing the identified point of contact for the designation request or grant application with the subject heading ''Meeting Request''; or
- For other issues, by emailing the general OOPD inbox at *orphan@fda.hhs.gov* with the subject heading ''Meeting Request'' or by emailing the point of contact for each OOPD Program Area listed in the ''Contact FDA'' section of the OOPD's Web site (*http://www.fda.gov/orphan*), again with the subject heading ''Meeting Request.'' In the draft guidance, FDA recommends that the meeting request, at a minimum, include (1) a brief statement of the meeting purpose, (2) whether the stakeholder prefers an informal or formal meeting, (3) suggested dates and times for the meeting, (4) preferred format of the meeting, and (5) the email address(es) to which OOPD should send a response to the meeting request (if different from the email address from which the request was sent) and telephone number for the primary contact for the stakeholder. Before scheduling a meeting, OOPD may ask the stakeholder for more information about the proposed meeting to help determine whether an informal or formal meeting is most appropriate and who from OOPD should attend. For informal meetings, the information in the meeting request may suffice, although OOPD may ask for supplemental information via email or telephone.

B. Meeting Package

If a formal meeting is scheduled, FDA recommends that stakeholders submit a meeting package to OOPD at least 2 weeks before the meeting. Stakeholders are encouraged to submit the package electronically by email to the OOPD program contact who scheduled the meeting. In the draft guidance, FDA recommends that the meeting package contain the following information: (1) The date, time, and subject of the meeting; (2) an explanation of the meeting purposes; (3) basic information about the product to be discussed (e.g., product name or identifier, designation or application number (if applicable), proposed rare disease or condition, brief background about the product); (4) proposed meeting agenda; (5) any data, information, or presentation materials to support the discussion (if needed); and (6) a list of all individuals, with their titles and affiliations, who are expected to participate in the meeting on behalf of the stakeholder.

C. Draft Meeting Minutes

Under the draft guidance, a stakeholder should prepare a draft of summary meeting minutes for all formal meetings and certain informal meetings. These draft minutes should be sent to the OOPD program contact by email with the subject heading ''Draft Meeting Minutes.'' The draft minutes should summarize the meeting discussion points, agreements, disagreements, and action items. OOPD will review and provide any revisions to the draft meeting minutes via email, and the stakeholder will then either accept the version as final and notify OOPD to that effect or will followup with questions and/or further revisions.

Description of Respondents: Individuals from industry, researchers, patient groups, and other stakeholders who seek a meeting with OOPD regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues.

Burden estimate: Table 1 of this document provides an estimate of the annual reporting burden for the preparation and submission of meeting

requests, meeting packages, and meeting minutes under the guidance.

Request for a meeting: Based upon information collected from OOPD program areas, approximately 2,120 informal and 46 formal meetings were requested with OOPD in fiscal year (FY) 2013 regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues. FDA anticipates that the number of meeting requests and stakeholders will remain the same or will only slightly increase, and therefore estimates the total number of meeting requests will be 2,166 annually (2120 informal and 46 formal meetings). The hours per response, which is the estimated number of hours that a stakeholder would spend preparing the information to be submitted with a meeting request in accordance with the draft guidance, is estimated to be approximately 3 hours for informal meetings and approximately 10 hours for formal meetings. Based on FDA's experience, the Agency expects that it will take stakeholders this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting. Therefore, the Agency estimates that stakeholders will spend 6,820 hours per year (6,360 hours for informal meetings and 460 hours for formal meetings) preparing meeting requests to OOPD regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues.

Meeting package: Based upon information collected from OOPD program areas, OOPD held approximately 46 formal meetings in FY 2013 regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues. FDA anticipates that the number of formal meetings, and therefore meeting packages, may increase only slightly as a result of this guidance; thus, the Agency estimates that the total responses will be 46 annually. As stated previously, it is current practice for stakeholders to submit meeting packages to the Agency in advance of any such formal meeting. The hours per response, which is the estimated number of hours that a stakeholder would spend preparing the meeting package in accordance with this draft guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the Agency expects it will take stakeholders this amount of time to gather and copy brief statements about the product, a description of details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the Agency. Therefore, the Agency estimates that stakeholders will spend 828 hours per year submitting meeting packages to the Agency prior to a formal meeting regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues.

Draft meeting minutes: Based upon information collected from OOPD program areas, OOPD received approximately 46 draft meeting minutes for formal meetings and 21 draft meeting minutes for informal meetings in FY 2013 regarding orphan drug designation requests, HUD designation requests, rare pediatric disease designation requests, funding opportunities through the Orphan Products Grants Program and the Pediatric Device Consortia Grants Program, and orphan product patient-related issues. FDA anticipates that the number of stakeholders submitting draft meeting minutes may remain the same or increase only slightly; thus, the Agency estimates that the total number of respondents will be 67 annually. As stated previously, it is current practice for stakeholders to submit draft meeting minutes to the Agency after all formal meetings and certain informal meetings. The hours per response, which is the estimated number of hours that a stakeholder would spend preparing draft meeting minutes in accordance with this draft guidance, is estimated to be approximately 8 hours. Based on FDA's experience, the Agency expects it will take stakeholders this amount of time to summarize the meeting discussion points, agreements, disagreements, and action items. Therefore, the Agency estimates that stakeholders will spend 536 hours per year submitting draft meeting minutes to the Agency documenting the meeting outcomes, agreements, disagreements, and action items as followup to all formal and certain informal meetings.

FDA invites comments on this analysis of information collection burdens.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Meeting requests, packages, and minutes	Number of stakeholders	Number of responses per stakeholder	Total annual responses	Average burden per response	Total hours
Meeting Requests (informal)	2,120	1	2,120	3	6,360
Meeting Requests (formal)	46	1	46	10	460
Meeting Packages	46	1	46	18	828
Meeting Minutes	67	1	67	8	536
Total					8,184

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is necessary to send only one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or at *http://www.regulations.gov*.

Dated: April 2, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07908 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0252]

Watson Laboratories, Inc.; Withdrawal of Approval of Bupropion Hydrochloride Extended-Release Tablets, 300 Milligrams

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of Bupropion Hydrochloride (HCl) Extended-Release (ER) Tablets, 300 Milligrams (mg) (Bupropion HCl ER Tablets, 300 mg), under abbreviated new drug application (ANDA) 77–715, held by Watson Laboratories, Inc. (Watson), 4955 Orange Dr., Fort Lauderdale, FL 33314. Watson has voluntarily requested that approval for this product be withdrawn and waived its opportunity for a hearing.

DATES: Effective April 9, 2014.

FOR FURTHER INFORMATION CONTACT: Carolina M. Wirth, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6282, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: FDA approved ANDA 77–715 for Bupropion HCl ER Tablets, 300 mg on June 13, 2007, under section 505(j) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(j)). Bupropion HCl ER Tablets, 300 mg was indicated for the treatment of major depressive disorder. On September 24, 2013, FDA requested that Watson voluntarily withdraw its Bupropion HCl ER Tablets, 300 mg from the market after results of a bioequivalence study conducted by Watson showed that the firm's Bupropion HCl ER Tablets, 300 mg are not therapeutically equivalent to the 300-mg strength of the reference listed drug. In a letter dated September 30, 2013, Watson requested that FDA withdraw approval of the 300-mg strength of Bupropion HCl ER Tablets, approved under ANDA 77–715, under § 314.150(d) (21 CFR 314.150(d)). In that letter, Watson also waived its opportunity for a hearing. The Agency acknowledged Watson's requests in a letter dated October 4, 2013.

Therefore, under section 505(e) of the FD&C Act (21 U.S.C. 355(e)) and § 314.150(d), and under authority delegated by the Commissioner to the Director, Center for Drug Evaluation and Research, approval of the 300-mg strength of Bupropion HCl Extended-Release Tablets under ANDA 77–715 is withdrawn (see **DATES**). Distribution of this product 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)).

Dated: April 3, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–07897 Filed 4–8–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Organization, Functions, and Delegations of Authority

Part GFJ

Indian Health Service

Navajo Area Office

Part GFJ, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), as amended at 52 FR 47053–67, December 11, 1987, as amended at 60 FR 56606, November 9, 1995, as amended at 61 FR 67048, December 19, 1996, as amended at 69 FR 41825, July 12, 2004, as amended at 70 FR 24087, May 6, 2005 70 FR 60350, October 17, 2005, and most recently amended at 71 FR 69570, December 1, 2006, is hereby amended to reflect a reorganization of the Navajo Area Indian Health Service (IHS). The purpose of this re-organization proposal is to update the current approved Navajo Area IHS organization structure due to the decrease in Area shares from Federal facilities transitioning to Public Law 93–638 Indian Self-Determination and Education Assistance Act facilities. Delete the functional statements for the Navajo Area IHS in their entirety and replace with the following:

Organizations and Functions

Department of Health and Human Services
Indian Health Service (G)
Navajo Area Indian Health Service (GFJ)

Office of the Area Director (GFJ1)

(1) Plans, develops and directs the Area Program within the framework of Indian Health Service (IHS) policy in pursuit of the IHS mission; (2) delivers and ensures the delivery of high quality comprehensive health services; (3) coordinates the IHS activities and resources internally and externally with those of other governmental and nongovernmental programs; (4) promotes optimum utilization of health care services through management and delivery of services to American Indians and Alaska Natives; (5) encourages the full application of the principles of Indian preference and Equal Employment Opportunity (EEO); and (6) provides Indian Tribes and other Indian community groups with optional ways of participating in the Indian health programs including an opportunity to participate in developing the mission, values and goals for the Navajo Area Indian Health Service (NAIHS).

Branch of Planning (GFJ1A)

Provides advice on program planning and evaluation activities to include:

(1) Strategic planning coordination at the Area level, including planning, implementing, and monitoring progress on the achievement of the Area Strategic Plan; (2) facilities planning, including the development of program justification documents, program of requirements, quarters justifications, and other required facilities planning and construction documents; (3) staffing requirements and projections for Service Units, facilities projects, and other needs; (4) statistical and epidemiological reporting, analysis, and monitoring, reporting, and including monitoring health status, morbidity, mortality, patient care, health services, health systems, population, demographic, and other health related data for the Area, Service Units, Tribes, States, health programs, universities, researchers, and the general public; (5) developing and implementing data quality improvements and strategies; (6) ensuring resource allocation methodologies are current by updating and providing technical support for resource allocation to the Office of the Area Director (OAD) and the Navajo Area Management Council; (7) providing other program planning and health systems planning activities and technical support to the OAD by

preparing briefings, issue papers, and other analyses for the OAD and assisting local entities in health systems program development, implantation, and evaluation activities; (8) carrying out the functions of public affairs—by coordinating media affairs and IHS clearance on media and publications; (9) serving as coordinator for urban Indian health programs; (10) coordinating implementation and reporting of Government Performance Results Act performance measurements in the Area; and (11) coordinating research and evaluation activities including Institutional Review Board.

Branch of Indian Self-Determination (GFJ1B)

(1) Plans, coordinates and implements all tasks relative to contracting activities pursuant to the Indian Self-Determination and Education Assistance Act, Public Law 93–638; (2) coordinates and effectuates respectful and positive relations with Tribal, State and Federal Governments and agencies, and intra-agency departments at local and national offices; (3) develops supportive relationships with local Tribal Governments and Tribal organizations (contractors); (4) provides advice on the effect and impact of IHS policies, plans, programs and operations on Tribal operations and relationships; (5) advises on new methods and techniques for Indian community participation in, and management of their health programs; (6) provides technical assistance in such areas as financial resource management (inter/intra-agency), health board and staff training; (7) organizes, collaborates, promotes and maintains effective Tribal consultation with NAIHS health boards, Tribal Government programs, Tribal organizations and Tribal Leaders; (8) coordinates activities with IHS Headquarters (HQ) and NAIHS on relevant Tribal activities; (9) coordinates, assists and monitors inter-governmental and legislative activity and functions; (10) monitors and provides liaison for the maintenance of an effective financial management system on all aspects of contract funding; (11) responsible for Contracting Officer's functions as it relates to Public Law 93–638 contract functions for NAIHS including contract development, execution, administration, and maintenance of contract files; (12) assists, establishes and maintains effective contract administration service policies and procedures, regulations for all Tribal contracts and grants under Public Law 93–638; (13) advises and reports pertinent data/information to the Area Director, Executive Committee, Public Law 93–638 Negotiation Team, Service Unit Chief Executive Officers, Tribal Governments, and Tribal organizations relative to contracting activities; (14) compiles Area Director Report to Navajo Nation legislature on a quarterly basis; (15) collaborates with Area program offices, Public Law 93–638 contractors and IHS HQ on budget and program issues; (16) provides technical support to the Office of the General Counsel on Public Law 93–638 issues; (17) provides technical assistance and conducts monthly meeting on reconciliation and related tasks; and (18) assists with all administrative tasks in the operation of all Office of Indian Self-Determination programs, functions, services and activities.

Equal Employment Opportunity Staff (GFJ1C)

(1) Advises the Area Director and other key management officials in the execution of their EEO responsibilities; (2) provides program direction and leadership for the Area EEO program and procedures; and (3) ensures the elimination of discrimination practices in employment, promotion, training, treatment of applicants, and employees, because of race, color, religion, national origin, sex, age.

Office of Administration and Management (GFJ2)

(1) Plans, directs, and coordinates NAIHS activities in the areas of policy, internal controls reviews, financial management, human resources management, third-party reimbursements, contracts management, procurement, personal property accountability/management, and administrative services; (2) serves as the Navajo Area principal advisor on all Area organization and management policy activities; and (3) provides guidance and assistance to Service Units in the overall development, planning and implementation of administrative functions.

Division of Financial Management (GFJ2A)

(1) Provides direction for the organization, coordination, and execution of all budget and financial operations of the Area; (2) monitors fund control operations of Service Units and program offices; (3) develops and implements budget, fiscal, and accounting procedures; (4) conducts reviews and analyses to ensure compliance with Area policy; (5) interprets policies, guidelines, manual issuances, Office of Management and Budget (OMB) circulars, directives and other instructions issued by IHS, Public Health Service (PHS), Department of Health Human Services (HHS), OMB, and Congress as it relates to the formulation of Area and Service Units budgets and budget execution; (6) develops and makes recommendations of Area budget execution by Service Unit; (7) establishes and maintains memorandum accounts of obligations for allowances through use of commitment registers; and (8) monitors and ensure proper obligation of prior year funds.

Branch of Accounting (GFJ2A1)

(1) Provides advice and guidance to Area and Service Unit staff in the areas of Accounts Payable, Cash Management, Federal/Inter-agency Transactions, and Travel; (2) advises Area and Service Unit staff on the interpretation of accounting data and reports received from IHS HQ; (3) assures that accounting transactions are entered properly and prepares periodic or special purpose reports and financial statements for Area Divisions and Service Units; (4) provides interpretation and ensures compliance with operating policies, procedures, guidelines via Federal Travel Regulations, Federal Property Management Regulations, Joint Travel Regulations, HHS Travel Manual, Indian Health Manual-Travel Management; and (5) participates in reconciliations of all funding sources (Federal and Tribal) on a regular basis.

Branch of Budget (GFJ2A2)

(1) Ensures that accurate and current information is available at all times for the Navajo Area Executive Staff, Division Directors, and Service Unit management teams; (2) ensures that funds are allotted properly and accounted for in line with acceptable Federal accounting practices; (3) analyzes obligation trends and prepares periodic reports; and (4) assures that reconciliations of all funding sources (Federal and Tribal) are accomplished on a regular basis.

Branch of Third-Party (GFJ2A3)

(1) Establishes liaison and coordinates Medicare/Medicaid activities with State agencies; (2) plans and coordinates the third-party activities of NAIHS facilities; (3) develops policy pertaining to third-party activities, and coordinates and develops overall policy and plans for the implementation of, Indian Health Care Improvement Act, 25 U.S.C. 1601 *et seq.;* (4) provides technical assistance and guidance to Service Unit third-party staff; (5) provides advice and guidance to Area and Service Unit staff in the

areas of collection, accounts receivable, debt management and internal audit; (6) develops and implements Area-wide internal controls and ensures compliance with established policies, procedures and regulations; and (7) develops and implements Area-wide internal controls and ensures compliance with established policies, procedures and regulations.

Division of Administrative Services (GAJ2B)

(1) Plans, develops, coordinates, and provides internal audit activities, office services, records management and delegation/directives control, personal property management, and other administrative services in support of Area programs; (2) provides guidance to Service Units in the operation and evaluation of procurement and acquisition of equipment, office services, telecommunications (voice), and transportation; (3) develops and executes administrative management systems, methods, and techniques designed to organize, maintain, monitor, evaluate, and report on the administrative aspects of the Area-wide supply management program in support of requirements and authorities of IHS, PHS, and HHS; (4) serves as the administrative authority on Federal personal property management laws, rules, regulations, policies, procedures, and practices; (5) organizes, maintains, monitors, evaluates, and reports on the acquisition, control, utilization, and disposition of personal property, (6) advises staff on the procedures for the development, revision, or cancellation of Area-issued directives and delegations; (7) ensures that Area and Service Unit personnel are afforded the opportunity to comment on draft IHS and NAIHS directives; (8) provides policy interpretation of Area-issued directives and delegations; and (9) maintains complete sets of IHS and NAIHS directives and delegations.

Branch of Property and Supply Management (GFJ2B1)

(1) Provides leadership, direction and overall management of all personal property in key areas of accountability, utilization, control, and disposal; (2) provides guidance on Area property management procedures including property accounting and reporting instructions; (3) executes physical inventories including the reconciliation of inventory reports and standard general ledger accounts; (4) documents all transactions affecting personal property; (5) provides technical assistance Area-wide on property software packages, e.g. Sunflower Assets; (6) provides overall management of Area Office expendable supplies to include reliability, timeliness, quality, service and cost effectiveness; (7) directs administrative and general supply items; (8) plans, develops, and manages the supply budget, operational stores; and (9) provides technical and staff assistance to Area and Service Units on matters related to the acquisition, utilization, disposition, and accountability of equipment.

Gallup Regional Supply Service Center (GFJ2B2)

(1) Responsible for the overall management of expendable supplies; (2) provides supply support directly to Service Units through management and operation of more than 2,000 pharmaceutical, laboratory, dental, medical, administrative, subsistence, and general supply items; (3) plans, develops, and manages supply budgets; and (4) provides technical and staff assistance to Service Units in matters related to the acquisition, utilization, disposition, and accountability of supplies.

Division of Acquisition Management and Contracts (GFJ2C)

Division of Acquisition Management and Contracts employees are located at each of the five Service Units. Positions located at the Service Units are considered Service Unit staff; however, due to the nature of the work, the line authority is with the Navajo Area Office.

(1) Plans, develops, and coordinates the execution of administrative systems, methods, and techniques for Area procurement activities; (2) provides guidance to Service Units on the administrative aspects of Federal contracting, procurement, and grant requirements; (3) serves as the principle focus for liaison activities regarding the administrative aspects of procurements, intra/inter-agency agreements, collaborative agreements, Memorandum of Agreements (MOA) and Memorandum of Understanding (MOU), etc.; (4) determines and delegates procurement authority; and (5) administers the purchase card program.

Shared Services Center (GFJ2C1)

(1) Coordinates the award and administration of all formally advertised and negotiated medical contracts; (2) provides planning, direction, monitoring, and evaluation assistance to Service Units on procurement functions; (3) ensures compliance with applicable Federal regulations and statutes; (4) prepares closeout documentation on all contracts, review and process claims, disputes, and termination actions; (5) evaluates and administers compliance and closeout of contracts; (6) plans, develops, and coordinates the execution of administrative systems, methods, and techniques for both Area Office and Service Unit procurement activities; (7) audits in-progress and completed work of Area Office and Service Units; (8) prepares and issues internal and field policies and guidance; (9) provides acquisition support through cost/price analysis and proposal and bid evaluation; (10) serves as NAIHS Ombudsman for development and fostering of contractual relationships; (11) reviews and processes other agreements, including intra/inter-agency agreements, collaborative agreements, MOAs, MOUs, etc.; and (12) provides technical assistance to non-acquisition personnel in the government and private sector.

Division of Information Technology (GFJ2D)

(1) Provides direction, supervision and management of all activities related to data processing, word processing, networking, video-conferencing, digital imaging transmission, computer security, telecommunications and archiving; (2) provides direct services through operation and management of associated automated data processing hardware and software; (3) provides technical assistance in related activities involving systems design, development, implementation, testing and training throughout the NAIHS, including staff assistance to Area and Service Unit staff; (4) provides data processing services, including computer operations, and information retrieval and analysis for operational data systems within the NAIHS; and (5) performs systems analysis, computer programming, computer systems security, system implementation and user training for the Area's data systems.

Branch of Systems Administration (GFJ2D1)

(1) Provides overall system administration support functions for the Navajo Area Office and Service Unit Resource and Patient Management System (RPMS), Microsoft® Windows©, Unix and Commercial Off The Shelf operating systems; (2) plans, develops, and manages the NAIHS Web site; (3) monitors and ensures all security requirements are met or exceeded; (4) develops applications for administrative, financial and clinical reporting requirements; and (5) evaluates new technologies and internet services.

Clinical Systems Staff (GFJ2D2)

(1) Plans, coordinates and assists in implementation of new software/hardware packages to support clinical care; (2) assists in deployment of electronic health records and associated Information Technology (IT) programs and systems as an essential function; (3) provides a liaison function to promote communication and coordination between clinical, IT staff and administrative staff; (4) analyzes and evaluates processes related to patient data flow, patient data quality and promotes changes for improved patient care; and (5) provides or acquires appropriate knowledge and training for both end users of clinical applications as well as IT and administrative staff.

Information Systems Security Staff (GFJ2D3)

(1) Develops and monitors information systems security requirements for NAIHS; (2) plans, develops, and monitors security policies, procedures and requirements for the Area Office and Service Units; (3) installs, manages and monitors security systems to protect patient privacy and confidentiality; (4) plans, designs and implements network and telecommunications systems to provide optimum voice, video and data transmission; and (5) manages and monitors a wide area network and local area networks for optimum digital imaging/telehealth utilization and availability.

Policy, Planning, and Management Staff (GFJ2D4)

(1) Coordinates and promotes the NAIHS IT strategic planning initiatives; (2) monitors, develops and manages the NAIHS information systems policies and procedures; (3) consults with administrative services and management regarding information systems initiatives and provides IT support; (4) maintains, monitors and coordinates the RPMS system-wide data elements requirements; and (5) assembles performance improvement measurements required by the Joint Commission (JC) or Centers for Medicare and Medicaid Services.

Office of Health Programs (GFJ3)

(1) Provides consultation and technical assistance to all operating and management levels of the NAIHS and Indian Tribes in the design and implementation of a health management delivery system; (2) provides guidance and support to all field activities related to the day-to-day delivery of health care; (3) provides Area-wide leadership in health programs in relation to the IHS goals, objectives, policies, and priorities; (4) directs the development and implementation of health care administration, coordinates activities in Contract Health Services (CHS) funds, standards, quality control and quality assurance, operational planning activities and program reviews of health programs; and (5) provides leadership, guidance, and coordination of the health manpower and training programs.

Branch of Clinical Services (GFJ3A)

(1) Provides direction for the operation of the health delivery activities of the NAIHS; (2) handles all logistics associated with the conduct of program reviews of Service Units; (3) advises on assessment findings for potential implications for NAIHS policy, plans, programs and operations; (4) develops quality of care evaluation criteria, standards of care, and guidance for the maintenance of the quality assurance programs of the NAIHS; and (5) conducts monitoring activities to assess the quality of care provided by the NAIHS.

Branch of Contract Health (GFJ3B)

(1) Establishes and provides organization, coordination, and implementation of policies and procedures for CHS operations, utilizing managed care concepts; (2) coordinates the development of an annual budget, with advice of allowance, for CHS fund control activities; (3) coordinates and evaluates medical, preventive, and hospital services provided through formal contractual procedures; (4) implements and administers a CHS quality assurance program that is data based and verifiable for monitoring the quality of CHS; (5) establishes strategic CHS plans that are developed to support organizations, issues, or work processes; (6) coordinates and implements information resource related processes that integrates selected techniques/methods with CHS systems to solve processes/problems; and (7) coordinates and analyzes appeal cases, high cost care cases, and deferred CHS services.

Branch of Health Promotion and Disease Prevention (GFJ3C)

(1) Plans, coordinates, and integrates health promotion and disease prevention services with other NAIHS programs and services; (2) promotes community and preventive health services to improve the health and well-being of beneficiaries with optimal use of available resources; (3) provides Area-wide leadership in preventive health services in relation to IHS goals, objectives, policies, and priorities; and (4) coordinates the development and implementation of preventive health services, standards, quality control, quality assurance, operational planning activities and program reviews of preventive health programs.

Dental Health Staff (GFJ3D)

(1) Develops, coordinates, and evaluates oral health programs; (2) establishes standards for staffing, technical procedures, use of facilities, and dental contracts; (3) coordinates professional recruitment, assignment and development for the Area; (4) improves quality and efficiency of the Dental Program; (5) assists in the promotion and maintenance of the quality of patient care and staff training to assure the application of appropriate standards for health care is provided; and (6) advises Service Units on matters pertaining to accreditation, quality assurance, and performance improvement programs.

Nursing Services Staff (GFJ3E)

(1) Provides leadership, direction and consultation to Service Units in the overall development, planning, monitoring and evaluation of nursing care services; (2) works closely with the Service Unit Chief Nurse Executives to provide professional guidance in formulating policies, procedures and standards of care and practices; (3) coordinates nursing recruitment, assignments, retention and career development; (4) assesses NAIHS professional staffing needs, providing technical assistance and guidance in the initiation of Area training programs for ancillary nursing personnel and continuing education of paraprofessional and professional nursing staff; (5) provides advice and ensures Area-wide compliance with established policies, procedures and regulations; (6) establishes a liaison and provides guidance to Navajo Area Public Health Nursing programs; (7) collaborates and coordinates nursing activities with NAIHS and Headquarters; and (8) acts as a liaison with Tribal programs including the Community Health Program.

Professional Recruitment Staff (GFJ3G)

(1) Develops the NAIHS program to recruit, assign and retain health care professionals; (2) assesses the professional staffing needs, coordinates the development of strategies to satisfy these needs, and increase the morale and retention of all professionals; (3) provides liaison with Commissioned Corps activities; (4) maintains contact with related professional societies, educational institutions, and other Federal, State and local agencies; (5)

coordinates professional recruitment, assignment and development of Dental Officers for the Area; and (6) enhances partnerships with Tribal healthcare organizations that are administered by the Navajo Nation and its contractors by providing recruitment and retention activities for the organizations that have left Tribal shares at the Area Office for this purpose.

Navajo Human Resources Region (GALG4)

Navajo Human Resources Region employees are located at each of the five Service Units. Positions located at the Service Units are considered Service Unit staff; however, the line authority is with the Navajo Human Resources Region at Navajo Area Office.

(1) Provides the full range of personnel management and personnel administrative services including manpower planning and utilization, staffing, recruitment, compensation and classification, training, career development, labor and employee relations, performance management, retirement, worker's compensation, and other Federal benefits services; (2) provides advice, consultation, and assistance to Navajo Area Office and Service Unit managers, and Tribal officials on personnel policy issues associated with the implementation of Public Law 93–638; (3) develops Area/Service Unit level training programs; (4) represents NAIHS in personnel management matters within and outside the Navajo Area; (5) implements personnel servicing responsibilities for the Public Law 93–638 human resources programs covered by the Area's appointing authority; (6) processes personnel actions and appointing of all civil service and Commissioned Corps employees; (7) implements the application of the principles, practices and techniques of personnel recruitment, examination, selection and/or placement; and (8) advises management regarding merit promotion principles and various Federal personnel regulations, as well as Indian preference law/policies, basic personnel management concepts in determining career patterns, identifying promotional and reassignment opportunities.

Division of Client Services

(1) Implements personnel servicing responsibilities for the NAIHS human resources programs covered by the Area's appointing authority; (2) processes personnel actions and appointing of all civil service and Commissioned Corps employees; (3) implements the application of the principles, practices and techniques of personnel recruitment, examination, selection and/or placement; (4) advises management regarding merit promotion principles and various Federal personnel regulations, as well as Indian preference law/policies, basic personnel management concepts in determining career patterns, identifying promotional and reassignment opportunities; (5) establishes and maintains the Area Position Classification Program assuring positions are classified according to Office of Personnel Management classification standards, techniques, and guides; (6) conducts regulatory classification reviews and provides technical guidance and assistance on special position reviews for Service Unit managers; and (7) provides advice to managers on position management techniques and practices.

Division of Strategic Planning

(1) Assesses organizational training needs; (2) conducts or coordinates training of Area/Service Unit staff; (3) manages clearances of training requests for the NAIHS and manages nominations for long-term training; (4) coordinates applications for Public Law 93– 437 scholarships and monitors student progress after scholarship award; and (5) evaluates training and career development activities throughout the Navajo Area.

Division of Workforce Relations

(1) Provides guidance, consultation, and assistance to management on employee relations matters (i.e., employee discipline, adverse actions, and appeals); (2) provides guidance, consultation, and assistance to management on labor relations matters, represents management in meetings with labor organizations, and before third-party officials; (3) provides guidance, consultation, and assistance to management on performance matters (i.e. employee performance plans and incentive awards); (4) provides assistance to employees on Federal retirement estimates and processing of retirement applications; (5) provides assistance to management and employees in the worker's compensation process in regards to employee injuries; and (6) provides assistance to employees regarding their Federal benefits including medical and life insurances, leave, and the processing of death benefits claims.

Office of Environmental Health And Engineering (GFJ4)

(1) Establishes policies related to NAIHS health care and sanitation facilities planning, construction, operations, and maintenance; (2) provides leadership, guidance and coordination to the overall Navajo facilities management programs; (3) develops and coordinates program requirements for planning, design and evaluation of health care and sanitation facilities; (4) develops, coordinates, and evaluates technical standards, guides, plans and requirements for health care and sanitation facilities construction requirements within the Navajo Area; (5) provides leadership, guidance, and coordination to the overall Area Biomedical Engineering Program and the Occupational Health and Safety Management Programs; (6) allocates appropriation funds to all Office of Environmental Health and Engineering (OEHE) programs and projects; and (7) advises the Area on Public Law 93–638 as it relates to OEHE services and activities.

Division of Environmental Health Services (GFJ4A)

(1) Plans, develops and appraises Area-wide environmental health services programs; (2) provides technical assistance to the Service Units and the Tribes on the implementation of comprehensive environmental health programs and services among Indian families and communities; (3) provides technical assistance on environmental health including institutional environmental health and plan reviews, vector control, epidemiology, sanitary facilities, and food sanitation to the IHS, Tribes and Federal and State agencies; (4) plans and implements an integrated Area-wide injury prevention and control program designed to reduce injury deaths and hospitalizations; (5) coordinates environmental responses to emerging diseases with Tribes, States, and other Federal agencies; and (6) manages and administers a Web-based environmental health database that helps determine resource requirement allocations.

Division of Sanitation Facilities Construction Services (GFJ4B)

(1) Administers the Indian Sanitation Facilities Construction Program through Public Law 86–121; (2) plans, develops, coordinates, appraises and evaluates Area-wide sanitation facilities construction activities conducted in cooperation with Tribal groups and other agencies; (3) provides engineering consultation regarding environmentally related public health programs; (4) provides technical liaison with other Governmental agencies, foundations and groups relative to public health engineering and environmental health; (5) provides personnel staffing, training, orientation, and development; (6)

ensures professional/technical/environmental standards compliance and support; (7) provides National Environmental Policy Act (NEPA) compliance documentation, approval, and support; (8) provides right-of-way easement documents, approval, and support; (9) provides specialty use/construction permits, approval, and support; (10) provides project funding document preparation, production, approval, and support; (11) coordinates multi-agency funded projects coordination, procurement, and task tracking; (12) provides procurement/warehousing/inventory of office and special order project materials/equipment/services; (13) provides project services, materials, equipment, and construction via Memorandum of Agreements and Public Law 93–638 contracts with Navajo Engineering Construction Authority and Navajo Tribal Utility Authority; (14) provides vehicle fleet maintenance, management, and support; (15) provides project electrical design, services, and support; (16) provides project accounting and payment services and/or support; (17) provides project final inspection/transfer process documentation, tracking, approval, and support; (18) provides technical support for writing, completion, and distribution of project final reports; and (19) coordinates feasibility studies related to Tribal, Tribal Chapter, and other outside agency requests.

Division of Facilities Management (GFJ4C)

(1) Develops and coordinates program requirements for planning, design and evaluation of health care facilities in the Navajo Area; (2) develops, coordinates, and evaluates technical standards, guidelines, plans, and requirements for health care facilities construction requirements within IHS; (3) develops and coordinates facility construction programs; (4) provides technical assistance and monitors Navajo Area and Tribal facilities planning and construction programs; (5) coordinates inter-agency requirements for shared or cooperative projects with agencies such as Department of Defense, Department of Veterans Affairs, State, Tribal, and regional planning bodies; (6) provides technical assistance and consultation to the Tribal Government to assist and brief those organizations on the progress of planning, design and construction projects; (7) ensures compliance with NEPA and other environmental regulations in planning, design and construction of health care facilities, support buildings, major renovations/expansions to existing facilities and staff quarters; (8) responsible for real property asset accountability of all IHS government property; (9) responsible for budget accounting for all construction projects for all funding sources; and (10) advises the NAIHS on Public Law 93–638 as it relates to OEHE services and activities.

Division of Biomedical Engineering (GFJ4D)

(1) Plans, develops, coordinates, appraises and evaluates Area-wide biomedical engineering programs; (2) assesses Service Unit biomedical engineering needs and develops appropriate action programs and modification to existing program functions; (3) coordinates staff assignments, designs medical equipment training and education programs for hospital and clinical staff and career development activities for the NAIHS; (4) provides engineering and technical assistance and consultation on biomedical engineering and telemedicine equipment, purchases, modifications, installation and hospital renovation and construction projects; (5) coordinates safety and emergency response planning activities; (6) ensures compliance with regulatory requirements and agencies imposed on IHS such as National Fire Protection Agency, Association for the Advancement of Medical Instrumentation, JC, Food and Drug Administration, etc.; (7) coordinates the modification, installation and design of medical, dental, and radiology equipment; (8) assesses and minimizes the clinical and physical risk of equipment use on patients and clinical staff through equipment maintenance, inspection, testing and quality assurance and risk management programs; (9) supports direct patient care programs by maintaining and certifying the operation and safety of all medical equipment; (10) provides specialized biomedical engineering equipment repair for all dental, medical, and radiology equipment; (11) coordinates and monitors complex medical and laboratory contracts Area-wide; (12) provides design and engineering of Picture Archiving and Communications System for radiology functions and recommends telemedicine applications for the applications for the clinical need and mission of IHS; and (13) specifies and designs telecommunications requirements for telemedicine to ensure sufficient bandwidth is available for the telemedicine programs.

Division of Occupational Health and Safety Management (GFJ4E)

(1) Performs industrial hygiene activities including compliance surveys of radiographic equipment; (2) assesses radiation exposure to patients; (3) provides quality assurance assessment of medical imaging processing; (4) provides surveys of occupational exposure to nitrous oxide, ethylene oxide, anesthetic gases, mercury and other chemical hazards; (5) evaluates ventilation systems in negative pressure isolation rooms, operating rooms and dental operations; (6) provides ergonomic analyses of workstations and high risk occupations; (7) provides safety and infection control program development and evaluation including training and consultative assistance for safety officers and infection control practitioners; (8) provides compliance reviews of existing policies and procedures; (9) develops model policies and procedures; (10) provides safety and infection control program accreditation compliance reviews; (11) provides occupational safety and infection control training for Service Unit staff; (12) provides environmental sampling to include sample collection and analysis of suspected asbestos-containing materials, lead-based paint and quantification of indoor air contaminants; (13) performs environmental assessments which include surveys to determine Service Unit compliance with Federal, State and local environmental regulations; (14) coordinates facilities management to conducts life safety code (building fire safety component) surveys; (15) conducts construction plan reviews for new construction and renovation; (16) consults with and advocates for facility managers on life safety code compliance issues; (17) coordinates Navajo Area emergency management planning, exercises and response; and (18) provides management training and consultation.

Division of Administrative Support (GFJ4G)

(1) Provides administrative direction and guidance to the operational Divisions within the NAIHS OEHE, including guidance provided to Area, District, and Field Offices located throughout the NAIHS; (2) performs accounting services for the OEHE Divisions, including planning and implementation of annual OEHE program budgets; (3) maintains annual OEHE budget commitment registers; (3) receives and approves vendor invoices; (4) provides certification of funds available within appropriate electronic

financial management and government travel systems; (5) ensures proper obligation and expenditure of program and project funds; (6) provides overall internal coordination with the NAIHS Divisions of Financial Management and the Division of Acquisition Management and Contracts, ensures appropriate financial transactions, documentation and reporting; (7) advises the OEHE Director on NAIHS OEHE IT needs and requirements, including computer equipment, computer networking, electronic mail, internet connectivity, new technologies, information system security awareness and compliance, and information system continuity of operations plans; (8) provides technical consultation and direct assistance to OEHE staff stationed at Area, District, and Field Offices concerning hardware and software installation, configuration, maintenance and repair; (9) assesses and monitors OEHE professional staffing needs; (10) coordinates with Division Directors to develop strategies to meet the needs and increase the morale and retention of OEHE staff; (11) works with Human Resources to prepare vacancy announcements and process personnel orders for civil servants and Commissioned Corps Officers; (12) encourages full program support and compliance concerning Indian preference and EEO requirements in hiring and managing staff; (13) oversees the OEHE staff professional development program; (14) receives, reviews, and processes OEHE training authorization documents to support continuing education and improved competencies among OEHE staff; (15) supports staff individual development plans (IDPs) and ensures training requests are consistent with established IDPs; (16) provides program management of OEHE personal property in terms of accountability, utilization, control, and disposal; (17) provides guidance on OEHE property management procedures including property accounting and reporting instructions; (18) documents all transactions affecting OEHE personal property; (19) assists the OEHE Director with Public Law 93–638 issues; (20) participates in formal Public Law 93–638 negotiations with the Navajo Nation and Tribal Organizations authorized by Navajo Nation to contract pursuant to Public Law 93–638; and (21) serves as members of the NAIHS Incident Response Team.

Navajo Area Service Units

Navajo Area IHS continues to be the primary health care provider for the Navajo Nation and San Juan Southern Paiute Tribe. The goal of the NAIHS is to provide for, and improve upon, the efficient delivery of high quality, comprehensive health care to the Navajo Nation, San Juan Southern Paiutes and all IHS beneficiaries served at NAIHS facilities. Comprehensive health care is provided through inpatient, outpatient and community health (preventive) programs. The goal is to provide high quality, comprehensive preventive health care to the Navajo Nation, San Juan Southern Paiutes and all IHS beneficiaries served at NAIHS facilities, including prenatal care, immunizations, well-baby clinics, family planning, health education, and chronic disease follow-up. Service Units in the NAIHS are as follows:

- Chinle Service Unit (GFJA)
- Crownpoint Service Unit (GFJB)
- Gallup Service Unit (GFJD)
- Kayenta Service Unit (GFJE)
- Shiprock Service Unit (GFJJ)

Dated: March 28, 2014.

Yvette Roubideaux,

Acting Director, Indian Health Service.

[FR Doc. 2014–07877 Filed 4–8–14; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Division of Cancer Epidemiology and Genetics (DCEG) Fellowship Program and Summer Student Applications (NCI)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Jackie Lavigne, Office of Education, Division of Cancer Epidemiology and Genetics, 9609 Medical Center Drive, MSC 9776, Bethesda, MD 20892–9776 or call non-toll-free number 240–376–7237 or Email your request, including your address to: *lavignej@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Division of Cancer Epidemiology and Genetics (DCEG) Fellowship Program and Summer Student Applications (NCI), Existing Collection in Use without OMB Control Number, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The Division of Cancer Epidemiology and Genetics (DCEG) Office of Education (OE) administers a variety of programs and initiatives to recruit pre-college through post-doctoral educational level individuals into the Intramural Research Program to facilitate their development into future biomedical scientists. DCEG trains post-doctoral, doctoral candidates, graduate and baccalaureate students, through full time fellowships, summer fellowships, and internships in preparation for research careers in cancer epidemiology and genetics. The proposed information collection involves brief online applications completed by applicants to the full time and the summer fellowship programs. Full-time fellowships include: Full-time Equivalents (FTE) and non-FTE fellowships for US citizens, permanent residents and international fellows. These applications are essential to the administration of these training programs as they enable OE to determine the eligibility and quality of potential awardees; to assess their potential as future scientists; to determine where mutual research interests exist; and to make decisions regarding which applicants will be proposed and approved for traineeship awards. In each case, completing the application is voluntary, but in order to

receive due consideration, the prospective trainee is encouraged to complete all relevant fields. The information is for internal use to make decisions about prospective fellows and students that could benefit from the DCEG program.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 175.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Summer Students	300	1	20/60	100
Full-time Fellows	150	1	30/60	75

Dated: April 3, 2014.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2014–07957 Filed 4–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Process Assessment Review of the Division of Acquired Immunodeficiency Syndrome (DAIDS) Critical Events Policy Implementation (CEPI) Program (NIAID)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Lyndi Lahl, RN, MS, Office for Policy in Clinical Research Operations, DAIDS, NIAID, 6700B Rockledge Drive, Room 4254, Bethesda, MD 20852, or call non-toll-free number 301–435–3756, or Email your request, including your address to: Lynda.Lahl@nih.gov. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Process Assessment Review of the Division of Acquired Immunodeficiency Syndrome (DAIDS) Critical Events Policy Implementation (CEPI) Program, 0925-New, National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH).

Need and Use of Information Collection: This is a new data collection to assess the CEPI program's progression to fulfillment of its program goals and will assess whether the CEPI program is implemented and functioning as intended. The program goals for CEPI are: (1) Awareness & Accessibility—The target populations (DAIDS Staff, extramural researchers, external stakeholders) are aware of the DAIDS Critical Events (CE) policy and manual and associated documents and whether the policy and associated documents are readily accessible.; (2) Understandability—The Critical Events policy and manual clearly articulate DAIDS expectations for CE policy implementation by the target populations. The CE policy and manual should establish a common base of understanding and promote positive attitudes towards event reporting; and (3) Applicability—Target populations are able to correctly identify which Critical Events have occurred at their sites and are able to apply the CE policy and manual to their events.

Findings will provide data to inform DAIDS and Protection of Participants, Evaluation and Policy (ProPEP) leadership regarding further policy deployment decisions. Information collected will be used to determine how effectively the CEPI Program meets extramural researchers' needs. By assessing the CEPI Program, DAIDS will determine how successfully it is reaching its goals—to facilitate and improve the quality of clinical research conducted within the division. In addition, the CEPI Program assessment will determine whether previously recommended improvements included in the DPIP assessment were successfully incorporated into the policy rollout process. The results may be used as a model for policy development to facilitate compliance in reporting certain incidents and implementation in other National Institutes of Health (NIH) Institutes and Centers (ICs) and will be shared with all interested divisions and institutes within the NIH. There are no plans to share this information with the public.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 386.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Data collection	Number of respondents	Number of responses per respondent	Average time per response	Total annual burden hours
DAIDS Staff, ER/ES	Survey	500	1	30/60	250
	Focus Group-IC Review	81	1	10/60	14
	Focus Group	81	1	90/60	122

Dated: April 3, 2014.

Brandie Taylor,

Project Clearance Liaison, NIAID, NIH.

[FR Doc. 2014–07960 Filed 4–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 209 and 37 CFR part 404 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Monoclonal Antibody Fragments for Targeting Therapeutics to Growth Plate Cartilage

Description of Technology: A child's growth is dependent on the proper functioning of the growth plate, a specialized cartilage structure located at the ends of long bones and within the vertebrae. The primary function of the growth plate is to generate new cartilage, which is then converted into bone tissue and results in the lengthening of bones. Current treatments for severe short stature and skeletal growth disorders are limited. Recombinant human growth hormone (GH) is typically used but the results are less than optimal and have potential adverse effects. The instant invention discloses that monoclonal antibodies that bind to matrilin-3, a protein specifically expressed in cartilage tissue, could be used for treating or inhibiting growth plate disorders, such as a skeletal dysplasia or short stature.

Potential Commercial Applications: A new treatment option for growth plate disorders, such as skeletal dysplasia or short stature.

Competitive Advantages: Avoidance of the risks associated with systemic treatment using growth hormone, such as increased intracranial pressure, slipped capital femoral epiphysis, insulin resistance, and possibly type II diabetes.

Development Stage:

- Early-stage.
- *In vitro* data available.

Inventors: Jeffrey Baron (NICHD), Sao Fong (Crystal) Cheung (NICHD), Chun Kin Julian Lui (NICHD), Dimiter S. Dimitrov (NCI), Zhongyu Zhu (NCI).

Intellectual Property: HHS Reference No. E–003–2014/0—US Application No. 61/927,904 filed 15 Jan 2014.

Licensing Contact: Betty B. Tong, Ph.D.; 301–594–6565; *tongb@mail.nih.gov*.

Collaborative Research Opportunity: The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development and the National Cancer Institute are seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize treatment of skeletal disorders and short stature to increase growth using targeting antibodies. For collaboration opportunities, please contact Joseph Conrad III, Ph.D. at *jmconrad@mail.nih.gov.*

Human Antibodies Against Middle East Respiratory Syndrome Coronavirus

Description of Technology: No effective therapeutics or vaccines are available against Middle East Respiratory Syndrome Coronavirus (MERS-CoV). This technology is for human antibodies targeting MERS-CoV. Certain of these antibodies bind with epitopes of the MERS-CoV receptor binding domain (RBD) of MERS-CoV spike (S) protein with high affinity and are capable of neutralized the virus in a pseudovirus assay. The MERS-CoV–S protein is believed to be required for binding and virus entry during MERS-CoV infection. The human to human aspect of transmission and the high mortality rate associated with MERS-CoV infection have raised concerns over the potential for a future MERS-CoV pandemic and emphasized the need for development of effective therapeutics and vaccines. The antibodies of this technology represent candidate antibody-based therapeutics for treatment of MERS-CoV infection.

Potential Commercial Applications: Antibody-based therapeutics for treatment of MERS-CoV infection.

Competitive Advantages:

- No vaccine or other biologic therapy is available.
- High binding (sub-nanomolar) affinity.
- Relative safety and long half-lives.

Development Stage:

- Early-stage.
- *In vitro* data available.

Inventors: Dimiter Dimitrov (NCI), Tianlei Ying (NCI), Tina Yu (NCI), Kwok Yuen (University of Hong Kong).

Publications:

1. Zaki AM, et al. Isolation of a novel coronavirus from a man with pneumonia in Saudi Arabia. N Engl J Med. 2012 Nov 8;367(19):1814–20. [PMID 23075143]
2. Zhu Z, et al. Exceptionally potent cross-reactive neutralization of Nipah and Hendra viruses by a human monoclonal antibody. J Infect Dis. 2008 Mar 15;197(6):846–53. [PMID 18271743]
3. Zhu Z, et al. Potent cross-reactive neutralization of SARS coronavirus isolates by human monoclonal antibodies. Proc Natl Acad Sci U S A. 2007 Jul 17;104(29):12123–8. [PMID 17620608]

Intellectual Property: HHS Reference No. E–002–2014/0—U.S. Patent Application No. 61/892,750 filed 18 Oct 2013.

Licensing Contact: Tedd Fenn; 424–297–0336; *Tedd.Fenn@nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute, Cancer and Inflammation Program, Laboratory of Experimental Immunology, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize animal studies, cGMP Manufacturing, clinical trials. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Novel Small Molecule Antimalarials for Elimination of Malaria Transmission

Description of Technology: The transmission of malaria begins with injection of sporozoites into a human from the bite of a female anopheles mosquito, which initiates the malarial life cycle in humans. When a mosquito bites an infected human, the ingested male and female malaria gametocytes fuse to form a zygote that eventually becomes an oocyst. Each oocyst produces thousands of sporozoites which migrate to the mosquito salivary glands, ready to infect a new human host.

Currently, the available therapeutics for malaria can effectively eliminate the asexual stages of malarial parasites that cause clinical symptoms in patients. However, their abilities to eliminate the gametocyte (sexual stage of the parasites) as well as the liver stage parasites are limited. The subject technology involves novel compounds, which include Torin 2, that are potently gametocytocidal in *in vitro* assays and in a mouse model of malaria, completely blocked the host-to-mosquito transmission by suppressing oocytes formation in mosquitoes.

Potential Commercial Applications: Novel therapeutics for elimination of malaria transmission and treatment of drug resistant malaria patients.

Competitive Advantages:

- These novel compounds are effective against gametocytes, the sexual stage of malarial parasites, whereas currently available antimalarials have limited effectiveness against this form of the parasite.
- The compounds provide an alternative treatment against malaria for patients with glucose-6-phosphate dehydrogenase deficiency.
- These compounds are active against drug resistant strains of malaria.

Development Stage:

- Early-stage.
- In vitro data available.
- *In vivo* data available (animal).

Inventors: Wei Sun (NCATS), Wei Zheng (NCATS), Seameen J. Dehdashti (NCATS), Noel T. Southhall (NCATS), Takeshi Tanaka (NIAID), Wenwei Huang (NCATS), John C. McKew (NCATS).

Publication: Sun W, et al. Chemical signatures and new drug targets for gametocytocidal drug development. Sci Rep. 2014 Jan 17;4:3743. [PMID 24434750].

Intellectual Property: HHS Reference No. E–751–2013/0—U.S. Provisional Patent Application No. 61/904,884 filed 15 Nov 2013.

Licensing Contact: Kevin W. Chang, Ph.D.; 301–435–5018; *changke@mail.nih.gov*.

Compositions and Methods for Improved Lyme Disease Diagnosis

Description of Technology: This CDC-developed technology entails novel compositions and methods related to the diagnosis of Lyme disease. Lyme disease, caused by the *Borrelia burgdorferi* bacterium, is the most common tick-borne infectious disease in the US and Europe. Diagnosis of Lyme disease is particularly challenging as symptoms often appear long after exposure. At present, the only FDA-approved diagnostic for Lyme disease involves patient blood tests for particular antibodies; these include an ELISA to measure patient antibody levels and a Western blot assay to detect antibodies specific to *B. burgdorferi.* One problem with the current diagnostic approach is that patient antibodies for the bacterium are not detectable until two to five weeks following the initial tick bite, and there is no way to differentiate between antibodies generated by a current infection or by a prior exposure.

This technology hinges on a unique approach that would detect whether a patient has a presently active *B. burgdorferi* infection. A fully developed assay based on these innovations would exploit the detection of the *B. burgdorferi* BbHtrA protease and/or its unique cleavage products to carry out a timely diagnosis of infection. While other direct detection methods, such as culturing, PCR and antigen capture, are often used in research laboratory settings, they have not demonstrated consistent efficacy as clinical diagnostic tools in the first few weeks following tick bite exposure. Further, despite the lack of a rapid and efficient readout for the aforementioned antibody-based Lyme disease diagnostics, there are currently no FDA-approved comparable alternatives. This technology provides a unique opportunity for rapid and accurate identification of *B. burgdorferi* infection, as well as distinguishing current bacterium exposure from prior exposure, thereby providing critical information to better inform treatment strategy and improve patient outcomes.

Potential Commercial Applications:

- Lyme disease/*B. burgdorferi* diagnostics.
- Zoonotic/tick-borne disease surveillance.
- Informing clinician strategies and improving patient outcomes.
- Reducing diagnosis time for patients concerned about tick bites.

Competitive Advantages:

- Present Lyme disease diagnostics cannot distinguish between current bacterium infections and prior exposures; this technology will provide such distinctions.
- Predominant antibody-based diagnostics currently available require weeks before efficacy and may require re-testing at later dates to avoid false negatives; this technology directly addresses this problem.
- Other alternative direct detection methods (e.g., PCR, culturing) have shown limited efficacy as clinical diagnostics.

Development Stage: In vitro data available.

Inventors: Barbara Johnson and Theresa Russell (CDC).

Publications:

1. Stricker RB, et al. *Borrelia burgdorferi* aggrecanase activity: more evidence for persistent infection in Lyme disease. Front Cell Infect Microbiol. 2013 Aug 14;3:40. [PMID 23967405]
2. Russell TM, et al. Lyme disease spirochaetes possess an aggrecan-binding protease with aggrecanase activity. Mol Microbiol. 2013 Oct;90(2):228–40. [PMID 23710801]
3. Russell TM, et al. *Borrelia burgdorferi* BbHtrA degrades host ECM proteins and stimulates release of inflammatory cytokines in vitro. Mol Microbiol. 2013 Oct;90(2):241–51. [PMID 23980719]

Intellectual Property: HHS Reference No. E–204–2013/0 –

- U.S. Application No. 61/588,820 filed 20 Jan 2012.
- PCT Application No. PCT/US2013/022379 filed 21 Jan 2013.

Related Technology: HHS Reference No. E–573–2013/0.

Licensing Contact: Whitney Blair, J.D., M.P.H.; 301–435–4937; *whitney.blair@nih.gov.*

Zirconium-89 PET Imaging Agent for Cancer

Description of Technology: The technology is tetrahydroxamate chelation technology that provides a stable Zr-89 chelated immuno-PET imaging agent for cancer that reduces the amounts of Zr-89 that is released

from the current state of the art chemistry and agent, desferrioxamine B (DFB), that is currently in clinical use. The tetrahydroxamates in either a linear or macrocyclic form exhibit greater stability as chelating agents for Zr-89 as compared to the currently in use siderophore DFB, a trihydroxamate. In imaging agents currently in clinical development, Zr-89 leaks from the DFB chelate which results in radioisotope accumulation in the bone 2–3 days after injection that increases over time. Upon in vitro examination, the tetrahydroxamate chelated Zr-89 remained kinetically inert at 7 or more days while that formed from DFB demonstrated instability.

Potential Commercial Applications:

- PET imaging.
- Cancer imaging.
- Immuno-PET imaging.

Competitive Advantages:

- High stability.
- Low toxicity.

Development Status:

- Prototype.
- *In vitro* data available.

Inventors: Francois Guerard (NCI), Yong Sok Lee (CIT), Martin Brechbiel (NCI).

Publications:

1. Zhou Y, et al. Mapping biological behaviors by application of longer-lived positron emitting radionuclides. 2013 Jul;65(8):1098–111. [PMID 23123291]
2. Deri MA, et al. PET imaging with 89Zr: from radiochemistry to the clinic. Nucl Med Biol. 2013 Jan;40(1):3–14. [PMID 22998840]
3. Vosjan MJ, et al. Conjugation and radiolabeling of monoclonal antibodies with zirconium-89 for PET imaging using the bifunctional chelate p-isothiocyanatobenzyl-desferrioxamine. Nat Protoc. 2010 Apr;5(4):739–43. [PMID 20360768]
4. Nayak TK, et al. PET and MRI of metastatic peritoneal and pulmonary colorectal cancer in mice with human epidermal growth factor receptor 1-targeted 89Zr-labeled panitumumab. J Nucl Med. 2012 Jan;53(1):113–20. [PMID 22213822]
5. Evans MJ, et al. Imaging tumor burden in the brain with 89Zr-transferrin. J Nucl Med. 2013 Jan;54(1):90–5. [PMID 23236019]
6. Guerard F, et al. Investigation of Zr(IV) and 89Zr(IV) complexation with hydroxamates: progress towards designing a better chelator than desferrioxamine B for immuno-PET imaging. Chem Commun (Camb). 2013 Feb 1;49(10):1002–4. [PMID 23250287]
7. Guerard F, et al. Rational Design, Synthesis and Evaluation of Tetrahydroxamic Acid Chelators for Stable Complexation of ZrIV. Chem Eur J. (in press)

Intellectual Property: HHS Reference No. E–111–2013/0 –

- U.S. Provisional Patent Application 61/779,016 filed 13 Mar 2013.
- PCT Application PCT/US2014/24048 filed 12 Mar 2014.

Related Technologies:

- HHS Reference No. E–194–2007/0.
- HHS Reference No. E–226–2006/0.
- HHS Reference No. E–067–1990/0.

Licensing Contact: Michael A. Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov.*

Collaborative Research Opportunity: The Radioimmune & Inorganic Chemistry Section, ROB, CCR, NCI, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize tetrahydroxamate chelation technology for Zirconium-89 PET Imaging. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Ex-vivo Production of Regulatory B-Cells (Breg) for Use in Auto-Immune Indications

Description of Technology: Regulatory B-cells (Breg) play an important role in reducing autoimmunity and reduced levels of these cells are implicated in etiology of several auto-inflammatory diseases. Despite their impact in many diseases, their physiological inducers are unknown. Given that Bregs are a very rare B-cell, identifying factors that promote their development would allow in vivo modulation of Breg levels and ex-vivo production of large amounts of antigen-specific Bregs to use in immunotherapy for auto-inflammatory diseases.

The invention herein, is a method of ex-vivo production of Breg. The method of production involves treating isolated primary B cells or B cell lines with IL–35 to induce their conversion into IL–10-producing Breg. Using this method, B-regulatory cells can be produced in large quantity and used in a Breg-based therapy against autoimmune diseases including but not limited to uveitis and sarcoidosis.

Potential Commercial Applications:

- *In vivo* modulation of Breg levels.
- Supplement the low population of Breg in a patient suffering from an autoimmune disease where it is known that B-regulatory cell populations are severely reduced (i.e. uveitis)
- Use in immunotherapy for the treatment of other autoimmune diseases such as multiple sclerosis, sarcoidosis, colitis, and arthritis.

Competitive Advantages:

- There is no known biological or chemical agent that can induce Bregs *ex-vivo.*
- This method produces large quantities of Bregs and can therefore aid in Breg-based therapy.
- Pre-clinical mouse model data available that uses the Bregs to treat experimental autoimmune uveitis (EAU).

Development Stage: In vivo data available (animal).

Inventors: Charles E. Egwuagu, Ren-Xi, Wang, Cheng-Rong Yu (all of NEI).

Relevant Publications:

1. Shen P, et al. IL–35-producing B cells are critical regulators of immunity during autoimmune and infectious diseases. Nature. 2014 Mar 20;507(7492):366–70. [PMID 24572363]
2. Ding Q, et al. Regulatory B cells are identified by expression of TIM–1 and can be induced through TIM–1 ligation to promote tolerance in mice. J Clin Invest. 2011 Sep;121(9):3645–56. [PMID 21821911]
3. Carter NA, et al. Mice lacking endogenous IL–10-producing regulatory B cells develop exacerbated disease and present with an increased frequency of Th1/Th17 but a decrease in regulatory T cells. J Immunol. 2011 May 15;186(10):5569–79. [PMID 21464089]
4. Collison LW, et al. IL–35-mediated induction of a potent regulatory T cell population. Nat Immunol. 2010 Dec;11(12):1093–101. [PMID 20953201]
5. Kochetkova I, et al. IL–35 stimulation of CD39+ regulatory T cells confers protection against collagen II-induced arthritis via the production of IL–10. J Immunol. 2010 Jun 15;184(12):7144–53. [PMID 20483737]

Intellectual Property: HHS Reference No. E–036–2012/0—

- U.S. Patent Application No. 61/637,915 filed 25 Apr 2012.
- PCT Application No. PCT/US2013/036175 filed 11 Apr 2013, which published as WO 2013/162905 on 31 Oct 2013.

Licensing Contact: Yolanda Mock-Hawkins, Ph.D., M.B.A.; 301–435–5170; *Yolanda.Hawkins@nih.gov.*

Collaborative Research Opportunity: The National Eye Institute, Molecular Immunology Section, is seeking statements of capability or interest from parties interested in collaborative

research to further develop, evaluate or commercialize Ex-vivo Production of Regulatory B-Cells (Breg). For collaboration opportunities, please contact Alan Hubbs, Ph.D. at *hubbsa@mail.nih.gov.*

SCGB3A2 for Treatment of Cancer

Description of Technology: A novel method of treating lung cancer using uteroglobin-related protein 1 (UGRP1), also known as secretoglobin family 3A member 2 (SCGB3A2) is disclosed. SCGB3A2 is a member of the uteroglobin/Clara cell secretory protein or Secretoglobin gene superfamily of secretory proteins that is predominantly expressed in the epithelial cells of the trachea, bronchus, and bronchioles, and is known for its anti-inflammatory activity. The inventors have previously discovered the growth factor and anti-fibrotic activities of SCGB3A2 and proposed the use of SCGB3A2 as a therapeutic to treat neonatal respiratory distress and as an agent to promote lung development, and to inhibit or reduce pulmonary fibrosis caused by an anti-cancer agent. Recently, the inventors have made a surprising discovery that the secretory protein SCGB3A2 also has anti-cancer activity, in addition to its known growth factor, anti-inflammatory, and anti-fibrotic activities. The inventors have used SCGB3A2-induced inhibition of metastasis in the iv- and sc-injected LLC cells lung metastasis model, Scgb3a2-null mice injected with LLC cells with and without SCGB3A2, and Scgb3a2-lung transgenic mice subjected to tobacco carcinogen induced mouse carcinogenesis bioassay to confirm their discovery that SCGB3A2 has anti-cancer activity.

Potential Commercial Applications: Therapeutics for treating cancers.

Competitive Advantages:

- This technology provides, for the first time, a new mode of treating lung cancer using SCGB3A2.
- Because SCGB3A2 is predominantly expressed in lung airways, low toxicity is anticipated by the use of SCGB3A2 as a therapeutic.
- Unique mode of action (affects both metastasis and growth (proliferation) of cancer cells) makes SCGB3A2 more effective as a therapeutic.

Development Stage:

- Early-stage.
- *In vitro* data available.
- *In vivo* data available (animal).

Inventors: Kimura Shioko, Cai Yan, and Murata Miyuki (NCI).

Publication: Cai Y, et al. Preclinical evaluation of human secretoglobin 3A2 in mouse models of lung development and fibrosis. Am J Physiol Lung Cell Mol Physiol. 2014 Jan 1;306(1):L10–22. [PMID 24213919].

Intellectual Property: HHS Reference No. E–286–2006/3—US Provisional Patent Application No. 61/862,429 filed 05 Aug 2013.

Related Technologies: HHS Reference Nos. E–286–2006/0, 1, 2–

- US Patent No. 8,133,859 issued 13 Mar 2012.
- US Patent No. 8,501,688 issued 06 Aug 2013.
- US Patent Application No. 13/959,628 filed 05 Aug 2013.

Licensing Contact: Suryanarayana (Sury) Vepa; 301–435–5020; *vepas@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Laboratory of Metabolism, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize SCGB3A2 as an anti-cancer reagent, which mainly works through the JNK pathway. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Dated: April 3, 2014.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2014–07871 Filed 4–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Grant Applications.

Date: May 2, 2014.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An.18B, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Margaret J. Weidman, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.18B, Bethesda, MD 20892, 301–594–2773, *weidmanma@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 3, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–07863 Filed 4–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Pragmatic Research and Natural Experiments.

Date: June 11, 2014.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 3, 2014.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–07862 Filed 4–8–14; 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 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: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: April 15–16, 2014.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Biology.

Date: May 8, 2014.

Time: 11:00 a.m. to 12:00 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: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 3, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–07861 Filed 4–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: May 4–6, 2014.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room GF144, Bethesda, MD 20892, (301) 435–2232, *koretskya@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: April 2, 2014.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–07860 Filed 4–8–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2013–N257; FF07R05000 FVRS84510700000 14X]

Minor Boundary Adjustment; Kodiak National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Alaska National Interest Lands Conservation Act, the Secretary of the Interior, acting through the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, has made a minor modification to the boundary of the Kodiak National Wildlife Refuge. This action incorporated a 2,333-acre parcel, adjacent to the Refuge and managed by the Bureau of Land Management (BLM), into the Refuge.

DATES: BLM provided written concurrence for the boundary adjustment on December 27, 2012. Notification to Congress of the proposed boundary change was provided on January 06, 2014.

ADDRESSES: Douglas Campbell, Acting Chief, Division of Realty and Conservation Planning, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Mail Stop 211, Anchorage, AK 99503–6199.

FOR FURTHER INFORMATION CONTACT: Douglas Campbell, 907–786–3907.

SUPPLEMENTARY INFORMATION: The parcel is within a larger area that was formerly the Karluk Indian Reservation. Pursuant to section 17(d)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, and Public Land Order 5188 signed on March 15, 1972, revoked land reserves within Alaska, including the Karluk Indian Reservation, were set aside for the use or administration of Alaska Native affairs. As a result, all the land and Alaska Native land claims within the boundary of the former Karluk Indian Reservation came under the administration of the Bureau of Land Management (BLM), Department of the Interior.

The parcel is described as Sections 26, 27, 28, and 30, Township 30 South, Range 31 West, Seward Meridian.

BLM conveyed the majority of the land within the former Karluk Indian Reservation to Alaska Native corporations and Native allottees. The four sections of land encompassed by the boundary adjustment were beyond what was needed to fulfill the Alaska Native Corporations entitlements and remained under BLM management. These lands are adjacent to Refuge lands and represent isolated acreage that is more suitably managed by the Service.

Authorities

Section 103(b) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3103(b)) establishes authority for the Secretary of the Interior to make minor boundary adjustments to the wildlife refuges created by the Act. Following due notice to Congress, the Secretary, acting through the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, has used this authority to adjust the boundary of the Kodiak National Wildlife Refuge to include the 2,333-acre Parcel described in the aforementioned legal description.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2014–07937 Filed 4–8–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX14LR000F60100]

Agency Information Collection Activities: Request for Comments

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension and revision of a currently approved information collection (1028–0068).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. The collection will consist of 15 forms. As part of the requested extension we will make several revisions to the number and nature of the associated collection instruments. These revisions include: (1) Deleting USGS Form 9–4092–A and USGS Form 9–4106–M; (2) changing USGS Form 9–4047–A from monthly and annual to an annual-only reporting form; (3) modifying USGS Form 9–4044–A and USGS Form 9–4045–M; and (4) modifying the title of USGS Form 9–4076–A. As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on July 31, 2014.

DATES: To ensure that your comments are considered, we must receive them on or before June 9, 2014.

ADDRESSES: Please submit a copy of your comments to the Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192 (mail); 703–648–7195 (fax); or *dgovoni@usgs.gov* (email). Please reference 'Information Collection 1028–0068, Ferrous Metals Surveys' in all correspondence.

FOR FURTHER INFORMATION CONTACT: Michael J. Magyar at 703–648–4910 (telephone); *mmagyar@usgs.gov* (email); or by mail at U.S. Geological Survey, 988 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents will use these forms to supply the USGS with domestic consumption data for 13 ores, concentrates, metals, and ferroalloys, some of which are considered strategic and critical. These data and derived information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

II. Data

OMB Control Number: 1028–0068.

Form Number: Various (15 forms).

Title: Ferrous Metals Surveys.

Type of Request: Revision of a currently approved collection.

Affected Public: Business or Other-For-Profit Institutions: U.S. nonfuel minerals consumers of ferrous and related metals.

Respondent Obligation: None. Participation is voluntary.

Frequency of Collection: Monthly and Annually.

Estimated Number of Annual Responses: 2,667.

Estimated Time per Response: For each form, we will include an average burden time ranging from 10 minutes to 1 hour.

Annual Burden Hours: 1,319 hours.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Request for Comments

We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden time to the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Please note that the comments submitted in response to this notice are a matter of public record. Before including your personal mailing address, phone number, email address, or other personally identifiable information in your comment, you should be aware that your entire comment, including your personally identifiable information, may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public view, we cannot guarantee that we will be able to do so.

Michael J. Magyar,

Acting Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2014–07947 Filed 4–8–14; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[14XR0680A1, RX–RP336900–0019100, RR01115000]

Yakima River Basin Conservation Advisory Group Charter Renewal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Yakima River Basin Conservation Advisory Group (CAG). The purpose of the CAG is to provide recommendations to the Secretary and the State of Washington on the structure and implementation of the Yakima

River Basin Water Conservation Program.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy McCoy, Manager, Yakima River Basin Water Enhancement Project, telephone 509–575–5848, extension 209.

SUPPLEMENTARY INFORMATION: The basin conservation program is structured to provide economic incentives with cooperative Federal, State, and local funding to stimulate the identification and implementation of structural and nonstructural cost-effective water conservation measures in the Yakima River basin. Improvements in the efficiency of water delivery and use will result in improved streamflows for fish and wildlife and improve the reliability of water supplies for irrigation.

This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). The certification of renewal is published below.

Certification

I hereby certify that Charter renewal of the Yakima River Basin Conservation Advisory Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

Sally Jewell,

Secretary of the Interior.

[FR Doc. 2014–07936 Filed 4–8–14; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–833]

Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and Methods of Making the Same: Commission Determination to Affirm-In-Part, Modify-In-Part, and Reverse-In-Part the Final Initial Determination and To Find a Violation of Section 337; Issuance of Cease and Desist Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm-in-part, modify-in-part, and reverse-in-part the final initial determination (''final ID'' or ''ID''), and to find a violation of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''Section 337'') in the above-captioned investigation. The Commission has issued cease and desist orders.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on April 5, 2012, based upon a complaint filed on behalf of Align Technology, Inc., of San Jose, California (''Align''), on March 1, 2012, as corrected on March 22, 2012. 77 FR 20648 (April 5, 2012). The complaint alleged violations of Section 337 in the sale for importation, importation, or sale within the United States after importation of certain digital models, digital data, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 6,217,325 (''the '325 patent''); U.S. Patent No. 6,471,511 (''the '511 patent''); U.S. Patent No. 6,626,666 (''the '666 patent''); U.S. Patent No. 6,705,863 (''the '863 patent''); U.S. Patent No. 6,722,880 (''the '880 patent''); U.S. Patent No. 7,134,874 (''the '874 patent''); and U.S. Patent No. 8,070,487 (the '487 patent''). The notice of institution named as respondents ClearCorrect Pakistan (Private), Ltd. of Lahore, Pakistan (''CCPK'') and ClearCorrect Operating, LLC of Houston, Texas (''CCUS'') (collectively, ''the Respondents'').

On May 6, 2013, the presiding administrative law judge (''ALJ'') issued the final ID, finding a violation of Section 337 with respect to the '325 patent, the '880 patent, the '487 patent, the '511 patent, '863 patent, and the '874 patent. He found no violation as to the '666 patent. The ALJ recommended the issuance of cease and desist orders directed to the Respondents.

On May 20, 2013, each of the parties filed a petition for review. On May 28, 2013, each of the parties filed a response thereto.

On June 5, 2013, Align filed a statement on the public interest. On June 13, 2013, the Respondents filed a statement on the public interest.

On June 16, 2013, the Commission issued notice of its determination to extend the deadline for determining whether to review the final ID to July 25, 2013.

On July 25, 2013, the Commission issued notice of its determination to review the final ID in its entirety and to solicit briefing on the issues on review and on remedy, the public interest, and bonding. 78 FR 46611 (August 1, 2013). On August 8, 2013, each of the parties filed written submissions. On August 15, 2013, each filed reply submissions.

On September 24, 2013, the Commission issued notice of its determination to extend the target date to November 1, 2013.

On November 18, 2013, the Commission issued notice of its determination to extend the target date to January 17, 2014.

On January 17, 2014, the Commission determined to extend the target date for completion of the above-captioned investigation to March 21, 2014, and to solicit additional briefing from the parties and the public.

On March 21, 2014, the Commission issued notice of its determination to extend the target date for completion of the investigation to April 3, 2014.

After considering the ID and the relevant portions of the record, and the submissions of the parties and the public, the Commission has determined to affirm-in-part, modify-in-part, and reverse-in-part the final ID and to find a violation of Section 337. The Commission has issued its opinion setting forth the reasons for its determination. Commissioner Johanson dissents and has filed a dissenting opinion.

Specifically, the Commission affirms the ALJ's conclusion that the accused products are ''articles'' within the meaning of Section 337(a)(1)(B) and that the mode of bringing the accused products into the United States constitutes importation of the accused products into the United States pursuant to Section 337(a)(1)(B). The Commission has determined to find a violation with respect to (i) claims 1 and 4–8 of the '863 patent; (ii) claims 1, 3, 7, and 9 of the '666 patent; (iii) claims

1, 3, and 5 of the '487 patent; (iv) claims 21, 30, 31 and 32 of the '325 patent; and (v) claim 1 of the '880 patent. The Commission has issued cease and desist orders directed to CCUS and CCPK, with an exemption for activities related to treatment of existing patients in the United States. The investigation is hereby terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: April 3, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–07875 Filed 4–8–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1655]

Draft of SWGDOC Standard for the Examination of Documents for Alterations

AGENCY: National Institute of Justice, JPO, DOJ.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, Scientific Working Group for Forensic Document Examination (SWGDOC) will make available to the general public a draft document entitled, ''SWGDOC Standard for the Examination of Documents for Alterations''. The opportunity to provide comments on this document is open to forensic document examiners, law enforcement agencies, organizations, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft document under consideration are directed to the following Web site: *http://www.swgdoc.org*

DATES: Comments must be received on or before May 31, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Kashtan, by telephone at 202–353–1856 [**Note:** this is not a toll-free telephone number], or by email at *Patricia.Kashtan@usdoj.gov.*

Gregory K. Ridgeway,

Acting Director, National Institute of Justice.

[FR Doc. 2014–07977 Filed 4–8–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1653]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, DOJ.

ACTION: Notice of Webinar Meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has scheduled a webinar meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

Dates and Location: The meeting will take place online, as a webinar, on Monday, April 28th, 2014, from 2 p.m. to 5 p.m. (ET).

FOR FURTHER INFORMATION CONTACT: Kathi Grasso, Designated Federal Official, OJJDP, *Kathi.Grasso@usdoj.gov,* or (202) 616–7567. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to section 3(2)(A) of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002 (42 U.S.C. 5633(f)(2)(C–E)). The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *www.facjj.org.*

Meeting Agenda: The proposed agenda includes: (a) Welcome and introductions of new members; (b) Report on 2013 FACJJ Report and Report Dissemination Plan; (c) Role of FACJJ/Issues for consideration; (d) Planning for October 2014 Face-to-Face Meeting and (e) miscellaneous FACJJ business matters.

To participate in or view the webinar meeting, members of the FACJJ and the public must pre-register online. Members and interested persons must link to the webinar registration portal through *www.facjj.org* no later than Wednesday, April 23th, 2014. Upon registration, information will be sent to you at the email address you provide to enable you to connect to the webinar. Should problems arise with webinar registration, please call Michelle Duhart-Tonge at 703–225–2103 [This is not a toll-free telephone number.] Note: Members of the public will be able to listen to and view the webinar as observers, but will not be able to actively participate during the webinar.

An on-site room (at the Office of Justice Programs, 810 7th St. NW., Washington, DC) is available for members of the public interested in viewing the webinar in person. If members of the public wish to view the webinar in person, they must notify Kathi Grasso by email message to *Kathi.grasso@usdoj.gov,* no later than Wednesday, April 23rd, 2014.

Please note that, with the exception of the FACJJ chair, FACJJ members will not be physically present in Washington, DC for the webinar. They will participate in the webinar from their respective home jurisdictions.

Written Comments: Interested parties may submit written comments in advance to Kathi Grasso, Designated Federal Official, by email message to *Kathi.Grasso@usdoj.gov,* no later than Wednesday, April 23rd, 2014. Alternatively, fax your comments to 202–307–2819 and contact Joyce Mosso Stokes at 202–305–4445 to ensure that they are received. [These are not toll-free numbers.]

Nancy Ayers,

Deputy Administrator for Operations, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2014–07978 Filed 4–8–14; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Exemptions From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the

prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following proposed exemptions: D–11496, Northwestern Mutual Investment Services, Inc.; D–11773, The Delaware County Bank and Trust Company Employee 401(k) Retirement Plan (the Plan); D–11780, The Home Savings and Loan Company 401(k) Savings Plan (the Plan), United Community Financial Corporation (UCFC) and the Home Savings and Loan Company (Home Savings); and D–11756, Liberty Media 401(k) Savings Plan (the Plan).

DATES: All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice.

ADDRESSES: Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5700, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via email or FAX. Any such comments or requests should be sent either by email to: *moffitt.betty@dol.gov,* or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

Warning: All comments will be made available to the public. Do not include any personally identifiable information (such as Social Security number, name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

SUPPLEMENTARY INFORMATION:

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[1] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Northwestern Mutual Investment Services, Inc. Located in Milwaukee, Wisconsin

[Exemption Application No. D–11496]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[2]

Section I. Transactions Involving Plans Described In Both Title I And Title II of ERISA

If the proposed exemption is granted, the restrictions of section 406(a)(1)(A), (B), and (D) and section 406(b)(1) and (2) of ERISA, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security (as defined in Section IV(b)) by a Plan (as defined in Section IV(h)) to the Sponsor (as defined in Section IV(g)) of such Plan; or

(b) A lending of money or other extension of credit to a Plan in connection with the holding of an Auction Rate Security by the Plan, from: (1) Northwestern Mutual Investment Services, Inc. or an affiliate (Northwestern Mutual); (2) an Introducing Broker (as defined in Section IV(f)); or (3) a Clearing Broker (as defined in Section IV(d)); where the loan is: (i) Repaid in accordance with its terms; and (ii) guaranteed by the Plan Sponsor.

Section II. Transactions Involving Plans Described In Title II of ERISA Only

If the proposed exemption is granted, the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A), (B), (D), and (E) of the Code, shall not apply, effective February 1, 2008, to the following transactions, if the conditions set forth in Section III have been met:

(a) The sale or exchange of an Auction Rate Security by a Title II Only Plan (as defined in Section IV(i)) to the Beneficial Owner (as defined in Section IV(c)) of such Plan; or

(b) A lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an Auction Rate Security by the Title II Only Plan, from: (1) Northwestern Mutual; (2) an Introducing Broker; or (3) a Clearing Broker; where the loan is: (i) Repaid in accordance with its terms and; (ii) guaranteed by the Beneficial Owner.

Section III. Conditions

(a) Northwestern Mutual acted as a broker or dealer, non-bank custodian, or fiduciary in connection with the acquisition or holding of the Auction Rate Security that is the subject of the transaction described in Section I or II of this proposal;

(b) For transactions involving a Plan (including a Title II Only Plan) not

[1] The Department has considered exemption applications received prior to December 27, 2011 under the exemption procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).

[2] For purposes of this proposed exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

sponsored by Northwestern Mutual for its own employees, the decision to enter into the transaction is made by a Plan fiduciary who is Independent (as defined in Section IV(e)) of Northwestern Mutual. Notwithstanding the foregoing, an employee of Northwestern Mutual who is the Beneficial Owner of a Title II Only Plan may direct such Plan to engage in a transaction described in Section II, if all of the other conditions of this Section III have been met;

(c) The last auction for the Auction Rate Security was unsuccessful;

(d) The Plan does not waive any rights or claims in connection with the sale or loan as a condition of engaging in the above-described transaction;

(e) The Plan does not pay any fees or commissions in connection with the transaction;

(f) The transaction is not part of an arrangement, agreement or understanding designed to benefit a party in interest;

(g) With respect to any sale described in Section I(a) or Section II(a):

(1) The sale is for no consideration other than cash payment against prompt delivery of the Auction Rate Security; and

(2) For purposes of the sale, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(h) With respect to an in-kind exchange described in Section (I)(a) or Section II(a), the exchange involves the transfer by a Plan of an Auction Rate Security in return for a Delivered Security, as such term is defined in Section IV(j), where:

(1) The exchange is unconditional;

(2) For purposes of the exchange, the Auction Rate Security is valued at par, plus any accrued but unpaid interest;

(3) The Delivered Security is valued at fair market value, as determined at the time of the in-kind exchange by a third party pricing service or other objective source;

(4) The Delivered Security is appropriate for the Plan and is a security that the Plan is otherwise permitted to hold under applicable law; [3] and

(5) The total value of the Auction Rate Security (i.e., par plus any accrued but unpaid interest) is equal to the fair market value of the Delivered Security;

(i) With respect to a loan described in Section I(b) or II(b):

(1) The loan is documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(2) The Plan does not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan:

(A) The coupon rate for the Auction Rate Security;

(B) The Federal Funds Rate; or

(C) The Prime Rate;

(3) The loan is unsecured; and

(4) The amount of the loan is not more than the total par value of the Auction Rate Securities held by the Plan.

Section IV. Definitions

(a) The term ''affiliate'' means: Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) The term ''Auction Rate Security'' or ''ARS'' means a security:

(1) That is either a debt instrument (generally with a long-term nominal maturity) or preferred stock; and

(2) With an interest rate or dividend that is reset at specific intervals through a Dutch auction process;

(c) The term ''Beneficial Owner'' means: The individual for whose benefit the Title II Only Plan is established and includes a relative or family trust with respect to such individual;

(d) The term ''Clearing Broker'' means: A member of a securities exchange that acts as a liaison between an investor and a clearing corporation and that helps to ensure that a trade is settled appropriately, that the transaction is successfully completed and that is responsible for maintaining the paper work associated with the clearing and executing of a transaction;

(e) The term ''Independent'' means a person who is: (1) Not Northwestern Mutual or an affiliate; and (2) not a relative (as defined in ERISA section 3(15)) of the party engaging in the transaction;

(f) The term ''Introducing Broker'' means: A registered broker that is able to perform all the functions of a broker except for the ability to accept money, securities, or property from a customer;

(g) The term ''Sponsor'' means: A plan sponsor as described in section 3(16)(B) of the Act and any Affiliates;

(h) The term ''Plan'' means: Any plan described in section 3(3) of the Act and/or section 4975(e)(1) of the Code;

(i) The term ''Title II Only Plan'' means: Any plan described in section 4975(e)(1) of the Code which is not an employee benefit plan covered by Title I of ERISA;

(j) The term ''Delivered Security'' means a security that is: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) A fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (e.g., a highly rated municipal bond or a highly rated corporate bond); or (4) A certificate of deposit insured by the Federal Deposit Insurance Corporation. Notwithstanding the above, the term ''Delivered Security'' shall not include any Auction Rate Security, or any related Auction Rate Security, including derivatives or securities materially comprised of Auction Rate Securities or any illiquid securities.

Summary of Facts and Representations

1. The Applicant is Northwestern Mutual Investment Services, Inc. and its affiliates (hereinafter, either Northwestern Mutual or the Applicant). Northwestern Mutual is a broker-dealer wholly owned by Northwestern Mutual Life Insurance Company, whose businesses include the provision of investment advisory and other services to IRAs and pension, profit sharing, and 401(k) plans qualified under section 401(a) of the Code. Among other things, Northwestern Mutual acts as a broker and dealer with respect to the purchase and sale of securities, including Auction Rate Securities (or ARS). The Applicant describes ARS and the arrangement by which ARS are bought and sold as follows. ARS constitute securities (issued as debt or preferred stock) with an interest rate or dividend that is reset at periodic intervals pursuant to a process called a Dutch Auction. Investors submit orders to buy, hold, or sell a specific ARS to a broker-dealer selected by the entity that issued the ARS. The broker-dealers, in turn, submit all of these orders to an auction agent. The auction agent's functions include collecting orders from all participating broker-dealers by the auction deadline, determining the amount of securities available for sale, and organizing the

[3] The Department notes that the Act's general standards of fiduciary conduct also would apply to the transactions described herein. In this regard, section 404 requires, among other things, that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent manner. Accordingly, a plan fiduciary must act prudently with respect to, among other things: (1) The decision to exchange an Auction Rate Security for a Delivery Security; and (2) the negotiation of the terms of such exchange (or a cash sale or loan described above), including the pricing of such securities. The Department further emphasizes that it expects plan fiduciaries, prior to entering into any of the proposed transactions, to fully understand the risks associated with these types of transactions following disclosure by Northwestern Mutual of all relevant information.

bids to determine the winning bid. If there are any buy orders placed into the auction at a specific rate, the auction agent accepts bids with the lowest rate above any applicable minimum rate and then successively higher rates up to the maximum applicable rate, until all sell orders and orders that are treated as sell orders are filled. Bids below any applicable minimum rate or above the applicable maximum rate are rejected. After determining the clearing rate for all of the securities at auction, the auction agent allocates the ARS available for sale to the participating broker-dealers based on the orders they submitted. If there are multiple bids at the clearing rate, the auction agent will allocate securities among the bidders at such rate on a pro-rata basis.

2. The Applicant states that Northwestern Mutual is permitted, but not obligated, to submit orders in auctions for its own account either as a bidder or a seller and routinely does so in the ARS market in its sole discretion. Northwestern Mutual may routinely place one or more bids in an auction for its own account to acquire ARS for its inventory, to prevent: (1) A failed auction (i.e., an event where there are insufficient clearing bids which would result in the auction rate being set at a specified rate); or (2) an auction from clearing at a rate that Northwestern Mutual believes does not reflect the market for the particular ARS being auctioned.

3. The Applicant states that for many ARS, Northwestern Mutual has been appointed by the issuer of the securities to serve as a dealer in the auction and is paid by the issuer for its services. Northwestern Mutual is typically appointed to serve as a dealer in the auctions pursuant to an agreement between the issuer and Northwestern Mutual. That agreement provides that Northwestern Mutual will receive from the issuer auction dealer fees based on the principal amount of the securities placed through Northwestern Mutual.

4. The Applicant states further that Northwestern Mutual may share a portion of the auction rate dealer fees it receives from the issuer with other broker-dealers that submit orders through Northwestern Mutual, for those orders that Northwestern Mutual successfully places in the auctions. Similarly, with respect to ARS for which broker-dealers other than Northwestern Mutual act as dealer, such other broker-dealers may share auction dealer fees with Northwestern Mutual for orders submitted by Northwestern Mutual.

5. According to the Applicant, since February 2008, a minority of auctions have cleared, particularly involving municipalities. As a result, Plans holding ARS may not have sufficient liquidity to make benefit payments, mandatory payments and withdrawals and expense payments when due.[4]

6. The Applicant represents that, in certain instances, Northwestern Mutual may have previously advised or otherwise caused a Plan to acquire and hold an ARS and thus may be considered a fiduciary to the Plan, so that a sale between a Plan and its sponsor or an IRA and its Beneficial Owner violates section 406(a)(1)(A) and (D), and 406(b)(1) and (2) of ERISA and/or corresponding provisions of the Code; in addition, a loan to the Plan by Northwestern Mutual may violate section 406(a)(1)(B) and (D), and 406(b)(1) and (2) of ERISA.[5] The Applicant is therefore requesting relief for the following transactions, involving all employee benefit plans covered under both Title I and Title II of ERISA: (1) The sale or exchange of an ARS from a Plan to the Plan's Sponsor; or (2) a lending of money or other extension of credit to a Plan in connection with the holding of an ARS from: Northwestern Mutual, an Introducing Broker, or a Clearing Broker, where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Plan Sponsor.

7. The Applicant is requesting similar relief for plans covered only by Title II of ERISA. In this regard, the Applicant is requesting relief for: (1) The sale or exchange of an ARS from a Title II Only Plan to the Beneficial Owner of such Plan; or (2) a lending of money or other extension of credit to a Title II Only Plan in connection with the holding of an ARS from: Northwestern Mutual, an Introducing Broker, or a Clearing Broker, where the subsequent repayment of the loan is made in accordance with its terms and is guaranteed by the Beneficial Owner.

8. The Applicant represents that the proposed transactions are in the interests of the Plans. In this regard, the Applicant states that the exemption, if granted, will provide Plan fiduciaries with liquidity notwithstanding changes that occurred in the ARS markets. The Applicant also notes that, other than for Plans sponsored by the Applicant, the decision to enter into a transaction described herein will be made by a Plan fiduciary who is independent of Northwestern Mutual.

9. The proposed exemption contains a number of safeguards designed to protect the interests of each Plan. With respect to the sale of an ARS by a Plan, the Plan must receive cash equal to the par value of the security, plus any accrued interest. The sale must also be unconditional, other than being for payment against prompt delivery. For in-kind exchanges covered by the proposed exemption, the security delivered to the Plan (i.e., the Delivered Security) must be: (1) Listed on a national securities exchange (excluding OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); or (2) a U.S. Treasury obligation; or (3) a fixed income security that has a rating at the time of the exchange that is in one of the two highest generic rating categories from an independent nationally recognized statistical rating organization (e.g., a highly rated municipal bond or a highly rated corporate bond); or (4) a certificate of deposit insured by the Federal Deposit Insurance Corporation. The Delivered Security must also be appropriate for the Plan, and a security that the Plan is permitted to hold under applicable law. The proposed exemption further requires that the Delivered Security be valued at its fair market value, as determined at the time of the exchange from a third party pricing service or other objective source, and must equal the total value of the ARS being exchanged (i.e., par value, plus any accrued interest).

10. With respect to a loan to a Plan holding an ARS, such loan must be documented in a written agreement containing all of the material terms of the loan, including the consequences of default. Further, the Plan may not pay an interest rate that exceeds one of the following three rates as of the commencement of the loan: The coupon rate for the ARS; the Federal Funds Rate; or the Prime Rate. Additionally, such loan must be unsecured and for an amount that is no more than the total par value of ARS held by the affected Plan.

11. Additional conditions apply to each transaction covered by the exemption, if granted. Among other things, the Plan may not pay any fees or commissions in connection with the transaction and the transaction may not be part of an arrangement, agreement, or

[4] The Department notes that Class Exemption 80–26 (45 FR 28545 (Apr. 29, 1980), as amended at 71 FR 17917 (Apr. 7, 2006)) permits interest-free loans or other extensions of credit from a party in interest to a Plan if, among other things, the proceeds of the loan or extension of credit are used only—(1) for the payment of ordinary operating expenses of the Plan, including the payment of benefits in accordance with the terms of the Plan and periodic premiums under an insurance or annuity contract, or (2) for a purpose incidental to the ordinary operation of the Plan.

[5] The relief contained in this proposed exemption does not extend to the fiduciary provisions of section 404 of the Act.

understanding designed to benefit a party in interest. The exemption expressly prohibits any waiver of rights or claims by a Plan in connection with the sale or exchange of an ARS by a Plan, or a lending of money or other extension of credit to a Plan holding an ARS.

12. In summary, the Applicant represents that the transactions described herein satisfy the statutory criteria set forth in section 408(a) of the Act and section 4975(c)(2) of the Code because:

(1) Any sale will be:

(A) For no consideration other than cash payment against prompt delivery of the ARS; and

(B) At par, plus any accrued but unpaid interest;

(2) Any in-kind exchange will be unconditional, other than being for payment against prompt delivery, and will involve Delivered Securities that are:

(A) Appropriate for the Plan;

(B) Listed on a national securities exchange (but not OTC Bulletin Board-eligible securities and Pink Sheets-quoted securities); U.S. Treasury obligations; fixed income securities; or certificates of deposit; and

(C) Securities that the Plan is permitted to hold under applicable law; and,

(3) Any loan will be:

(A) Documented in a written agreement containing all of the material terms of the loan, including the consequences of default;

(B) At an interest rate not in excess of: the coupon rate for the ARS, the Federal Funds Rate, or the Prime Rate;

(C) Unsecured; and

(D) For an amount that is not more than the total par value of ARS held by the affected Plan.

Notice to Interested Persons

The Applicant represents that the potentially interested participants and beneficiaries cannot all be identified and therefore the only practical means of notifying such participants and beneficiaries of this proposed exemption is by the publication of this notice in the **Federal Register**. Comments and requests for a hearing must be received by the Department not later than 45 days from the date of publication of this notice of proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Scott Ness of the Department, telephone (202) 693–8561. (This is not a toll-free number.)

The Delaware County Bank and Trust Company Employee 401(k) Retirement Plan (the Plan) Located in Lewis Center, OH

[Application No. D–11773]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).[6]

Section I: Transactions

If the proposed exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a)(1)(A) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply:

(a) To the acquisition of certain subscription rights (the Stock Rights) by the Plan in connection with an offering (the Offering) of shares of common stock (the Stock) of DCB Financial Corp (DCBF), a party in interest with respect to the Plan; and

(b) To the holding of the Stock Rights received by the Plan during the subscription period of the Offering; provided that the conditions set forth in Section II of this proposed exemption were satisfied.

Section II: Conditions

(a) The acquisition of the Stock Rights by the Plan was made pursuant to terms that were the same for all shareholders of DCBF Stock;

(b) The acquisition of the Stock Rights by the Plan resulted from an independent, corporate act of DCBF;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Stock Rights, and this proportionate number of Stock Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Stock Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually directed investments of the accounts of the individual participants, a portion of whose accounts in the Plan held the stock (the Invested Participants);

(e) The decisions with regard to the holding and disposition of the Stock Rights by the Plan were made by the Invested Participants who received the Stock Rights in their Plan accounts; and

(f) No brokerage fees, no subscription fees and no other charges were paid by the Plan with respect to the acquisition and holding of the Stock Rights, and no brokerage fees, no commissions and no other monies were paid by the Plan to any broker in connection with the exercise of the Stock Rights to acquire DCBF shares.

Effective Date: If granted, this proposed exemption will be effective from October 16, 2012, to November 26, 2012.

Summary of Facts and Representations[7]

Parties to the Covered Transaction

1. DCB Financial Corp (DCBF or the Applicant) is a financial holding company organized under Ohio law. DCBF is currently engaged in the financial services business through its wholly-owned subsidiary, Delaware County Bank & Trust Company (the Bank), and two non-bank subsidiaries, DCB Insurance Services, LLC and DCB Title Services, LLC. The Bank provides customary retail and commercial banking services through its main office and 14 branch offices located in Delaware, Ohio and surrounding counties.

2. The Delaware County Bank and Trust Company 401(k) Retirement Plan (the Plan), originally effective on January 1, 1991, is a qualified profit sharing plan under Section 401(a) of the Code. The Plan has adopted a prototype plan which received a favorable opinion letter from the Internal Revenue Service on March 31, 2008. The Plan sponsor believes that the Plan, as amended and restated, operates in compliance with the applicable requirements of the Code. In addition, the Applicant states that the Bank is the Plan's trustee (the Trustee) and custodian.[8]

[6] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[7] The Summary of Facts and Representations is based on the Applicant's representations and does not represent the views of the Department, unless indicated otherwise.

[8] The Applicant represents that the Bank serves as the Trustee and custodian of the Plan in compliance with section 408(b)(2) of the Act and the regulations thereunder. Furthermore, according

Continued

3. All employees of the Bank and the Bank's affiliates, DCB Insurance Services, LLC and DCB Title Services, LLC, are eligible to participate in the Plan. As of October 16, 2012, the Plan had 124 participants and total assets of approximately $4,096,517.

4. The Plan allows participants to direct the investment of their Plan account balances amongst a variety of 19 pre-selected investment options, including any combination of mutual funds and DCBF common stock (DCBF Stock). The Applicant represents that DCBF Stock constitutes ''qualifying employer securities'' under section 407(d)(5) of the Act. The fair market value of the assets of the Plan invested in DCBF Stock, as reflected in the Plan's most recent financial statements, dated August 29, 2012 (the Record Date), was approximately $383,049, held among the accounts of 18 Plan participants, as of the Record Date. The approximate percentage of the fair market value of the Plan's total assets, represented by investments in DCBF Stock was 9.35%.

5. According to the Applicant, the DCBF Stock is quoted on the Over-the-Counter-Bulletin Board (the OTCBB) and is not listed on the NASDAQ or a national stock exchange. The Applicant represents that investors who wish to buy or sell DCBF shares will contact a ''market maker'' who will link potential buyers and sellers.[9] These privately facilitated transactions are then reported to the NASDAQ OTCBB.

Background to the Offering

6. The Applicant represents that, like many banks, particularly banks with significant lending operations, the Bank was impacted by challenges faced by the real estate market, and federal banking regulators were engaged in discussions with all regulated financial institutions. On June 29, 2010, DCBF entered into a memorandum of understanding (the MOU) with the Federal Reserve Bank of Cleveland (the Federal Reserve), providing that DCBF may not declare or pay cash dividends to its shareholders, repurchase any of its shares, or incur or guarantee any debt without the prior approval of the Federal Reserve.

7. On October 28, 2010, the Bank entered into a written agreement (the Written Agreement) with the Ohio Division of Financial Institutions (the Ohio Division) and a consent order (the Consent Order) with the Federal Deposit Insurance Corporation (the FDIC) addressing matters pertaining to, among other things, strengthening the Bank's capital position and submitting a funding contingency plan for the Bank that identified available sources of liquidity. The Applicant represents that the Written Agreement and Consent Order also provide that the Bank may not declare or pay dividends to DCBF without the prior approval of the Ohio Division and the FDIC. The Written Agreement and Consent Order also specifically require that the Bank, among other things, enhance bank liquidity.

8. In response to the MOU and the Written Agreement, DCBF management and the Board of Directors of DCBF (the Board) chose to raise equity capital through a rights offering for DCBF Stock (the Rights Offering) to improve the Bank's capital position, to retain additional capital at DCBF, and to give shareholders the opportunity to limit ownership dilution by buying additional common shares.[10] As noted above, the Plan holds DCBF Stock which is subject to the investment direction of Plan participants. Therefore, according to the Applicant, DCBF determined it was in the interests of the Plan and its participants to allow the Plan to participate in the Rights Offering to the same extent as other shareholders, in part so that Plan participants holding DCBF Stock in their Plan accounts could avoid having such DCBF Stock become diluted as a result of the Rights Offering.

The Terms of the Offering

9. The Applicant represents that all shareholders of record as of 5:00 p.m. on the Record Date were eligible to participate in the Rights Offering. According to the Applicant, on or about October 10, 2012, Plan participants who held shares of DCBF Stock in their Plan accounts as of the Record Date (the Invested Participants) were mailed information about the Rights Offering. The Applicant notes that individuals who held DCBF Stock directly were mailed similar information at that time. In this regard, all Invested Participants (there were 53 at the time) were mailed: (a) a copy of the prospectus that was filed with the Securities and Exchange Commission; and (b) a letter from DCBF detailing the process Invested Participants would use to participate in the Rights Offering. In addition, the Applicant notes that Invested Participants could call the subscription and information agent engaged by DCBF in connection with the Rights Offering, Broadridge Corporate Solutions, Inc. (Broadridge), using the toll-free number listed in the letter, if they had any questions about the Rights Offering or the exercise process.

10. The Applicant states further that the offering period of the Rights Offering (the Offering Period) formally opened on October 16, 2012, and was originally scheduled to expire at 5:00 p.m. on November 12, 2012. However, according to the Applicant, the Board extended the Offering Period for two weeks (until November 26, 2012), in response to Hurricane Sandy, which adversely impacted the ability of Broadridge to perform its duties in connection with the Rights Offering.

11. The Applicant states that DCBF initiated the Rights Offering by distributing to the holders of DCBF Stock at no charge, non-transferable subscription rights (the Rights) to purchase additional common shares of DCBF Stock. For every three common shares of DCBF Stock owned as of the Record Date, a holder was entitled to receive one Right, subject to availability and proration. Each Right entitled the holder to a basic subscription right (the Basic Subscription Right) and an over-subscription privilege (the Over Subscription Privilege). The Rights were not listed for trading on any stock exchange or the OTCBB.

12. As represented by the Applicant, the Basic Subscription Right of each Right gave a shareholder the opportunity to purchase one share of DCBF common stock for $3.80 per share, subject to certain limitations or proration. Shareholders could exercise all or a portion of their Basic Subscription Rights or choose to exercise no Basic Subscription Rights at all. Fractional shares resulting from the

to the Applicant, neither the Bank nor any of its affiliates receives any direct or indirect compensation in connection with its provision of such services to the Plan. The Department notes that DOL regulation 29 CFR 2550.408b–2(e)(2) provides that a fiduciary does not engage in an act described in Section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility that makes him a fiduciary to cause a plan to pay additional fees for a service furnished by a person in which the fiduciary has an interest that may affect the exercise of his judgment as a fiduciary. It is also the Department's view that generally a fiduciary's decision to retain itself or an affiliate as a service provider who does not charge fees of any kind for the provision of such services will not involve an adversity of interests as contemplated by section 406(b)(2) of the Act. Accordingly, the decision by the Bank to act as the Trustee and custodian of the Plan, would not appear, in itself, to raise issues under section 406(b)(1) or (b)(2) of the Act.

[9] The Applicant represents that the following firms presently make a market in DCBF Stock: Sweney Cartwright & Company, Columbus, OH; Howe, Barnes, Hoefer & Arnett, Inc., Chicago, IL; and Stifel, Nicolaus & Company, Incorporated, St. Louis, MO.

[10] The Applicant states that DCBF has worked with Sandler O'Neill, a nationally recognized investment consultant, to evaluate various options for raising capital including strategic combinations with other institutions, public offerings, and the Rights Offering. Based on advice from this investment consultant, DCBF determined that the Rights Offering was the best opportunity to raise the necessary capital.

exercise of Basic Subscription Rights were eliminated by rounding down to the nearest whole share.

13. The Applicant represents that the Over-Subscription Privilege allowed a shareholder who purchased all of the DCBF Stock available to them pursuant to their Basic Subscription Right to purchase a portion of any shares of DCBF Stock that were not purchased pursuant to the exercise of other shareholders' Basic Subscription Rights. Shareholders were required to indicate on their Rights certificate how many additional shares they would like to purchase pursuant to the Over-Subscription Privilege. The Applicant states that, if sufficient shares of DCBF Stock were available, DCBF honored over-subscription requests in full. The Applicant states further, that, if over-subscription requests exceeded the number of common shares available to be purchased pursuant to the Over-Subscription Privilege, DCBF allocated the available shares of DCBF Stock among shareholders who over-subscribed by multiplying the number of shares of DCBF Stock requested by each shareholder through the exercise of the Over-Subscription Privilege by a fraction that equaled (x) the number of shares available to be issued through the Over-Subscription Privilege divided by (y) the total number of shares of DCBF requested by all subscribers through the exercise of the Over-Subscription Privilege. The Applicant states that DCBF did not issue fractional shares through the exercise of Over-Subscription Privileges.

14. The Applicant represents that another feature of the Rights Offering was a subsequent private offering (the Private Offering) held for certain standby investors (the Standby Investors).[11] According to the Applicant, DCBF entered into separate standby purchase agreements with the Standby Investors in order to maximize the amount of capital raised to ensure that shares of DCBF Stock available in the Rights Offering were purchased. In this regards, each Standby Investor agreed to acquire, in the Private Offering, a minimum number of shares of DCBF Stock if they remained unsold following the completion of the Rights Offering.[12] The Applicant represents that the price per share to be paid by the Standby Investors was the same price paid by subscribers in the Rights Offering, $3.80. Furthermore, the Applicant states that if all of the shares of DCBF Stock offered were subscribed for in the Rights Offering, DCBF would nevertheless sell a minimum number of shares to the Standby Investors as required by the standby purchase agreements.[13] The Applicant states that pursuant to the terms of the Rights Offering, all unexercised Rights would expire and become worthless after the close of the Rights Offering.

Exercise of the Rights

15. The Applicant states that the Plan received the Rights on the same terms as all holders of DCBF Stock. Thus, the Trustee received a total of 27,458 Rights that were allocated among Invested Participants based on the relative number of shares of DCBF Stock held in their accounts on the Record Date.

16. According to the Applicant, in order to exercise their Rights, a shareholder was required to submit a completed exercise form and tender the appropriate exercise price before the Offering Period expired on November 26, 2012. However, the Applicant notes that Invested Participants were required to submit elections to exercise Rights to the Trustee five business days before the above expiration date, so that the Trustee could aggregate all of the elections and submit a single consolidated election on behalf of all electing Invested Participants to Broadridge. Accordingly, Invested Participants were required to submit election forms to the Trustee no later than 5:00 p.m. on November 19, 2012. The Applicant represents that this early direction deadline was similar to the deadlines imposed by brokers and other stockholders who hold shares for the benefit of third parties.

17. The Applicant states that for each Invested Participant who directed the Plan Trustee to exercise Rights attributable to his or her Account within the Plan, the funds needed to pay the $3.80 per share exercise price were obtained by either selling specific investments at the Invested Participant's direction or by using cash equivalents in their account, at the Invested Participant's direction. The Applicant represents that, to the extent that an Invested Participant's account did not hold adequate funds to exercise all Rights pursuant to the Invested Participant's direction, the Plan exercised such Rights to the fullest extent possible based on funds available in such accounts. According to the Applicant, any common shares of the DCBF Stock purchased upon exercise of the Rights held by an Invested Participant's Plan account was allocated to such account, and remained there subject to further investment direction from the Invested Participant.

18. According to the Applicant, notwithstanding the foregoing, the Trustee was instructed to note the public trading price of a share of DCBF stock on the business day immediately preceding the expiration of the Rights Offering. According to the Applicant, if, on that date, DCBF Stock last traded at or above $3.80, the Trustee was to exercise the Rights on behalf of Invested Participants pursuant to the Invested Participants' instructions. However, if the last trade price was below $3.80 per share, the Trustee was instructed not to exercise any Rights and to redeposit all money into the appropriate Invested Participants' Plan accounts. The Applicant represents that, because the DCBF Stock price was above $3.80 per share on the business day immediately preceding the expiration of the Offering Period, the Trustee exercised the Rights as directed by the Invested Participants. In this regard, the Applicant represents that during the 52 week period ending July 1, 2013, the DCBF Stock traded on the OTCBB in the range from $3.99 to $5.60 per share, well above the $3.80 price set for shares purchased through the Rights Offering. Furthermore, according to the Applicant, from April 1, 2012 through the expiration of the Rights Offering, no executive officer or director of DCBF, or their immediate family members bought or sold DCBF Stock, with the exception that each calendar quarter DCBF purchased DCBF Stock for its non-employee directors pursuant to a prior written plan as payment of directors' fees.

19. On December 5, 2012, DCBF announced that the Rights Offering had been oversubscribed and that the shares of the DCBF Stock purchased in the Rights Offering would be issued as soon as possible after that date. The shares of DCBF Stock were allocated to the Plan accounts of Invested Participants who exercised Rights on December 19, 2012.

20. The Applicant represents that DCBF did not make any recommendation to Invested Participants or any DCBF shareholders regarding whether they should exercise their Rights but urged them to make independent decisions based on their

[11] The Applicant states that the Standby Investors included certain directors and executive officers who might not participate in the original Rights Offering.

[12] The Applicant states that five Standby Investors would have been permitted to terminate their standby purchase agreements if a certain amount was not raised in both the Rights Offering and the Private Offering. However, because the Rights Offering raised more than those thresholds, the standby purchase agreements were not terminated.

[13] The Applicant notes that several of these Standby Investors were Plan participants who could have elected to purchase shares in the Private Offering through their Plan accounts using the Plan's self-directed investment feature.

assessment of DCBF's business and the risk factors associated with the Rights Offering. As a result, the Applicant states that the Plan exercised Rights and purchased 7,426 shares for 15 Invested Participants through the exercise of Basic Subscription Rights. The Applicant further represents that the Plan also exercised the Over-Subscription Privilege for 10 Invested Participants who wanted to acquire an additional 8,740 shares. However, because the over-subscription requests exceeded the number of shares of DCBF Stock available to purchase under the Rights Offering, the Plan was only able to purchase an additional 6,056 shares for the 10 Invested Participants.[14]

Request for Exemptive Relief

21. DCBF requests exemptive relief for acquisition and holding of the Rights by the Plan in connection with the Rights Offering. The Applicant states that the Rights constitute employer securities, as defined under section 407(d)(1) of the Act. The Applicant states that the Rights do not satisfy the definition of ''qualifying employer securities,'' as defined under section 407(d)(5) of the Act.

22. The Applicant notes that section 406(a)(1)(E) of the Act prohibits the fiduciary of a plan from causing the plan to engage in a transaction that constitutes the acquisition, on behalf of a plan, of any ''employer security in violation of Section 407(a) of the Act.'' Moreover, section 406(a)(2) of the Act prohibits a fiduciary who has the authority or discretion to control or manage the assets of a plan from allowing the plan to hold any ''employer security'' that violates section 407(a) of the Act. Section 407(a) of the Act prohibits plans from acquiring or holding employer securities that are not qualifying employer securities or employer real property that is not qualified employer real property. Additionally, Section 406(b)(1) of the Act prohibits a plan fiduciary from ''deal[ing] with the assets of the plan in his own interest or for his own account.'' Under Section 406(b)(2), a fiduciary may not ''act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries.''

The Applicant states that the acquisition and holding of the Rights by the Plan may violate sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act and the fiduciary self-dealing and conflict of interest provisions of sections 406(b)(1) and (b)(2) of the Act. Accordingly, the Applicant requests relief from the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2) and 407(a)(1)(A) of the Act. Finally, the Applicant requests that an exemption for the above transactions be granted with retroactive effect as of the date the Rights Offering was made to DCBF shareholders, and through the closing date of the offering.

Statutory Findings

23. DCBF represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Plan allocated to Invested Participants' accounts was a one-time transaction that involved an automatic distribution of the Rights to all shareholders. In addition, the Applicant states that it is customary for corporations to make a rights offering available to all shareholders.

24. DCBF represents that the transactions which are the subject of this proposed exemption are in the interest of the Plan and its participants and beneficiaries, because such transactions represented a valuable opportunity to Plan participants to buy DCBF Stock at a discount. This discount was realized by Plan participants who directed the Trustee to sell all or part of the DCBF Stock held in their accounts immediately after the exercise of the Rights and investing the proceeds from such sales into other investment options under the Plan. Furthermore, all fees related to the Plan's exercise of Rights were paid by DCBF and no fees related to the Rights Offering or exercise of Rights were paid with Plan assets.

25. DCBF represents that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan. In this regard, the Applicant states that participation in the Rights Offering protected the Invested Participants from having their interests in DCBF diluted as a result of the Rights Offering. DCBF represents further that the Invested Participants were adequately protected in that such individuals acquired and held the Rights automatically as a result of the Rights Offering, which itself was an independent corporate act of DCBF, all shareholders of DCBF Stock, including the Plan, were treated in a like manner. In this regard, each shareholder of the DCBF stock, including each Plan Participant who held DCBF shares in their Plan account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of DCBF shares held by such shareholder. The Applicant represents that all decisions regarding Rights held by the Plan were made by the Invested Participants whose accounts in the Plan received the Rights. Moreover, the Applicant represents that these Invested Participants provided directions to the Trustee, in accordance with the provisions under the Plan for individually-directed investment of such accounts. Finally, the Applicant represents that the closing price per share for DCBF Stock on November 23, 2012 (the last business day before the Offering election period closed), was $4.27, which was in excess of the strike price of $3.80 per share.

Summary

26. In summary, DCBF represents that the Rights Offering satisfied the statutory requirements for a proposed exemption under section 408(a) because:

(a) The acquisition of the Stock Rights by the Plan was made pursuant to the terms that were the same for all shareholders of DCBF Stock;

(b) The acquisition of the Rights by the Plan resulted from an independent, corporate act of DCBF;

(c) Each shareholder of the Stock, including the Plan, received the same proportionate number of Stock Rights, and this proportionate number of Stock Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to provisions under the Plan for individually-directed investments of the accounts of the individual participants in the Plan, a portion of whose accounts in the Plan hold DCBF Stock;

(e) The decisions with regard to the holding and disposition of the Rights by the Plan were made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts; and

(f) No brokerage fees, no subscription fees and no other charges were paid by the Plan with respect to the acquisition and holding of the Rights, and no brokerage fees, no commissions and no other monies were paid by the Plan to any broker in connection with the exercise of the Rights.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested persons within 15 days of the publication of the notice of proposed exemption in the **Federal Register**. Notice will be provided by email with proof of

[14] According to the Applicant, DCBF also held the Private Offering as discussed above, wherein the Plan purchased 30,600 shares of DCBF Stock for 3 Plan participants who were Standby Investors through the self-directed investment feature of the Plan.

delivery to all Plan participants who are actively employed with DCBF and will be mailed via first-class mail to all other interested persons. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing.

All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Erin Brown of the Department at (202) 693–8352. (This is not a toll-free number.)

The Home Savings and Loan Company 401(k) Savings Plan (The Plan), United Community Financial Corporation (UCFC), and the Home Savings and Loan Company (Home Savings) Located in Youngstown, OH

[Application No. D–11780]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974, as amended, (the Act or ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986, as amended (the Code), and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

Section I: Transactions

If the proposed exemption is granted, effective for the period beginning April 30, 2013, and ending May 31, 2013, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[15] shall not apply:

(a) To the acquisition of certain subscription right(s) (the Rights) by the individually-directed account(s) (the Account(s)) of certain participant(s) in the Plan (Invested Participants) in connection with an offering (the Offering) of shares of common stock (the Stock) of United Community Financial Corporation (UCFC) by UCFC, a party in interest with respect to the Plan; and

(b) To the holding of the Rights received by the Accounts during the subscription period of the Offering, provided that the conditions, as set forth in Section II, below, were satisfied for the duration of the acquisition and holding.

Section II: Conditions

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Offering, and the Rights were made available by UCFC to all shareholders of the Stock other than the Employee Stock Ownership Plan sponsored by UCFC;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of UCFC;

(c) Each shareholder of Stock, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts in the Plan held the Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan to any related broker in connection with the exercise of any of the Rights, and no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with respect to the acquisition and holding of the Stock.

Effective Date: This proposed exemption, if granted, will be effective for the period beginning on April 30, 2013, the commencement date of the Offering, and ending on May 31, 2013, the close of the Offering.

Summary of Facts and Representations

Background

1. The prohibited transaction exemption proposed herein was requested by the Home Savings and Loan Company (Home Savings), United Community Financial Corporation (UCFC), and the Home Savings and Loan Company 401(k) Savings Plan (the Plan), (together, the Applicant).[16] Home Savings is an Ohio state-chartered savings bank and a wholly-owned subsidiary of UCFC, with 33 full-service branches and nine loan production offices located throughout Ohio and western Pennsylvania. The principal business of Home Savings is the origination of mortgage loans, including construction loans on residential and nonresidential real estate located in Home Savings' primary market area. In addition to real estate lending, Home Savings originates commercial loans and various types of consumer loans. UCFC is a unitary thrift holding company incorporated in the State of Ohio for the purpose of owning all of the outstanding capital stock of Home Savings issued upon the conversion of Home Savings from a mutual savings association to a permanent capital stock savings association on July 8, 1998.[17]

2. Home Savings sponsors the Plan, a qualified defined contribution plan under section 401(a) of the Code, originally effective on January 1, 1993. The Applicant represents that the Plan, as amended and restated, operates in compliance with applicable requirements of the Code and is intended to operate in compliance with the safe harbor in section 404(c) of the Act. As of March 21, 2013, there were 567 participants with account balances in the Plan and the Plan had total assets of approximately $20,392,500.

3. The Plan is funded by elective employee deferrals, as well as discretionary employer matching contributions. The Applicant represents that the match has consistently been funded in cash and invested according to the elections of individual participants. Participants in the Plan may choose among a variety of investment options, including any combination of mutual funds and UCFC common stock (the Stock). Shares of Stock held by the Plan are held in the UCFC stock fund (the Stock Fund). Wilmington Trust, National Association

[15] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[16] The Summary of Facts and Representations is based on the Applicant's representations and does not reflect the views of the Department, unless indicated otherwise.

[17] Home Savings was originally organized as a mutual savings association under Ohio Law in 1889.

(the Trustee) serves as the Plan's trustee and custodian of the Plan's assets. The Stock is listed on the NASDAQ Global Select Market. The Applicant represents that the Stock is a ''qualifying employer security,'' as defined under section 407(d)(5) of the Act and 4975(e) of the Code.

4. The Plan is administered by the Compensation and Benefits Committee (the Committee), which is composed of certain appointed employees of Home Savings. The Committee oversees the selection and oversight of the Plan's investment alternatives. An entity that is unrelated to the Applicant, UBS Financial Services, provides advice and counsel to the Committee regarding the menu of investment alternatives. The Applicant states that on an annual basis, or more frequently if necessary, the Committee reviews the Plan's investment fund alternatives, including the Stock Fund alternative. Furthermore, according to the Applicant, although UBS Financial Services has recommended several investment fund changes, it has never recommended freezing or eliminating the Stock Fund as an investment option.

5. The Applicant states that investment in the Stock Fund by participants in the Plan is entirely voluntary. The Applicant represents further that neither UCFC nor Home Savings contributes any of the Stock to the Plan as part of the employer matching contribution. Instead, the Stock is acquired by a participant's Plan account only as a result of participant-directed investment decisions. According to the Applicant, the Stock shares held by the Plan have voting and dividend rights that are passed through to Plan participants whose accounts are invested in the Stock Fund. The Trustee has the responsibility of carrying out the voting directions of Plan participants. However, no participant instructions are permitted with respect to dividends because they are reinvested according to a standard process.

Capital Raise Activities

6. The Applicant states that since August 28, 2008, UCFC has been subject to various orders and agreements with federal and state bank regulators to reduce UCFC's debt and raise its capital levels in order to comply with certain regulatory capital requirements. In this regard, the Applicant states that UCFC has engaged in multiple activities to increase its capitalization, including: sales of its broker/dealer and trust company subsidiaries; sales of various bank branches and securities; sales of Stock to certain investors; and various expense reduction efforts. Additionally, the Applicant states that UCFC explored other potential sales of assets, joint ventures, and transactions with strategic partners, which UCFC ultimately determined were not in the best interest of shareholders or were not likely to receive required regulatory approvals.

7. According to the Applicant, UCFC's capital raise plan included a private offering (the Private Offering) of a combination of preferred and common shares of UCFC, commencing on January 11, 2013. The Private Offering involved UCFC entering into securities purchase agreements with various accredited investors and subscription agreements with certain corporate insiders. Pursuant to the securities purchase agreements, on March 22, 2013, the investors purchased 6,574,272 newly issued shares of Stock at a purchase price of $2.75 per share and 7,942 newly created and issued perpetual mandatorily convertible non-cumulative preferred shares of UCFC at a purchase price of $2,750 per share, for an aggregate price of approximately $39.9 million.[18] Pursuant to the subscription agreements in the Private Offering, certain insiders of UCFC were also to invest, and did invest, an aggregate of approximately $2.1 million in exchange for the issuance of 755,820 newly issued shares of Stock, at the same purchase price of $2.75 per share. The issuance and sale of Stock to these insiders was subject to the approval of UCFC shareholders.

The Rights Offering

8. In connection with its capital raise and in conjunction with the Private Offering, the Applicant states that UCFC's Board of Directors determined to conduct a stock rights offering (the Rights Offering) for existing shareholders of UCFC. According to the Applicant, in addition to maintaining and improving Home Savings' capital position and satisfying UCFC's regulatory and contractual obligations, the Rights Offering improved and strengthened UCFC's financial condition, allowing UCFC to pursue growth strategies and give shareholders the opportunity to limit further ownership dilution after the Private Offering by buying additional shares of the Stock.

9. The Rights Offering commenced on April 30, 2013, and closed on May 31, 2013, at 5:00 p.m. Eastern Time. UCFC reserved the right to extend the Rights Offering one or more times, but in no event later than June 30, 2013; however, no extensions occurred. The terms of the Rights Offering provided that up to 1,818,181 shares of the Stock would be available for purchase at a subscription price of $2.75 per share (the Subscription Price). According to the Applicant, UCFC determined that the Subscription Price should be the same as the price at which the accredited investors agreed to purchase the newly issued shares of Stock in the Private Offering since that price was negotiated in an arms-length transaction.[19] Finally, the Applicant states that UCFC considered the trading price of the Stock over the last year compared to the past three years and the Stock's low average trading volume. The Applicant represents that the Rights Offering was fully subscribed and resulted in gross proceeds for UCFC of $5,000,000 and net proceeds of $4,467,500.[20] UCFC informed shareholders that the proceeds from the Rights Offering were intended to be used for general corporate purposes, to pursue its business objectives, or as an investment in Home Savings to improve its capital position.

10. Under the terms of the Rights Offering, all shareholders of the Stock, including Plan participants (the Invested Participants) whose Plan accounts (the Account(s)) held shares of the Stock, automatically received, at no charge, non-transferable subscription rights (the Rights) to purchase, through the exercise of such Rights, their share of $5 million worth of the Stock issued in connection with the Rights Offering.[21] Under the terms of the Rights Offering, a ''basic subscription privilege'' provided each shareholder, including an Invested Participant whose Account held shares of the Stock, the opportunity to purchase 0.06 shares of Stock for every one share of Stock owned as of March 21, 2013 (the Record Date), at a subscription price of $2.75 per share, rounded down to the nearest

[18] According to the Applicant, the securities purchase agreements also required UCFC to follow through on its plan to conduct a stock rights offering to existing shareholders.

[19] In determining the price agreed to in the Private Offering, the Applicant represents that any sizeable offering would be made at a discount to market and book value, and UCFC considered the advice of its financial advisors that obtaining a higher price was not feasible.

[20] The Applicant represents that expenses related to the Rights Offering included: subscription and information agent fees and expenses, legal fees and expenses, accounting fees and expenses, printing and mailing costs, and other miscellaneous expenses.

[21] The Applicant states that Rights were distributed to all UCFC shareholders other than the Employee Stock Ownership Plan sponsored by UCFC (the ESOP). According to the Applicant, as of the date that Rights were distributed, the ESOP was invested primarily in shares of the Stock and would not have been able to exercise Rights without selling some of those shares. Accordingly, the Applicant notes that UCFC determined that the ESOP should be excluded from the Rights *Offering.*

whole share. The Applicant states that, for example, if a shareholder owned 1,000 shares of Stock as of the record date, that shareholder would receive the right to purchase 60 shares of the Stock for $2.75 per share, subject to certain limitations and subject to allotment. Shareholders could exercise all or a portion of their basic subscription privilege or could choose to exercise no basic subscription privilege at all.

11. The Applicant states that each shareholder, including an Invested Participant whose Account held shares of the Stock, was also entitled to purchase shares of Stock in the Rights Offering by using an ''over-subscription privilege.'' The ''over-subscription privilege'' allowed each shareholder to subscribe for additional shares of Stock, in the event such shareholder first exercised his or her basic subscription privileges in full, subject to certain limitations and allocation procedures, up to the number of shares of Stock available in the Rights Offering that were not subscribed for by the other holders of the Rights pursuant to their basic subscription privileges. UCFC allocated the available Stock among shareholders who over-subscribed on a pro-rata basis if there were not enough shares available to honor the over-subscription requests in full.

12. The Applicant states that the ability to purchase Stock in the Rights Offering was subject to an overall beneficial ownership interest limitation of 4.9% of the outstanding Stock after giving effect to a shareholder's participation in the Rights Offering and taking into account the holdings of the shareholder and his or her affiliates. All shareholders of Stock, including the Accounts of Invested Participants, held the Rights until the Rights were exercised or until the Rights expired and became worthless at the close of the Rights Offering.

13. As of the Record Date, out of 567 total Plan participants, 203 were eligible to participate in the Rights Offering.[22] The Applicant states that on May 1, 2013, each of the Invested Participants was sent detailed information regarding the Rights Offering, including a copy of the prospectus which described the Rights Offering, an election form, a return envelope addressed to UCFC, and a statement indicating the number of shares of Stock each such participant held in his or her Account, as of the Record Date. In addition to the form letters and accompanying documents, UCFC distributed two special Q&A sheets for all employees and all shareholders. These Q&A sheets were filed with the U.S. Securities and Exchange Commission (SEC) on May 6, 2013, and distributed to shareholders on the same date. The Applicant represents that no other communications were sent to Plan participants because federal and state securities laws prohibit separate communications about offers unless they are filed with the SEC.

14. The Applicant represents that Invested Participants were instructed that the election to exercise, some, all, or none of his or her Rights had to be received by the close of business on the fifth business day prior to the expiration of the Rights Offering (May 24, 2013, at 4:00 p.m. EST) so that there was reasonable time for the Trustee to reconcile the Invested Participants' instructions with their Accounts. Additionally, Invested Participants were instructed that their election to exercise the Rights was irrevocable. This process, considered an ''early exercise,'' is commonly required by brokers and other stockholders who hold shares for the benefit of third parties. To ensure the Invested Participants were protected against prejudice due to such early exercise, UCFC instructed the Trustee not to exercise the Invested Participants' Rights if the official closing price of a share of Stock was below $2.75 as of the last business day prior to the close of the Rights Offering. The Applicant represents that at the close of business on May 30, 2013, one day prior to the close of the Rights Offering, the Stock was trading on the NASDAQ at $4.02 per share. Furthermore, the closing price of the Stock on the closing date of the Rights Offering on May 31, 2013, was $4.09. Therefore, the exercise of the Rights was effectuated by the Trustee in accordance with the instructions from UCFC and at a purchase price that was less than its then-current fair market value.

15. An Invested Participant was only allowed to pay for the exercise of Rights using funds in his or her Account. According to the Applicant, the exercise of the Rights on behalf of an Invested Participant required such individual to transfer assets into the UCFC Rights Offering Liquidity Fund (the Rights Fund), a cash fund, prior to such exercise. The Applicant explains that the Rights Offering election form provided a basic worksheet for the Invested Participant to determine the amount of assets that needed to be transferred into the Rights Fund. According to the Applicant, the Invested Participant was responsible for liquidating other investments in his or her Account and transferring those assets to the Rights Fund, pending the exercise of the Rights. To the extent that an Invested Participant's Account did not hold adequate assets to exercise all the Rights pursuant to the Invested Participant's direction, the Trustee exercised such Invested Participant's Rights to the fullest extent possible based on the assets in such Invested Participant's Rights Fund. The Applicant states further that Invested Participants received a trade confirmation or other notice when the exercise of the Rights was completed on their behalf.

16. The Applicant represents that to exercise the Rights on behalf of Invested Participants, the Trustee placed the Invested Participants' orders to purchase the Stock with the subscription agent, Registrar and Transfer Company (Registrar), a registered broker-dealer that is unrelated to UCFC and the Plan. UCFC represents that the subscription price (which was based on the number of Rights to be exercised for each Invested Participant) was liquidated from that Participant's Rights Fund account, and cash equal to the necessary subscription payment was transferred to Registrar. The Applicant states further that Registrar received the subscription elections and related subscription payments from all electing shareholders, including the Trustee. Registrar calculated the number of shares of Stock to be issued to each subscriber and returned any excess subscription price paid by that subscriber (since the Rights Offering was oversubscribed). Finally, the Applicant states that Registrar issued the purchased shares of Stock to each subscriber, including the Trustee, and forwarded the subscription payments to UCFC. Following its receipt of the purchased shares of Stock after the close of the Rights Offering, according to UCFC, the Trustee allocated such shares to the Accounts of Invested Participants. In the event that the Invested Participant transferred more assets into the Rights Fund than was necessary to exercise all of his or her Rights, the Trustee transferred such assets into the Invested Participant's other investments, consistent with his or her elections for future contributions, on file at the time the Rights Offering was completed. According to the Applicant, the Stock was issued to shareholders, including the Accounts of Invested Participants, on June 10, 2013.

17. UCFC states that it paid any expenses associated with the Rights Offering. In this regard, the Applicant represents that no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with

[22] As of the Record Date, the Plan owned 562,928 shares out of 32,941,285 outstanding shares of Stock, or 1.71% of the outstanding Stock.

respect to the acquisition and holding of the Stock, and no brokerage fees, commissions, fees, or expenses were paid by the Plan to any related broker in connection with the exercise of the Rights.

18. The Applicant states that out of 203 Invested Participants, only 40 participated in the Rights Offering (7.05% of total Plan participants and 19.70% of Invested Participants). The Plan purchased 97,180 shares of the Stock through the Rights Offering for a total cost to the Plan of $267,245. According to the Applicant, there were no resale restrictions on the Stock held in the Accounts of Invested Participants, other than the general limitations under securities laws applicable to all shareholders that prohibit buying or selling shares while in possession of material non-public information. The Applicant states that as of June 11, 2013, the first valuation date after the Stock was issued to the Plan, the Plan held 652,391 shares of Stock which represented 1.3% of the 50,129,531 shares outstanding on that date. The Plan's total investment in the Stock was valued at $2,589,999.27 ($3.97 per share) as of that date. Furthermore, the Plan's investment in the Stock Fund on that date represented 12.7% ($2,589,992.27) of the total value of Plan assets ($20,399,202.42).

Requested Relief

19. The Applicant has requested exemptive relief for the acquisition of the Rights by the Accounts of Invested Participants in connection with the Rights Offering and the holding of the Rights by the Accounts of Invested Participants during the subscription period of the Rights Offering. The Applicant represents that the Rights acquired by the Invested Participants satisfy the definition of ''employer securities,'' pursuant to section 407(d)(1) of the Act. However, as the Rights were not stock or marketable obligations, they do not meet the definition of ''qualifying employer securities,'' as set forth in section 407(d)(5) of the Act. Accordingly, the Applicant states that the subject transactions constitute the acquisition and holding, on behalf of the Accounts of Invested Participants, of employer securities which are not qualifying employer securities, in violation of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), and 406(b)(2) and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code.

20. As noted above, the subject transactions have already been consummated. In this regard, the Accounts of Invested Participants acquired the Rights pursuant to the Rights Offering on April 30, 2013, and held such Rights until the closing of the Rights Offering on May 31, 2013, when such Rights were either exercised or expired. The Applicant has requested retroactive relief because UCFC determined that it was in the best interest of its shareholders generally to issue the Rights as soon as possible after the offering documents were approved by the SEC so that UCFC could maintain and improve its capital position and its capital ratio in accordance with its regulatory obligations and other agreements, as described above. Therefore, the Applicant seeks retroactive relief effective from April 30, 2013, the date that the Accounts of Invested Participants acquired the Rights, to May 31, 2013, the closing date of the Rights Offering.

21. UCFC represents that the proposed exemption is administratively feasible. In this regard, the acquisition and holding of the Rights by the Accounts of Invested Participants was a one-time transaction that involved an automatic distribution of the Rights to all shareholders. The Applicant represents further that it is customary for corporations to make a rights offering available to all shareholders and that the Department has granted exemptions for similar types of transactions in the past.

22. UCFC represents that the proposed exemption is in the interests of the Invested Participants, because if the Plan had not participated in the Rights Offering, the Invested Participants would not have received the same benefit as other UCFC shareholders and would not have been able to reduce the dilution of their investment in UCFC that occurred as a result of the Private Offering and the shares of Stock purchased by other shareholders of UCFC in connection with the Rights Offering.

23. UCFC represents that the proposed exemption is protective of the rights of the participants and beneficiaries of the Plan because decisions with regard to the holding and disposition of the Rights were made by each of the Invested Participants in accordance with the provisions under the Plan for individually-directed accounts. Additionally, the Applicant states that the Plan participants and beneficiaries were protected against prejudice in connection with the early exercise of the Rights by instructions given to the Trustee by UCFC not to exercise any Rights if the official closing price of a share of Stock was below $2.75 as of the last business day prior to the close of the Rights Offering. The Applicant represents that the closing price of the Stock on that date was $4.02, and the closing price on the day the Rights Offering closed was $4.09; therefore, the exercise of the Rights was effectuated by the Trustee in accordance with UCFC's instructions and at a purchase price that was below its then-current fair market value.

24. The Applicant states further that the Accounts of Invested Participants were protected against economic loss because the Rights were given to Invested Participants for free. Furthermore, the Applicant suggests that in the event that an Invested Participant chose not to exercise the Rights, his or her Account was not affected, as the Rights automatically expired and became worthless at the end of the Rights Offering.

25. In summary, the Applicant represents that the subject transactions satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The acquisition of the Rights by the Accounts of Invested Participants occurred in connection with the Rights Offering, and the Rights were made available by UCFC to all shareholders of the Stock other than the Employee Stock Ownership Plan sponsored by UCFC;

(b) The acquisition of the Rights by the Accounts of Invested Participants resulted from an independent corporate act of UCFC;

(c) Each shareholder of Stock, including each of the Accounts of Invested Participants, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investments of the Accounts by the individual participants in the Plan, a portion of whose Accounts held the Stock;

(e) The decision with regard to the holding and disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan to any related broker in connection with the exercise of any of the Rights, and no brokerage fees, commissions, subscription fees, or other charges were paid by the Plan with respect to the acquisition and holding of the Stock.

Notice to Interested Persons

Notice of the proposed exemption (the Notice) will be provided to all Invested Participants within fifteen (15) days of publication of the Notice in the **Federal Register**. Notice will be provided by email to all Invested Participants who are actively employed by UCFC or Home Savings in accordance with the Department's procedures for electronic disclosure to active employees under 29 CFR 2520.104b-1(c). Notice will be provided via first-class mail to all other Invested Participants. Such notification will contain a copy of the Notice, as published in the **Federal Register**, and a supplemental statement, as required, pursuant to 29 CFR 2570.43(a)(2). The supplemental statement will inform all interested persons of their right to comment on and to request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within 45 days of the publication of this proposed exemption in the **Federal Register**. All comments will be made available to the public.

Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Liberty Media 401(k) Savings Plan (the Plan) Located in Englewood, Colorado

[Application No. D–11756]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011).

Section I. Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(E) of the Code,[23] shall not apply, effective August 9, 2012, until October 9, 2012, to:

(a) The acquisition by the individually-directed accounts (the Accounts) in the Plan of certain participants (the Invested Participants) of stock subscription rights (the Rights) pursuant to a stock rights offering (the Rights Offering) by Liberty Interactive Corporation (LIC), a party in interest with respect to the Plan; and

(b) The holding of the Rights by the Invested Participants' Accounts during the subscription period.

Section II. Conditions

(a) The receipt of the Rights by the Invested Participants' Accounts occurred in connection with the Rights Offering, and the Rights were made available by LIC to all shareholders of Series A Liberty Interactive common stock (the LIC Stock);

(b) The acquisition of the Rights by the Invested Participants' Accounts resulted from an independent corporate act of LIC;

(c) Each shareholder of LIC Stock, including each Invested Participant's Account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of the LIC Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Invested Participants' Accounts, all or a portion of whose Accounts in the Plan held the LIC Stock;

(e) The decision with regard to the disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights. Notwithstanding the above, if any of the Invested Participants failed to give instructions as to the disposition of the Rights received in the Rights Offering, such Rights were sold on the Nasdaq Global Market System (the Nasdaq) and the proceeds from the sale were distributed to such Invested Participant's Account; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan or by the Invested Participants' Accounts to any broker related to Fidelity Management Trust Company (Fidelity), the Plan trustee, or to Liberty Media Corporation (LMC) or LIC in connection with the acquisition, holding or sale of the Rights.

Effective Date: This proposed exemption, if granted, will be effective for the period beginning August 9, 2012, through and including October 9, 2012.

Summary of Facts and Representations

1. Liberty Media Corporation (LMC or the Applicant), a Delaware corporation with its principal place of business in Englewood, Colorado, is primarily engaged in media, communications and entertainment operating businesses. LMC is a publicly traded corporation and a participating employer in the Plan.

2. LIC, which was affiliated with LMC until 2011, is a participating employer in the Plan. LIC owns interests in subsidiaries and other companies which are primarily engaged in the video and on-line commerce industries. Through subsidiaries and affiliates, LIC operates in North America, Europe and Asia.

3. The Plan, which is sponsored by LMC and LIC, is a defined contribution plan that is intended to qualify under sections 401(a) and 401(k) of the Code. According to the Applicant, the Plan meets the requirements of section 404(c) of the Act and allows participants to direct the investment of their entire Plan accounts (including their 401(k) contributions, any employer contributions, and any rollover contributions) into one of 18 investment categories, including shares of Series A common stock issued by LMC (LMC Stock) and shares of LIC Stock issued by LIC.

As of August 8, 2012, the Plan had approximately 1,904 participants (including beneficiaries) and total assets of $233,663,352. As of August 8, 2012, the Plan held 1,450,477 shares of LIC Stock, valued at $27,340,926 and representing 11.7% of the Plan's assets.[24] Such stock was allocated to the Plan Accounts of 970 Invested Participants. Also as of August 8, 2012, the Plan held 4,760 shares of LMC Stock, representing 20.85% of the Plan's assets and valued at $48,699,017. The LIC Stock (ticker: LINTA) and the LMC Stock (ticker: LMCA) are traded on the Nasdaq.

4. As the trustee of the Plan, Fidelity also acts as the custodian of Plan assets, holds legal title to the assets, and executes investment directions in accordance with the participants' written instructions. The Liberty Media 401(k) Savings Plan Administrative Committee (the Committee) is the fiduciary responsible for Plan matters.

5. LIC decided to conduct the Rights Offering in order to raise capital for general corporate purposes. To this end, LIC provided written communications to all shareholders of LIC Stock regarding the Rights Offering. The disclosures to each Invested Participant

[23] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[24] As of August 8, 2012, there were 542,297,982 shares outstanding of LIC Stock.

included a copy of the LIC Offering Questions & Answers, as well as a copy of the LIC Rights Offering Instructions, both of which were mailed on July 17, 2012.[25]

6. On August 8, 2012, shareholders of LIC approved a tracking stock proposal, which resulted in the amendment and restatement of LIC's certificate of incorporation to create Liberty Ventures common stock (Liberty Ventures Stock), a new tracking stock, and to make certain conforming changes to the existing LIC Stock, referred to hereafter as the ''recapitalization.''

7. Under the recapitalization, the Liberty Ventures Stock is intended to track and reflect the separate economic performance of the LIC Ventures Group, which is primarily focused on the maximization of the value of its investments in such companies as, Expedia, Inc., TripAdvisor, Inc., and other entities, such as Time Warner Cable Inc. The existing LIC Stock is intended to track and reflect the separate economic performance of the LIC Interactive Group, which is focused on video and online commerce operating businesses, such as QVC, Inc., Provide Commerce, Inc., and Backcountry.com, Inc.

8. On the date of the recapitalization (August 9, 2012), each holder of LIC Stock received:

(a) 0.05 of a share of Liberty Ventures Stock[26] for each share of LIC Stock held as of the record date (August 9, 2012); and

(b) ⅓ of a subscription right (each, a Right) to purchase one share of Liberty Ventures Stock for each share of Liberty Ventures Stock to be received by such holder in the distribution (rounded up to the nearest whole Right), as described in (a) above.

Each Right entitled the holder to purchase one share of Liberty Ventures Stock at a subscription price equal to a 20% discount to the 10-trading day volume weighted average trading price of such Stock beginning on the first day those shares began trading ''regular way'' on the Nasdaq following the completion of the distribution of the Rights (the first trading day for the shares was August 10, 2012). The Rights Offering commenced on September 12, 2012, once the subscription price for the Rights was determined and remained open for 20 trading days. There were 64,174 Rights offered to shareholders of LMC. Of the Rights, the Invested Participants' Accounts received 24,174 Rights.

9. Except as described in Representation 11 below, with respect to Rights allocated to their Accounts, Invested Participants could either elect to (a) exercise the Rights, or (b) sell the Rights at an exercise price of $35.99 per share of Liberty Ventures Stock. The elections applied to all of the Rights held in the Invested Participants' Accounts, including 401(k) contributions and employer matching contributions.

10. In addition to the Rights, all shareholders of LIC Stock were permitted to subscribe to purchase shares in excess of the shares reflected by the basic Rights issued to such shareholder, if the other shareholders did not exercise all of their basic Rights. Although the Plan was able to exercise oversubscription Rights, the Committee did not pass through this option to the Invested Participants because the Invested Participants would have been required to liquidate the assets in their Plan Accounts so that the purchase price for any Rights available under this option could be transmitted to Computershare Trust Company, N.A. (the Transfer Agent). This would have required Plan assets to be paid out of the Plan for which there was no assurance that any additional shares could be purchased, and these Plan assets would have been held by the Transfer Agent in an uninvested account.

In addition, the Committee was concerned about the fiduciary implications of permitting Plan assets to be held in an uninvested account where there was no guarantee that any shares of Liberty Ventures Stock would be available for purchase under the oversubscription option. Therefore, the Committee did not direct Fidelity to participate in the oversubscription option on behalf of the Plan.

11. Due to securities law restrictions, certain Invested Participants, who were considered ''reporting persons'' under Rule 16(b)[27] of the Securities Exchange Act of 1934 (Rule 16(b)) with respect to LIC, did not have the right to instruct Fidelity to either sell or exercise the Rights credited to their Plan Accounts. LMC provided Fidelity with a list of those Invested Participants and Fidelity established the appropriate restrictions to prevent these Invested Participants from exercising or selling the Rights credited to their Accounts. As provided by the Plan and as directed by the Committee, Fidelity sold the Rights credited to these Rule 16(b) Invested Participants' Accounts as soon as it was administratively feasible following the receipt and allocation of the Rights to such Accounts.

12. To hold the Rights, the Plan established a temporary separate trust (the Rights Trust), with the Committee serving as the trustee. Within the Rights Trust, two investment funds were established. The first fund, the ''Rights Holding Fund,'' was a separate fund set up to hold the Rights when they were issued. The Rights were credited to Invested Participants' Accounts based on their respective holdings of the Liberty Ventures Stock as of August 9, 2012. The second fund, the ''Rights Receivable Fund,'' reflected the approximate value of the Liberty Ventures Stock due from the Subscription Agent, following the exercise of Rights on October 8, 2012, as directed by the Investing Participants.

13. With the exception of the Rule 16(b) ''reporting persons,'' as described above, each Investing Participant could elect to exercise any percentage of the Rights allocated to such Participant's Account in the Plan. Under the Offering, an Invested Participant could elect to exercise the Rights by speaking to a Fidelity representative at any time prior to 4 p.m. Eastern Time, on or about September 26, 2016 (the Election Close-Out Date). Investing Participants had the opportunity prior to the Election Close-Out Date to revoke or change instructions to exercise their Rights by (a) electing a new percentage of Rights to exercise, (b) by placing an order to sell the Rights, or (c) selecting a combination of both alternatives.

14. The dollar amount required to exercise the Rights was exchanged from other investments in an Investing Participant's Account into the Rights Receivable Fund that had been established under the Plan. The required dollar amount to exercise the Rights equaled the percentage of Rights to be exercised (as elected by the Investing Participant) multiplied by the

[25] Subsequent to this mailing, the Invested Participants were notified of the dates instructions would be provided to Fidelity by a mailing of a Rights Offering Update on September 7, 2012. In addition, LIC issued a press release dated September 7, 2012, which set forth the exercise price for the purchase of the shares pursuant to the Rights offering.

[26] The Applicant represents that the Liberty Ventures Stock that is issued by LIC, a participating employer in the Plan, is a ''qualifying employer security.'' In relevant part, section 407(d)(5)(A) of the Act defines the term ''qualifying employer security'' as an employer security that is stock. Section 407(d)(1) of the Act defines the term ''employer security'' as a security that is issued by an employer of employees covered by a plan or by an affiliate of such employer. In this proposed exemption, the Department expresses no opinion on whether the Liberty Ventures Stock satisfies the definition of a ''qualifying employer security.''

[27] Rule 16(b) requires an officer, director, or any shareholder holding more than 10% of the outstanding shares of a publicly-traded company who makes a profit on a transaction with respect to the company's stock during a given six month period, pay the difference back to the company.

number of Rights credited to the Investing Participant's Account and multiplied by the exercise price for the Rights Offering. The dollar amount was exchanged from the other investments in which the Investing Participant's Account was invested on a proportional basis by source, excluding shares of LIC Stock, Liberty Ventures Stock and LMC Stock. For those Invested Participants with insufficient funds to permit the exercise of the entire elected amount of Rights, Fidelity exercised as many Rights as their Account balances in the Plan permitted.

15. On October 8, 2012, the Rights to be exercised and the funds needed to consummate the transaction were submitted by Fidelity to Computershare Trust Company, N.A. (the Subscription Agent) for the purchase of shares. Invested Participants' balances in the Rights Holding Fund were reduced by the number of Rights exercised on the Invested Participant's behalf. Upon receipt of the new shares, the Rights Receivable Fund was closed and the newly received shares were allocated to the Invested Participants' Accounts.

Those Invested Participants who elected to exercise only a portion of their Rights could later elect to exercise additional Rights to the extent that sufficient time existed prior to the Election Close-Out Date. The Election Close-Out Date was established to permit sufficient time for Fidelity to liquidate the Invested Participants' other assets in an orderly manner so that the necessary cash would be available to exercise the Rights before the Rights Offering expiration date (October 9, 2012). According to the Applicant, 74 Invested Participants exercised 3,171 Rights during this period.[28] If an Investing Participant failed to make an election during this period, or filed an invalid election, such Investing Participant would not be deemed to have elected to exercise his or her Rights.

In connection with the exercise of the Rights, National Financial Services LLC (NFS), an affiliate of Fidelity and a broker for the Plan, received a commission equal to 2.9 cents per Rights share. The commission was charged to the Invested Participants' Accounts. According to the Applicant, NFS was retained by the Committee to provide brokerage services to the Plan that were required for the sale of the Rights on the open market. In addition, the Applicant represents that the Committee approved the compensation paid to NFC, and it deemed such compensation to be ''reasonable.'' [29]

Fidelity also attempted to sell unexercised Rights on the open market between October 1 and October 9, 2012. Rights that remained unsold at the close of the market on October 9, 2012, expired.

16. An Invested Participant could elect to sell rather than exercise the Rights allocated to his or her Plan Account. In order to sell a Right, an Invested Participant was required to (a) contact a Fidelity representative, and (b) specify the percentage (in whole amounts) of the Rights the Invested Participant desired to sell. The selling period for Invested Participants ran from September 13, 2012, through October 1, 2012.[30] During this time period, 20 Invested Participants affirmatively elected to sell their Rights and 734 Rights were sold. The Rights were traded on the Nasdaq under the ticker symbol ''LVNAR.'' Fidelity sold a total of 20,269 of the remaining Rights for 877 Invested Participants between October 2 and October 5, 2012, for a total selling price of $257,130.70. (One Invested Participant had both an exercise and a sale.)

17. The Applicant has requested an administrative exemption from the Department for: (a) The acquisition of the Rights by the Plan in connection with the Rights Offering; and (b) the holding of the Rights by the Invested Participants' Accounts during the subscription period of the Rights Offering.

The Applicant represents that the Rights acquired by the Plan satisfy the definition of ''employer securities,'' pursuant to section 407(d)(1) of the Act. However, as the Rights are not stock or a marketable obligation, such Rights do not meet the definition of ''qualifying employer securities,'' as set forth in section 407(d)(5) of the Act. Accordingly, the subject transactions constitute an acquisition and holding by the Plan, of employer securities that are not qualifying employer securities, in violation of section 407(a) of the Act, for which the Applicant has requested relief from sections 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act. In addition, because the subject transactions raise conflict of interest issues by Plan fiduciaries, the Applicant has requested exemptive relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act. If granted, the proposed exemption will be effective for the period beginning August 9, 2012, through and including October 9, 2012.

18. The Applicant represents that the proposed exemption is administratively feasible because it involves the acquisition and short-term holding of Rights by the Invested Participants' Accounts and the one-time exercise of the Rights, as directed by the Invested Participants. In this regard, the Applicant explains that the Plan had already passed through certain rights to the Invested Participants with respect to the employer securities held in such Invested Participants' Accounts. According to the Applicant, voting rights with respect to the employer securities had been passed through to the Invested Participants. Therefore, the Committee determined that it would be consistent with these other rights to pass through the decision on whether to exercise or sell the Rights to the Invested Participants.

In addition, the Applicant represents that the proposed exemption is in the interests of the Plan and the participants and beneficiaries because it allowed Invested Participants, who exercised their Rights, to purchase shares of Liberty Ventures Stock at a significant discount. Had the Plan not engaged in the subject transactions, the Plan and the Invested Participants would have been at a disadvantage compared with outside shareholders. Therefore, the Committee determined that Invested Participants should be permitted to exercise or sell the Rights.

Finally, the Applicant explains that the proposed exemption is protective of the Plan and the participants and beneficiaries because all Invested Participants were notified, in advance of the recapitalization and the subsequent transactions, of the procedure for instructing Fidelity of such Invested Participants' desires with respect to the Rights. In addition, all instructions given by the Invested Participants to Fidelity were properly executed.

19. In summary, the Applicant represents that the subject transactions satisfy the statutory criteria of section 408(a) of the Act because:

(a) The receipt of the Rights by the Invested Participants' Accounts occurred in connection with the Rights Offering, and the Rights were made available by LIC to all shareholders of

[28] It is represented that the Invested Participants' Accounts relied on the relief provided by the statutory exemption pursuant to section 408(e) of the Act and the regulations that are promulgated thereunder with respect to the exercise of the Rights. However, in this proposed exemption, the Department is expressing no opinion on whether the requirements of the statutory exemption have been met.

[29] The Applicant represents that the brokerage services and commissions received by NFS from the Plan in connection with the exercise of the Rights are statutorily exempt under section 408(b)(2) of the Act and the applicable regulations. However, the Department is expressing no opinion in this proposed exemption on whether the requirements of the statutory exemption have been met.

LIC Stock, including the Invested Participants' Accounts;

(b) The acquisition of the Rights by the Invested Participants' Accounts resulted from an independent corporate act of LIC;

(c) Each shareholder of LIC Stock, including each Invested Participant's Account, received the same proportionate number of Rights, and this proportionate number of Rights was based on the number of shares of the LIC Stock held by each such shareholder;

(d) The Rights were acquired pursuant to, and in accordance with, provisions under the Plan for individually-directed investment of the Invested Participants' Accounts, all or a portion of whose Accounts in the Plan held the LIC Stock;

(e) The decision with regard to the disposition of the Rights by an Account was made by the Invested Participant whose Account received the Rights. Notwithstanding the above, if any of the Invested Participants failed to give instructions as to the disposition of the Rights received in the Rights Offering, such Rights were sold on the Nasdaq and the proceeds from the sale were distributed to such Invested Participant's Account; and

(f) No brokerage fees, commissions, or other fees or expenses were paid by the Plan or by the Invested Participants' Accounts to any broker related to Fidelity, the Plan trustee, or to LMC or LIC in connection with the acquisition, holding or sale of the Rights.

Notice to Interested Persons

The persons who may be interested in the publication in the **Federal Register** of the Notice of Proposed Exemption (the Notice) include Invested Participants whose Accounts in the Plan were invested in LIC Stock at the time of the Offering.

It is represented that all such interested persons will be notified of the publication of the Notice by first class mail, to each such interested person's last known address within fifteen (15) days of publication of the Notice in the **Federal Register**. Such mailing will contain a copy of the Notice, as it appears in the **Federal Register** on the date of publication, plus a copy of the Supplemental Statement, as required, pursuant to 29 CFR 2570.43(a)(2), which will advise all interested persons of their right to comment and to request a hearing. All written comments and/or requests for a hearing must be received by the Department from interested persons within 45 days of the publication of this proposed exemption in the **Federal Register**.

All comments will be made available to the public. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji-Keefe of the Department, telephone (202) 693–8567. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of March 2014.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2014–07872 Filed 4–8–14; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2014–022]

Agency Information Collection Activities: Proposed Extension of Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed extension of information collection.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection consisting of National Archives Trust Fund (NATF) Order Forms for Genealogical Research in the National Archives. The NATF forms included in this information collection are: NATF 84, National Archives Order for Copies of Land Entry Files; NATF 85, National Archives Order for Copies of Pension or Bounty Land Warrant Applications; and NATF 86, National Archives Order for Copies of Military Service Records. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before June 9, 2014 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (ISSD), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–7409; or electronically mailed to *tamee.fechhelm@nara.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments

and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (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 all respondents, including the use of information technology; and (e) whether small businesses are affected by this collection. Submitted comments will be summarized and included in NARA's request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Order Forms for Genealogical Research in the National Archives.

OMB number: 3095–0027.

Agency form numbers: NATF Forms 84, 85, and 86.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 13,525.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,254.

Abstract: Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records and the need to obtain specific information from the researcher to search for the records sought. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. You can also use Order Online! (*http://www.archives.gov/research_room/obtain_copies/military_and_genealogy_order_forms.html*) to complete the forms and order the copies.

Dated: April 2, 2014.

Michael L. Wash,

Executive for Information Services/CIO.

[FR Doc. 2014–07854 Filed 4–8–14; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0167]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on December 27, 2013.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* DOE/NRC Form 741, ''Nuclear Material Transaction Report'' and NUREG/BR–0006, Revision 7, ''Instructions for Completing Nuclear Material Transaction Reports, (DOE/NRC Forms 741 and 740M).''

3. *Current OMB approval number:* 3150–0003.

4. *The form number if applicable:* DOE/NRC Form 741.

5. *How often the collection is required:* DOE/NRC Form 741 is submitted when specified events occur (nuclear materials or source material transfer, receipts, or inventory changes).

6. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material. Any licensee who ships, receives, or otherwise undergoes an inventory change of special nuclear or source material is required to submit a DOE/NRC Form 741 to document the change.

7. *An estimate of the number of annual responses:* 10,000.

8. *The estimated number of annual respondents:* 340.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 12,500.

10. *Abstract:* The NRC is required to collect nuclear material transaction information for domestic safeguards use and make it available to the International Atomic Energy Agency (IAEA). Licensees use Form 741 to make inventory and accounting reports for certain source or special nuclear material, or for transfer or receipt of 1 kilogram or more of source material. This form enables the NRC to collect, retrieve, analyze, and submit the data to IAEA to fulfill its reporting responsibilities.

This information collection request will also categorize this form as a common form. Once the OMB approves the use of this common form, all Federal agencies using the form may request use of this common form without additional 60- or 30-day notice and comment requirements. At that point, each agency will account for its number of respondents and the burden associated with the agency's use.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 9, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Danielle Jones, Desk Officer, Office of Information and Regulatory Affairs (3150–0003), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Danielle_Y_Jones@omb.eop.gov* or submitted by telephone at 202–395–1741.

The Acting NRC Clearance Officer is Kristen Benney, telephone: 301–415–6355.

Dated at Rockville, Maryland, this 31st day of March, 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–07879 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0280]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on January 10, 2014.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 63, ''Disposal of High-Level Radioactive Wastes in a Geologic Repository at Yucca Mountain, Nevada.''

3. *Current OMB approval number:* 3150–0199.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required:* One time.

6. *Who will be required or asked to report:* The State of Nevada, local governments, or affected Indian tribes, or their representatives, requesting consultation with the NRC staff regarding review of the potential high-level waste geologic repository site, or wishing to participate in a license application review for the potential geologic repository.

7. *An estimate of the number of annual responses:* 6.

8. *The estimated number of annual respondents:* 6.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 726.

10. *Abstract:* Part 63 of Title 10 of the *Code of Federal Regulations* (10 CFR), requires the State of Nevada, local governments, or affected Indian tribes to submit certain information to the NRC if they request consultation with the NRC staff concerning the review of the potential repository site, or wish to participate in a license application review for the potential repository. Representatives of the State of Nevada, local governments, or affected Indian tribes must submit a statement of their authority to act in such a representative capacity. The information submitted by the State, local governments, and affected Indian tribes is used by the Director of the Office of Nuclear Material Safety and Safeguards as a basis for decisions about the commitment of the NRC staff resources to the consultation and participation efforts.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.*

The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 9, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Danielle Jones, Desk Officer, Office of Information and Regulatory Affairs (3150–0199), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to Danielle_Y_Jones@omb.eop.gov or submitted by telephone at 202–395–1741.

The Acting NRC Clearance Officer is Kristen Benney, telephone: 301–415–6355.

Dated at Rockville, Maryland, this 31st day of March 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–07880 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2013–0166]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on December 27, 2013.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* DOE/NRC Form 740M, ''Concise Note'' and NUREG/BR–0006, Revision 7, ''Instructions for Completing Nuclear Material Transaction Reports, (DOE/NRC Forms 741 and 740M).''

3. *Current OMB approval number:* 3150–0057.

4. *The form number if applicable:* DOE/NRC Form 740M.

5. *How often the collection is required:* DOE/NRC Form 740M is requested as necessary to inform the U.S. or the International Atomic Energy Agency (IAEA) of any qualifying statement or exception to any of the data contained in other reporting forms required under the U.S.-IAEA Safeguards Agreement.

6. *Who will be required or asked to report:* Persons licensed to possess specified quantities of special nuclear material or source material, and licensees of facilities on the U.S. Eligible Facilities List who have been notified in writing by the NRC that they are subject to Part 75 of Title 10 of the *Code of Federal Regulations* (10 CFR).

7. *An estimate of the number of annual responses:* 150.

8. *The estimated number of annual respondents:* 15.

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 113.

10. *Abstract:* Licensees affected by Part 75 and related sections of parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or the IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S.—IAEA Safeguards Agreement. The use of the Form 740M enables the NRC to collect, retrieve, analyze, and submit the data to

IAEA to fulfill its reporting responsibilities.

This information collection request will also categorize this form as a common form. Once OMB approves the use of this common form, all Federal agencies using the form may request use of this common form without additional 60- or 30-day notice and comment requirements. At that point, each agency will account for its number of respondents and the burden associated with the agency's use.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/.* The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 9, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Danielle Jones, Desk Officer, Office of Information and Regulatory Affairs (3150–0057), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Danielle_Y_Jones@omb.eop.gov* or submitted by telephone at 202–395–1741.

The Acting NRC Clearance Officer is Kristen Benney, telephone: 301–415–6355.

Dated at Rockville, Maryland, this 31st day of March 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–07878 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–033; NRC–2008–0566]

DTE Electric Company; Fermi 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Combined license application; availability.

SUMMARY: On September 18, 2008, the U.S. Nuclear Regulatory Commission (NRC) received an application for a combined license (COL) submitted by Detroit Edison Company. The NRC published a notice of receipt and availability for an application for a COL in the **Federal Register** on October 17, 2008. In a letter dated December 21, 2013, the Detroit Edison Company notified the NRC that, effective January 1, 2013, the name of the company would be changed to ''DTE Electric Company.'' This notice is being published to make available to the public the application for a COL submitted by DTE Electric Company (Formerly the Detroit Edison Company).

ADDRESSES: Please refer to Docket ID NRC–2008–0566 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–2008–0566. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The application for a combined license submitted by Detroit Edison Company and the letter notifying the NRC of the name change are available in ADAMS under Accession Nos. ML082730763 and ML12361A437.
- *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: Adrian Muniz, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4093, email: *Adrian.Muniz@nrc.gov.*

SUPPLEMENTARY INFORMATION: On September 18, 2008, Detroit Edison Company (renamed DTE Electric Company as of January 1, 2013) filed with the NRC, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Part 52 of Title 10 of the Code of Federal Regulations (10 CFR), ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' an application for a COL for an economic simplified boiling-water reactor designated as Fermi 3 in Monroe County, Michigan. The NRC published a notice of receipt and availability for an application for a COL in the **Federal Register** on October 17, 2008 (73 FRN 61916). The application is currently under review by the NRC staff. On December 21, 2012, the Detroit Edison company sent the NRC a letter indicating that, effective January 1, 2013, the name of the company would be changed to ''DTE Electric Company.''

An applicant may seek a COL in accordance with Subpart C of 10 CFR Part 52. The information submitted by the applicant includes certain administrative information, such as financial qualifications submitted pursuant to 10 CFR 52.77, as well as technical information submitted pursuant to 10 CFR 52.79. This notice is being provided in accordance with the requirements in 10 CFR 50.43(a)(3).

A copy of the application is available for public inspection at the NRC's PDR, and online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* The application is also available at *http://www.nrc.gov/reactors/new-reactors/col.html.* Additional information about accessing the application and other publicly available documents related to the application, including revisions filed after the initial submission, are provided in the **ADDRESSES** section of this document.

Dated at Rockville, Maryland, this 3rd day of April 2014.

For the Nuclear Regulatory Commission.

Ronaldo Jenkins,

Chief, Licensing Branch 3, Division of New Reactor Licensing, Office of New Reactor.

[FR Doc. 2014–07958 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–335; NRC–2014–0076]

Exemption for Florida Power & Light Company; St. Lucie Plant, Unit 1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an

exemption in response to a May 10, 2013, request from Florida Power & Light Company for an exemption for the use of a different fuel rod cladding material (AREVA M5®).

ADDRESSES: Please refer to Docket ID NRC–2014–0076 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–2014–0076. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Lisa M. Regner, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1906; email: *Lisa.Regner@nrc.gov.*

I. Background

Florida Power & Light Company (the licensee) is the holder of Renewed Facility Operating License No. DPR–67, which authorizes operation of the St. Lucie Plant, Unit 1. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect. The facility consists of a pressurized-water reactor (PWR) located in St. Lucie County, Florida.

II. Request/Action

In accordance with § 50.12, of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Specific exemptions,'' the licensee, by letter dated May 10, 2013 (ADAMS Accession No. ML13135A008), requested an exemption from the requirements of 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems [ECCS] for light-water nuclear power reactors,'' and 10 CFR Part 50, Appendix K, ''ECCS Evaluation Models,'' to allow the use of fuel rods clad with AREVA M5® alloy for future reload applications. The regulations in 10 CFR 50.46 contain acceptance criteria for the ECCS for reactors fueled with zircaloy or ZIRLO™ fuel rod cladding material. In addition, Appendix K to 10 CFR Part 50 requires that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal/water reaction. The Baker-Just equation assumes the use of a zirconium alloy, which is a material different from the AREVA M5® material. The licensee requested the exemption because these regulations do not have criteria for the use of fuel rods clad in a material other than zircaloy or ZIRLO™. Because the material specifications of M5® differ from the specification for zircaloy or ZIRLO™, a plant-specific exemption is required to support the reload applications for St. Lucie Plant Unit 1.

The exemption request relates solely to the cladding material specified in these regulations (i.e., fuel rods with zircaloy or ZIRLO™ cladding material). This exemption would provide for the application of the acceptance criteria of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to fuel assembly designs using AREVA M5® fuel rod cladding material.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person, grant exemptions from the requirements of 10 CFR Part 50, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Paragraph (a)(2)(ii) of 10 CFR 50.12 states that the Commission will not consider granting an exemption unless special circumstances are present, such as when application of the regulation in the particular circumstance is not necessary to achieve the underlying purpose of the rule.

A. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 is to establish acceptance criteria for ECCS performance. The regulations in 10 CFR 50.46 and Appendix K are not expressly applicable to M5® cladding material, because the M5® cladding material is not specified in 10 CFR 50.46 or presumed in the Baker-Just equation required by paragraph I.A.5 of 10 CFR Part 50, Appendix K. The evaluations described in the following sections of this exemption, however, show that the intent of the regulation is met, in that, subject to certain conditions, the acceptance criteria are valid for M5® zircaloy-based alloy cladding, the material is less susceptible to embrittlement, and the Baker-Just equation conservatively bounds scenarios following a loss of coolant accident (LOCA) for rods with M5® cladding material. Thus, a strict application of the rule (which would preclude the applicability of ECCS performance acceptance criteria to, and the use of, M5® clad fuel rods) is not necessary to achieve the underlying purposes of 10 CFR 50.46 and Appendix K of 10 CFR Part 50. The purpose of these regulations is achieved through the application of the requirements to the use of M5® fuel rod cladding material. Therefore, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption exist.

B. The Exemption Is Authorized by Law

This exemption would allow the use of M5® fuel rod cladding material for future reload applications at St. Lucie Plant, Unit 1. Section 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR Part 50 provided that special circumstances are present. The NRC staff determined that special circumstances exist to grant the proposed exemption and that granting the exemption would not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

C. The Exemption Presents No Undue Risk to Public Health and Safety

Section 10 CFR 50.46 requires that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within

cylindrical zircaloy or ZIRLO cladding must be provided with an ECCS that must be designed so that its calculated cooling performance following postulated LOCAs conforms to the criteria set forth in paragraph (b) of this section. The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance at nuclear power reactors. The NRC staff previously documented its approval of AREVA topical report BAW–10227P, ''Evaluation of Advanced Cladding and Structural Material (M5®) in PWR Reactor Fuel,'' in a safety evaluation dated February 4, 2000 (ADAMS Accession No. ML003681490), and concluded that the 10 CFR 50.46 and 10 CFR Part 50, Appendix K, criteria are applicable to M5® fuel, subject to compliance with specific conditions. The specific conditions that address the use of M5® with respect to ECCS performance requirements are: (1) the corrosion limit will remain below 100 microns for all locations of the fuel; (2) all conditions listed in the NRC safety evaluations for AREVA methodologies for M5® fuel analysis will continue to be met; (3) AREVA methodologies will be used only within the range for which M5® data was acceptable and for which the verifications discussed in the topical reports were performed; and (4) the burnup limit for implementation of M5® is 62 gigawatt-days per megaton uranium metal (GWd/MTU). The staff determined that the licensee has satisfied these conditions. The corrosion limit stated in condition (1) is verified by the licensee for each reload as required by TS 6.9.1.11, ''Core Operating Limits Report [COLR].'' The conditions from NRC approved safety evaluations stated in condition (2) are incorporated as restrictions in AREVA procedures that control the core reload designs which are also verified by the licensee for each reload as required by the COLR. The restrictions on the use of AREVA methodologies stated as condition (3) are also incorporated as restrictions in AREVA procedures that control the core reload designs which are also verified for each reload as required by the COLR. Finally, the burnup limit stated in condition (4) is currently part of the St. Lucie Plant, Unit 1, COLR, and is also verified as part of the reload analysis required by the COLR.

The AREVA topical report BAW–10227P–A, which was submitted to the NRC by letter dated February 11, 2000 (ADAMS Accession No. ML003685828), demonstrates that M5® has essentially the same properties as the current zircaloy cladding material and requires no change in fuel rod dimensions. Subsequently, the NRC staff approved topical report, BAW–10240P–A, ''Incorporation of M5 Properties in Framatome ANP Approved Methods'' (dated May 5, 2004; ADAMS Accession No. ML041260560), which further addressed M5® material properties with respect to LOCA applications and reached similar conclusions.

Based on the recently completed LOCA research program at Argonne National Laboratory (ANL), the results showed that cladding corrosion and associated hydrogen pickup had a significant impact on postquench ductility. The research identified a new embrittlement mechanism referred to as hydrogen-enhanced beta layer embrittlement. Pretest characterization of irradiated M5® fuel cladding segments at ANL provides further evidence of favorable corrosion and hydrogen pickup characteristics of M5® as compared with standard zircaloy. Due to its favorable hydrogen pickup, fuel rods with M5® zirconium-based alloy cladding are less susceptible to this new embrittlement mechanism.

Furthermore, ANL postquench ductility tests on un-irradiated and irradiated M5® cladding segments demonstrate that the 10 CFR 50.46(b) acceptance criteria (i.e., 2200 degrees Fahrenheit and 17-percent equivalent cladding reacted) remain conservative up to the current burnup limit of 62 GWd/MTU. Information provided in the previously approved M5® topical reports and recent ANL LOCA research demonstrate that the acceptance criteria within 10 CFR 50.46 remain valid for the M5® alloy material, and thus the underlying purpose of the rule—to maintain a degree of post-quench ductility in the fuel cladding material through ECCS performance criteria—would be served if an exemption were granted to allow those criteria to apply to M5® clad fuel.

In addition, utilizing currently-approved LOCA models and methods and consistent with technical specifications, the licensee will perform an evaluation to ensure that the M5® fuel rods continue to satisfy 10 CFR 50.46 acceptance criteria. Therefore, for the reasons above, granting the exemption request will ensure that the underlying purpose of the rule is achieved for St. Lucie Plant, Unit 1. Thus, a strict application of the rule (which would prohibit the applicability of ECCS performance acceptance criteria to M5® clad fuel rods) is not necessary to achieve the underlying purpose of the rule.

Paragraph I.A.5 of Appendix K to 10 CFR Part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the advanced zirconium-based M5® alloy for determining acceptable fuel performance. The underlying intent of this portion of the appendix, however, is to ensure that the analysis of fuel response to LOCAs is conservatively calculated. The approved AREVA topical reports show that due to the similarities in the chemical composition of the advanced zirconium-based M5® alloy and zircaloy, the application of the Baker-Just equation in the analysis of the M5® clad fuel rods will continue to conservatively bound all post-LOCA scenarios. For the reasons above, granting the exemption request will ensure that the Baker-Just equation can be applied to M5® clad fuel and that the underlying purpose of the rule is achieved for St. Lucie Plant, Unit 1. Thus, a strict application of the rule (which would preclude the application of the Baker-Just equation) is not necessary to achieve the underlying purpose of the rule.

Based upon results of metal-water reaction testing and mechanical testing which ensure the applicability of 10 CFR 50.46 acceptance criteria and 10 CFR 50 Appendix K methods, the staff finds it acceptable to grant an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50 to allow these regulations to apply to, and enable the use of, fuel rods with M5® zirconium-based alloy at St. Lucie Plant, Unit 1. Therefore, the exemption presents no undue risk to public health and safety.

D. The Exemption Is Consistent With the Common Defense and Security

The licensee's exemption request is only to allow the application of the aforementioned regulations to an improved fuel rod cladding material that is not specified or presumed by the cited regulations. In its letter dated May 10, 2013, the licensee stated that 10 CFR 50.46 and 10 CFR Part 50, Appendix K, requirements and acceptance criteria will be maintained. The licensee is required to handle and control special nuclear material in these assemblies in accordance with its approved plant procedures. This change to the reactor core internals is adequately controlled by NRC requirements and is not related to security issues. Therefore, the NRC staff determined that this exemption does not impact common defense and

security and thus, is consistent with the common defense and security.

E. Environmental Considerations

The NRC staff determined that the exemption discussed herein meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(9) because it is related to a requirement concerning the installation or use of a facility component located within the restricted area, as defined in 10 CFR Part 20, and the granting of this exemption involves: (i) No significant hazards consideration, (ii) no significant change in the types or a significant increase in the amounts of any effluents that may be released offsite, and (iii) no significant increase in individual or cumulative occupational radiation exposure. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need to be prepared in connection with the NRC's consideration of this exemption request. The basis for the NRC staff's determination is discussed in the following evaluation of the requirements in 10 CFR 51.22(c)(9)(i)–(iii).

Requirements in 10 CFR 51.22(c)(9)(i)

The NRC staff evaluated the issue of no significant hazards consideration, using the standards described in 10 CFR 50.92(c), as presented as follows:

1. Does the proposed exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed exemption would allow the use of M5® fuel rod cladding material in the St. Lucie Plant Unit 1 reactor core. The NRC-approved topical reports, BAW–10227P–A and BAW–10240(P)(A), address the M5® material and demonstrate that it has essentially the same properties as currently licensed zircaloy. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of M5® fuel rod cladding material will continue to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident. Therefore, the proposed exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The use of M5® fuel rod cladding material will not result in changes in the operation or configuration of the facility. The NRC-approved topical reports BAW–10227P–A and BAW–10240(P)(A) demonstrated that the material properties of M5® are similar to those of zircaloy. The M5® fuel rod cladding material will perform similarly to those fabricated from zircaloy, thus precluding the possibility of the fuel cladding becoming an accident initiator and causing a new or different type of accident. Therefore, the proposed exemption does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed exemption involve a significant reduction in a margin of safety?

No. The proposed exemption does not involve a significant reduction in a margin of safety because it has been demonstrated that the material properties of the M5® material are not significantly different from those of zircaloy. M5® is expected to perform similarly to zircaloy for all normal operating and accident scenarios, including both LOCA and non-LOCA scenarios. For LOCA scenarios, plant-specific LOCA analyses using M5® properties demonstrate that the acceptance criteria of 10 CFR 50.46 have been satisfied. Therefore, the proposed exemption does not involve a significant reduction in a margin of safety.

Based on the above, the NRC staff concludes that the proposed exemption presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

Requirements in 10 CFR 51.22(c)(9)(ii)

The proposed exemption would allow the use of M5® fuel rod cladding material in the reactors. AREVA M5® material has essentially the same properties as the currently licensed zircaloy cladding. The use of the M5® fuel rod cladding material will not significantly change the types of effluents that may be released offsite, or significantly increase the amount of effluents that may be released offsite. Therefore, the provisions of 10 CFR 51.22(c)(9)(ii) are met.

Requirements in 10 CFR 51.22(c)(9)(iii)

The proposed exemption would allow the use of the M5® fuel rod cladding material in the St. Lucie Plant, Unit 1 reactor core. M5® has essentially the same properties as the currently used zircaloy cladding. The use of the M5® fuel rod cladding material will not significantly increase individual occupational radiation exposure, or significantly increase cumulative occupational radiation exposure. Therefore, the provisions of 10 CFR 51.22(c)(9)(iii) are met.

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances required by 10 CFR 50.12(a)(2)(ii) are present. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR Part 50, to allow the application of those criteria to, and the use of, M5® fuel rod cladding material at St. Lucie Plant Unit 1.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of March 2014.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–07972 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0069]

Regulatory Guide 3.28, Welder Qualification for Welding in Areas of Limited Accessibility in Fuel Reprocessing Plants and in Plutonium Processing and Fuel Fabrication Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide 3.28, ''Welder Qualification for Welding in Areas of Limited Accessibility in Fuel Reprocessing Plants and in Plutonium Processing and Fuel Fabrication Plants.'' This guide is being withdrawn because more recently updated guidance is provided in RG 1.71, Rev. 1, ''Welder Qualification for Areas of Limited Accessibility,'' which was updated in March 2007.

ADDRESSES: Please refer to Docket ID NRC–2014–0069 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–2014–0069. 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.

• *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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The bases document for the withdrawal of RG 3.28 is available in ADAMS under Accession No. ML13274A526.

• *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, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jose Cuadrado, Office of Nuclear Material Safety and Safeguards, telephone: 301–287–9127, email: *Jose.Cuadrado@nrc.gov;* or Jazel Parks, Office of Nuclear Regulatory Research, telephone: 301–251–7690, email: *Jazel.Parks@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTAL INFORMATION:

I. Introduction

The NRC is withdrawing Regulatory Guide (RG) 3.28, ''Welder Qualification for Welding in Areas of Limited Accessibility in Fuel Reprocessing Plants and in Plutonium Processing and Fuel Fabrication Plants,'' which was published in May 1975 (ADAMS Accession No. ML003739371). RG 3.28 provides guidance on methods acceptable to the NRC for meeting quality assurance (QA) requirements for welding nuclear components for fuel reprocessing plants and for plutonium processing and fuel fabrication plants in areas of limited accessibility. RG 3.28 is being withdrawn because the guidance it provides is duplicated in RG 1.71, Rev. 1, ''Welder Qualification for Areas of Limited Accessibility,'' which was updated in March 2007 (ADAMS Accession No. ML070320476).

II. Further Information

The withdrawal of RG 3.28 does not alter any prior or existing licensing commitments based on its use. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological innovations, Congressional actions, or other events.

Regulatory guides are revised for a variety of reasons and the withdrawal of a regulatory guide should be thought of as the final revision of the guide. Although a regulatory guide is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal of a guide means that the guide should not be used for future NRC licensing activities. Changes to existing licenses can be accomplished using other regulatory products.

Dated at Rockville, Maryland, this 28th day of March 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Branch Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–07928 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0070]

Regulatory Guide 3.29, Preheat and Interpass Temperature Control for the Welding of Low-Alloy Steel for Use in Fuel Reprocessing Plants and in Plutonium Processing and Fuel Fabrication Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 3.29, ''Preheat and Interpass Temperature Control for the Welding of Low-Alloy Steel for Use in Fuel Reprocessing Plants and in Plutonium Processing and Fuel Fabrication Plants.'' This guide is being withdrawn because the guidance can be found in RG 1.50, Rev. 1, ''Control of Preheat Temperature for Welding of Low-Alloy Steel.''

ADDRESSES: Please refer to Docket ID NRC–2014–0070 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–2014–0070. 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.

• *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 ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The bases document for the withdrawal of RG 3.29 is available in ADAMS under Accession No. ML13274A528.

• *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, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jose Cuadrado, Office of Nuclear Material Safety and Safeguards, telephone: 301–287–9127, email: *Jose.Cuadrado@nrc.gov*; or Jazel Parks, Office of Nuclear Regulatory Research, telephone: 301–251–7690, email: *Jazel.Parks@nrc.gov*, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTAL INFORMATION:

I. Introduction

The NRC is withdrawing Regulatory Guide (RG) 3.29, ''Preheat and Interpass Temperature Control for the Welding of Low-Alloy Steel for Use in Fuel Reprocessing Plants and in Plutonium Processing and Fuel Fabrication Plants,'' which was published in May 1975 (ADAMS Accession No. ML003739381). RG 3.29 provides guidance on methods acceptable to the NRC for meeting quality assurance (QA) requirements with regard to controlling the welding of low-alloy steel components for fuel reprocessing plants and for plutonium processing and fuel fabrication facilities.

RG 3.29 is being withdrawn because the guidance it provides is duplicated in RG 1.50, Rev. 1, ''Control of Preheat Temperature for Welding of Low-Alloy Steel,'' which was updated in March 2011 (ADAMS Accession No. ML101870612), and is up-to-date. In addition to endorsing portions of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (Sections III, VIII, and IX), RG 3.29 provides additional guidance.

II. Further Information

The withdrawal of RG 3.29 does not alter any prior or existing licensing commitments based on its use. Regulatory guides may be withdrawn when their guidance no longer provides useful information, or is superseded by technological innovations, Congressional actions, or other events.

Regulatory guides are revised for a variety of reasons and the withdrawal of a regulatory guide should be thought of as the final revision of the guide. Although a regulatory guide is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. Withdrawal of a guide means that the guide should not be used for future NRC licensing activities. Changes to existing licenses can be accomplished using other regulatory products.

Dated at Rockville, Maryland, this 28th day of March , 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Branch Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–07929 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0267]

Service Contracts Inventory

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is providing for public information its Inventory of Contracts for Services for Fiscal Year (FY) 2013. The inventory includes service contract actions over $25,000 that were awarded in FY 2013.

ADDRESSES: Please refer to Docket ID NRC–2013–0267 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0267. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may 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. The Inventory of Contracts for Services for FY 2013 can be found in ADAMS under Accession No. ML13351A457. The inventory was published on the NRC's Web site at the following location: *http://www.nrc.gov/about-nrc/contracting.html.*
- *NRC' 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: Lori Konovitz, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–0897 or email: *lori.konovitz@nrc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law 111–117, the NRC is publishing this notice to advise the public of the availability of its FY 2013 Service Contracts Inventory. The inventory provides information on service contract actions over $25,000 that were awarded in FY 2013. The information is organized by function to show how contracted resources are distributed throughout the agency.

The inventory contains the following data:

1. A description of the services purchased;
2. The total dollar amount obligated for the services under the contract, and the funding source for the contract;
3. The contract type and date of the award;
4. The name of the contractor and place of performance;
5. Whether the contract is a personal services contract; and
6. Whether the contract was awarded on a non-competitive basis.

The NRC will analyze the data in the inventory for the purpose of determining if its contract labor is being used in an effective and appropriate manner and if the mix of federal employees and contractors in the agency is effectively balanced. The NRC developed the inventory by pulling data from the Federal Procurement Data System—Next Generation. The inventory does not include contractor proprietary or sensitive information.

Dated at Rockville, Maryland, this 31th day of March 2014.

For the Nuclear Regulatory Commission.

James Corbett,

Director, Acquisition Management Division, Office of Administration.

[FR Doc. 2014–07973 Filed 4–8–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31002; 812–14269]

Direxion Shares ETF Trust, et al.; Notice of Application

April 3, 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 (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 (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 12(d)(1)(B) of the Act.

APPLICANTS: Direxion Shares ETF Trust (the ''Trust''), Rafferty Asset Management, LLC (''Rafferty''), and Foreside Fund Services, LLC (''Foreside'').

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 ((a) through (d), the ''ETF Relief''); 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 January 22, 2014, and amended on April 2, 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 28, 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: 1301 Avenue of the Americas (6th Avenue), 35th Floor, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

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 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 registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. The Trust intends to offer an actively managed investment series, Direxion Active Asset Allocation Shares (the ''Initial Fund''). The Initial Fund will seek to achieve its investment goal of providing risk adjusted returns by investing in shares of other investment companies, primarily ETFs, and other types of securities such as common and preferred stock, convertible securities, credit-linked notes and indexed floating rate securities, private placements and other restricted securities.

2. Rafferty, a New York limited liability company, will be the investment adviser to the Initial Fund. Each Advisor (as defined below) is or will be registered as an ''investment adviser'' under the Investment Advisers Act of 1940 (the ''Advisers Act''), The Advisor may enter into sub-advisory agreements with investment advisers (''Subadvisors'') to act as sub-advisers with respect to the Funds (as defined below). Any Subadvisor will be registered under the Advisers Act or not subject to such registration. A registered broker-dealer under the Securities Exchange Act of 1934 (''Exchange Act''), which may be an affiliate of the Advisor, will act as the distributor and principal underwriter of the Funds (''Distributor''). Foreside will serve as the initial Distributor.

3. Applicants request that the order for ETF Relief apply to the Initial Fund and any future series of the Trust or of any other existing or future open-end management companies that utilize active management investment strategies (''Future Funds''). Any Future Fund will (a) be advised by Rafferty or an entity controlling, controlled by, or under common control with Rafferty (together with Rafferty, an ''Advisor''), and (b) comply with the terms and conditions of the ETF Relief. The Initial Fund and Future Funds together are the ''Funds.'' [1] Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) as well as currencies and other assets and positions (''Portfolio Positions''). For any Fund that invests in derivatives, the Fund's board of trustees or directors (for any entity, the ''Board'') periodically will review and approve the Fund's use of derivatives and how the Fund's Advisor or any Subadvisor assesses and manages risk with respect to the Fund's use of derivatives. Each Fund's disclosure of its use of derivatives in its offering documents and periodic reports will be consistent with relevant Commission and staff guidance. Funds may invest in ''Depositary Receipts.'' A Fund will not invest in any Depositary Receipts that the Advisor or Subadvisor deems to be illiquid or for which pricing information is not readily available.[2] Funds may also invest in ''to-be-announced transactions'' or ''TBA Transactions,'' [3] short sales and forward commitment transactions. Each Fund will operate as an actively managed exchange traded fund (''ETF''). The Funds may invest in other open-end and/or closed-end investment companies and/or ETFs.

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) (''12(d)(1) Relief'') apply to: (i) Any Fund that is currently or subsequently part of the same ''group of investment companies'' as an Initial Fund within the meaning of section 12(d)(1)(G)(ii) of the Act; (ii) any principal underwriter for the Fund; (iii) any brokers selling Shares of a Fund to an Investing Fund (as defined below); and (iv) 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 within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with 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.

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the price of a Share will range from $20 to $250. 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 dealer registered under the Exchange Act (''Broker'') or other participant in

[1] 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. An Investing Fund (as defined below) may rely on the order only to invest in Funds and not in any other registered investment company.

[2] 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. No affiliated persons of applicants, any Fund or any Subadvisor will serve as the depositary bank for any Depositary Receipts held by the Fund.

[3] 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.

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 (such participant, ''DTC Participant''). The 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'').[4] On any given Business Day [5] 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),[6] 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 tradeable round lots;[7] or (c) TBA transactions, short positions and other positions that cannot be transferred in kind [8] will be excluded from the Creation Basket.[9] If there is a difference between the net asset value (''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 ''Balancing Amount'').

6. 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 Balancing 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. investments (''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.[10]

7. 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 Balancing 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 through the facilities of the Consolidated Tape Association an amount representing, on a per Share basis, the sum of the current value of the Portfolio Positions that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

8. An investor purchasing or redeeming a Creation Unit from a Fund may be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[11] 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.

9. 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 (''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 fees and charges.

10. 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

[4] 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.

[5] Each Fund will sell and redeem Creation Units on any day the Fund is open for business, including as required by section 22(e) of the Act (each, a ''Business Day'').

[6] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[7] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[8] 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.

[9] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Balancing Amount (defined below).

[10] 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).

[11] Where a Fund permits an in-kind purchaser to substitute 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. The determination whether or not to impose a Transaction Fee, and the amounts of such Transaction Fee, will be determined on the same basis regardless of the identity of the Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

use in their own market making activities.[12] Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[13] 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.

11. 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. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.

12. 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 statement to the effect that Shares are not individually redeemable.

13. The Funds' Web site, which will be publicly available prior to the public offering of Shares, will include the 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 Positions held by the Fund (including any short positions) that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[14]

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 5(a)(1) and 2(a)(32) 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

[12] If Shares are listed on NYSE Arca, Nasdaq or a similar electronic Stock Exchange, one or more member firms of that Stock Exchange will act as Market Maker and maintain a market for Shares trading on the Stock Exchange. On Nasdaq or BATS Exchange, Inc., 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. If Shares are listed on a Stock Exchange such as the NYSE, one or more member firms will be designated to act as a Specialist and maintain a market for the Shares trading on the Stock Exchange. No Market Maker or Specialist will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within section 2(a)(3)(A) or (C) of the Act due to ownership of Shares, as described below.

[13] 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.

[14] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

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 immaterial.

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 Positions 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, up to a maximum of 14 calendar days, in the principal local markets where transactions in the Portfolio Positions of each Global Fund customarily clear and settle, but in all cases no later than 14 calendar days following the tender of a Creation Unit.

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 the 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 effect 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 [15] (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

[15] 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.

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.[16]

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.

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.[17] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from, and also engage in any accompanying in-kind transactions that would accompany such sales and redemptions with, certain Investing Funds of which the Funds are affiliated persons or a second-tier affiliates.[18]

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, nor by prohibiting Investing Funds and Funds transacting directly in Creation Units. Absent the circumstances discussed above, 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 Positions. 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 Positions currently held by the relevant Funds. 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.[19] Absent the circumstances discussed above, on each Business Day, 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 Positions. The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the policies set forth in its 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

[16] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[17] 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.

[18] 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 any in-kind transactions that would accompany such sales and redemptions.

[19] 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.

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 Positions 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 Subadvisor, 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. 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 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 the 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–l 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 ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

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 an FOF Participation Agreement with the Fund stating, without limitation, 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 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.

[FR Doc. 2014–07893 Filed 4–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31003; File No. 812–14197]

FundVantage Trust, et al.; Notice of Application

April 3, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 6(c) of the Act for an exemption from rule 12d1–2(a) under the Act.

SUMMARY: *Summary of the Application:* The requested order would (a) permit certain registered open-end management investment companies that operate as ''funds of funds'' to acquire shares of certain registered open-end management investment companies and unit investment trusts (''UITs'') that are within and outside the same group of investment companies as the acquiring investment companies, and (b) permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: FundVantage Trust (''Trust''), Boston Advisors, LLC (''Advisor''), and Foreside Funds Distributors LLC (''Distributor'').

DATES: *Filing Dates:* The application was filed on August 7, 2013, and amended on January 31, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 28, 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: c/o John M. Ford, Esq., Pepper Hamilton LLP, 3000 Two Logan Square, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

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, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is comprised of 28 series that pursue different investment objectives and principal investment strategies.[1]

2. Boston Advisers, LLC, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and currently serves as investment adviser to one series of the Trust.

3. The Distributor, a Delaware limited liability company, is registered as a broker-dealer under the Securities

[1] Applicants request that the order apply to each existing and future series of the Trust and to each existing and future registered open-end management investment company or series thereof which is advised by a Fund of Funds Adviser (as defined below) or any entity controlling, controlled by or under common control with the Fund of Funds Adviser and which is part of the same ''group of investment companies'' (as defined in section 12(d)(1)(G)(ii) of the Act), as the Trust (each, a ''Fund'' and collectively, ''Funds.''). All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application.

Exchange Act of 1934 (the ''Exchange Act''). The Distributor serves as principal underwriter and distributor for the shares of the Funds.

4. Applicants request an order to permit (a) a Fund that operates as a ''fund of funds'' (each a ''Fund of Funds'') to acquire shares of (i) registered open-end management investment companies that are not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (''Unaffiliated Investment Companies'') and UITs that are not part of the same group of investment companies as the Fund of Funds (''Unaffiliated Trusts,'' together with the Unaffiliated Investment Companies, ''Unaffiliated Funds'') [2] or (ii) registered open-end management companies or UITs that are part of the same ''group of investment companies, within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds (collectively, ''Affiliated Funds,'' together with the Unaffiliated Funds, ''Underlying Funds'') [3] and (b) each Underlying Fund, the Distributor or any principal underwriter for the Underlying Fund, and any broker or dealer registered under the Exchange Act (''Broker'') to sell shares of the Underlying Fund to the Fund of Funds. Applicants also request an order under sections 6(c) and 17(b) of the Act to exempt applicants from section 17(a) to the extent necessary to permit Underlying Funds to sell their shares to Funds of Funds and redeem their shares from Funds of Funds.

5. Applicants also request an exemption under section 6(c) from rule 12d1–2 under the Act to permit any existing or future Fund that relies on section 12(d)(1)(G) of the Act (''Same Group Investing Fund'') and that otherwise complies with rule 12d1–2 to also invest, to the extent consistent with its investment objective, policies, strategies, and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').

Applicants' Legal Analysis

A. Investments in Underlying Funds —Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act, in relevant part, 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, and any Broker from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's total outstanding voting stock, or if the sale will cause more than 10% of the acquired company's total outstanding voting stock to be owned by investment companies generally.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) of the Act to permit a Fund of Funds to acquire shares of the Underlying Funds in excess of the limits in section 12(d)(1)(A), and an Underlying Fund, the Distributor or any principal underwriter for an Underlying Fund, and any Broker to sell shares of an Underlying Fund to a Fund of Funds in excess of the limits in section 12(d)(1)(B) of the Act.

3. Applicants state that the terms and conditions of the proposed arrangement will not give rise to the policy concerns underlying sections 12(d)(1)(A) and (B), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Accordingly, applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants believe that the proposed arrangement will not result in the exercise of undue influence by a Fund of Funds or a Fund of Funds Affiliate over the Unaffiliated Funds.[4] To limit the control that a Fund of Funds may have over an Unaffiliated Fund, applicants propose a condition prohibiting a Fund of Funds Adviser, any person controlling, controlled by, or under common control with a Fund of Funds Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Fund of Funds Adviser or any person controlling, controlled by, or under common control with a Fund of Funds Adviser (the ''Advisory Group'') from controlling (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any other investment adviser within the meaning of section 2(a)(20)(B) of the Act to a Fund of Funds (''Subadviser''), any person controlling, controlled by, or under common control with the Subadviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Subadviser or any person controlling, controlled by, or under common control with the Subadviser (the ''Subadvisory Group''). Applicants propose other conditions to limit the potential for undue influence over the Unaffiliated Funds, including that no Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in an offering of securities during the existence of any 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, trustee, advisory board member, investment adviser, Subadviser, or employee of the Fund of Funds, or a person of which any such officer, director, trustee, member of an advisory board, investment adviser, Subadviser, or

[2] Certain of the Unaffiliated Funds may be registered under the Act as either UITs or open-end management investment companies and have received exemptive relief to permit their shares to be listed and traded on a national securities exchange at negotiated prices (''ETFs'').

[3] Certain of the Underlying Funds currently pursue, or may in the future pursue, their investment objectives through a master-feeder arrangement in reliance on section 12(d)(1)(E) of the Act. In accordance with condition 11, a Fund of Funds may not invest in an Underlying Fund that operates as a feeder fund unless the feeder fund is part of the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as its corresponding master fund or the Fund of Funds. If a Fund of Funds invests in an Affiliated Fund that operates as a feeder fund and the corresponding master fund is not within the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as the Fund of Funds and Affiliated Fund, the master fund would be an Unaffiliated Fund for purposes of the application and its conditions.

[4] A ''Fund of Funds Affiliate'' is any Fund of Funds Adviser, any Subadviser (as defined below), promoter, or principal underwriter of a Fund of Funds, as well as any person controlling, controlled by, or under common control with any of those entities. An ''Unaffiliated Fund Affiliate'' is an investment adviser, sponsor, promoter, or principal underwriter of an Unaffiliated Fund, as well as any person controlling, controlled by, or under common control with any of those entities.

employee is an affiliated person. An Underwriting Affiliate does not include any person whose relationship to an Unaffiliated Fund is covered by section 10(f) of the Act.

5. To further assure that an Unaffiliated Investment Company understands the implications of an investment by a Fund of Funds under the requested order, prior to a Fund of Funds' investment in the shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute an agreement stating, without limitation, that their respective board of directors or trustees (for any entity, the ''Board'') and their investment advisers understand the terms and conditions of the order and agree to fulfill their responsibilities under the order (''Participation Agreement''). Applicants note that an Unaffiliated Investment Company (other than an ETF whose shares are purchased by a Fund of Funds in the secondary market) will retain its right at all times to reject any investment by a Fund of Funds.[5]

6. Applicants state that they do not believe that the proposed arrangement will involve excessive layering of fees. The Board of each Fund of Funds, including a majority of the trustees who are not ''interested persons'' (within the meaning of section 2(a)(19) of the Act) (''Independent Trustees''), will find that the advisory fees charged under investment advisory or management contract(s) are based on services provided that will be in addition to, rather than duplicative of, the services provided under such advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. In addition, a Fund of Funds Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Fund of Funds Adviser or an affiliated person of the Fund of Funds Adviser, other than any advisory fees paid to the Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any sales charges and/or service fees charged with respect to shares of the Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in Rule 2830 of the Conduct Rules of the NASD (''NASD Conduct Rule 2830'').[6]

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Underlying Fund 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 in certain circumstances identified in condition 11 below.

B. Section 17(a)

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; and (c) any person directly or indirectly controlling, controlled by, or under common control with the other person.

2. Applicants state that a Fund of Funds and the Affiliated Funds managed by the same Adviser might be deemed to be under common control of the Fund of Funds Adviser and therefore affiliated persons of one another. Applicants also state that the Fund of Funds and the Unaffiliated Funds might be deemed to be affiliated persons of one another if the Fund of Funds acquires 5% or more of an Unaffiliated Fund's outstanding voting securities. In light of these and other possible affiliations, section 17(a) could prevent an Underlying Fund from selling shares to and redeeming shares from a Fund of Funds.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed transactions satisfy the standards for relief under sections 17(b) and 6(c) of the Act.[7] Applicants state that the terms of the transactions are reasonable and fair and do not involve overreaching. Applicants state that the terms upon which an Underlying Fund will sell its shares to or purchase its shares from a Fund of Funds will be based on the net asset value of the Underlying Fund.[8] Applicants state that the proposed transactions will be consistent with the policies of each Fund of Funds and each Underlying Fund and with the general purposes of the Act.

C. Other Investments by Same Group Investing Funds

1. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities

[5] An Unaffiliated Investment Company, including an ETF, would retain its right to reject any initial investment by a Fund of Funds in excess of the limit in section 12(d)(1)(A)(i) of the Act by declining to execute the Participation Agreement with the Fund of Funds.

[6] Any references to NASD Conduct Rule 2830 include any successor or replacement rule of FINRA to NASD Conduct Rule 2830.

[7] Applicants acknowledge that receipt of any compensation by (a) an affiliated person of a Fund of Funds, or an affiliated person of such person, for the purchase by a Fund of Funds of shares of an Underlying Fund or (b) an affiliated person of an Underlying Fund, or an affiliated person of such person, for the sale by the Underlying Fund of its shares to a Fund of Funds may be prohibited by section 17(e)(1) of the Act. The Participation Agreement also will include this acknowledgement.

[8] To the extent purchases and sales of shares of an ETF occur in the secondary market (and not through principal transactions directly between a Fund of Funds and an ETF), relief from section 17(a) of the Act would not be necessary. The requested relief is intended to cover, however, transactions directly between ETFs and a Fund of Funds. Applicants are not seeking relief from section 17(a) of the Act for, and the requested relief will not apply to, transactions where an ETF could be deemed an affiliated person, or an affiliated person of an affiliated person, of a Fund of Funds because the investment adviser to the ETF or an entity controlling, controlled by, or under common control with the investment adviser to the ETF, also is an investment adviser to the Fund of Funds.

association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end management investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

2. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

3. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that a Same Group Investing Fund may invest a portion of its assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Same Group Investing Funds to invest in Other Investments. Applicants assert that permitting Same Group Investing Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

4. Consistent with its fiduciary obligations under the Act, the Board of each Same Group Investing Fund will review the advisory fees charged by the Same Group Investing Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Same Group Investing Fund may invest.

Applicants' Conditions

Investments by Funds of Funds in Underlying Funds

Applicants agree that the relief to permit Funds of Funds to invest in Underlying Funds shall be subject to the following conditions:

1. The members of an Advisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. The members of a Subadvisory Group will not control (individually or in the aggregate) an Unaffiliated Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of an Unaffiliated Fund, an Advisory Group or a Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of the Unaffiliated Fund, then the Advisory Group or the Subadvisory Group will vote its shares of the Unaffiliated Fund in the same proportion as the vote of all other holders of the Unaffiliated Fund's shares. This condition will not apply to a Subadvisory Group with respect to an Unaffiliated Fund for which the Subadviser or a person controlling, controlled by, or under common control with the Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Unaffiliated Investment Company) or as the sponsor (in the case of an Unaffiliated Trust).

2. No Fund of Funds or Fund of Funds Affiliate will cause any existing or potential investment by the Fund of Funds in shares of an Unaffiliated Fund to influence the terms of any services or transactions between the Fund of Funds or a Fund of Funds Affiliate and the Unaffiliated Fund or an Unaffiliated Fund Affiliate.

3. The Board of each Fund of Funds, including a majority of the Independent Trustees, will adopt procedures reasonably designed to assure that its Fund of Funds Adviser and any Subadviser(s) to the Fund of Funds are conducting the investment program of the Fund of Funds without taking into account any consideration received by the Fund of Funds or Fund of Funds Affiliate from an Unaffiliated Fund or an Unaffiliated Fund Affiliate in connection with any services or transactions.

4. Once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, the Board of the Unaffiliated Investment Company, including a majority of the Independent Trustees, will determine that any consideration paid by the Unaffiliated Investment Company to a Fund of Funds or a Fund of Funds Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Unaffiliated Investment Company; (b) is within the range of consideration that the Unaffiliated Investment Company would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Unaffiliated Investment Company and its investment adviser(s) or any person controlling, controlled by, or under common control with such investment adviser(s).

5. No Fund of Funds or Fund of Funds Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Unaffiliated Investment Company or sponsor to an Unaffiliated Trust) will cause an Unaffiliated Fund to purchase a security in any Affiliated Underwriting.

6. The Board of an Unaffiliated Investment Company, including a majority of the Independent Trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Unaffiliated Investment Company in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of the Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board of the Unaffiliated Investment Company will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Unaffiliated Investment Company. The Board of the Unaffiliated Investment Company will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Unaffiliated Investment Company; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Unaffiliated Investment Company in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board of the Unaffiliated Investment Company 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 interests of shareholders.

7. Each Unaffiliated Investment Company shall 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 shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in an Affiliated Underwriting once an investment by a Fund of Funds in the securities of an Unaffiliated Investment Company exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth: (a) The party from whom the securities were acquired, (b) the identity of the underwriting syndicate's members, (c) the terms of the purchase, and (d) the information or materials upon which the determinations of the Board of the Unaffiliated Investment Company were made.

8. Prior to its investment in shares of an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i) of the Act, the Fund of Funds and the Unaffiliated Investment Company will execute a Participation Agreement stating, without limitation, that their Boards and their investment advisers 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 an Unaffiliated Investment Company in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Unaffiliated Investment Company of the investment. At such time, the Fund of Funds will also transmit to the Unaffiliated Investment Company a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Unaffiliated Investment Company of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Unaffiliated Investment Company and the Fund of Funds will maintain and preserve a copy of the order, the 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.

9. Before approving any advisory contract under section 15 of the Act, the Board of each Fund of Funds, including a majority of the Independent Trustees, shall find that the advisory fees charged under such advisory contract are based on services provided that are in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Underlying Fund in which the Fund of Funds may invest. Such finding and the basis upon which the finding was made will be recorded fully in the minute books of the appropriate Fund of Funds.

10. A Fund of Funds Adviser will waive fees otherwise payable to it by a Fund of Funds in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by an Unaffiliated Investment Company under rule 12b–1 under the Act) received from an Unaffiliated Fund by the Fund of Funds Adviser, or an affiliated person of the Fund of Funds Adviser, other than any advisory fees paid to the Fund of Funds Adviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund. Any Subadviser will waive fees otherwise payable to the Subadviser, directly or indirectly, by the Fund of Funds in an amount at least equal to any compensation received by the Subadviser, or an affiliated person of the Subadviser, from an Unaffiliated Fund, other than any advisory fees paid to the Subadviser or its affiliated person by an Unaffiliated Investment Company, in connection with the investment by the Fund of Funds in the Unaffiliated Fund made at the direction of the Subadviser. In the event that a Subadviser waives fees, the benefit of the waiver will be passed through to the applicable Fund of Funds.

11. No Underlying Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that such Underlying Fund: (a) Acquires such securities in compliance with section 12(d)(1)(E) of the Act and either is an Affiliated Fund or is in the same ''group of investment companies,'' as defined in section 12(d)(1)(G)(ii) of the Act, as its corresponding master fund; (b) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (c) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more investment companies for short-term cash management purposes, or (ii) engage in interfund borrowing and lending transactions.

12. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to fund of funds set forth in NASD Conduct Rule 2830.

Other Investments by Same Group Investing Funds

Applicants agree that the relief to permit Same Group Investing Funds to invest in Other Investments shall be subject to the following condition:

13. Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Same Group Investing Fund from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07894 Filed 4–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 33–9569; Release No. 34–71852]

Securities Act of 1933; Securities Exchange Act of 1934; Order Regarding Review of FASB Accounting Support Fee for 2014 Under Section 109 of the Sarbanes-Oxley Act of 2002

April 3, 2014.

The Sarbanes-Oxley Act of 2002 (the ''Act'') provides that the Securities and Exchange Commission (the ''Commission'') may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets certain criteria. Consequently, Section 109 of the Act provides that all of the budget of such a standard setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the ''recoverable budget expenses'' of the standard setting body. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable

share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (''FASB'') and its parent organization, the Financial Accounting Foundation (''FAF''), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' under Section 108 of the Act.[1] As a consequence of that recognition, the Commission undertook a review of the FASB's accounting support fee for calendar year 2014. In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2014.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (''GASB''), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (''OMB'') has determined the FASB's spending of the 2014 accounting support fee is sequestrable under the Budget Control Act of 2011.[2] So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2014 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07882 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[1] Financial Reporting Release No. 70.

[2] See ''OMB Report Pursuant to the Sequestration Transparency Act of 2012'' (Pub. L. 112–155), page 222 of 224 at: *http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71856; File No. SR–C2–2014–008]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rule 6.15

April 3, 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 April 1, 2014, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to Rule 6.15 (Obvious Error and Catastrophic Errors). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to obvious errors. Interpretation and Policy .08 to Rule 6.15, explained in further detail below, is currently operating on a pilot program set to expire on April 8, 2014. The Exchange proposes to extend the pilot program to February 20, 2015.

On April 8, 2013, the Commission approved, on a pilot basis, amendments to Exchange Rule 6.15 that stated that options executions will not be adjusted or nullified if the execution occurs while the underlying security is in a limit or straddle state as defined by the Plan.[3] Under the terms of this current pilot program, though options executions will generally not be adjusted or nullified while the underlying security is in a limit or straddle state, such executions may be reviewed by the Exchange should the Exchange decide to do so under its own motion.[4]

Pursuant to a comment letter filed in connection with the order approving the establishment of the pilot, the Exchange committed to submit monthly data regarding the program.[5] In addition, the Exchange agreed to submit an overall analysis of the pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission.[6] The Exchange now notes that each month, the Exchange shall provide to the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[7] For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted

[3] Securities Exchange Act Release No. 69345 (April 8, 2013), 78 FR 21985 (April 12, 2013) (SR–C2–2013–013). *See also* Exchange Rule 6.15.08

[4] *Id.*

[5] See letter from Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange, Incorporated, date April 4, 2013.

[6] *Id.*

[7] The Exchange also notes that it will be supplying the Commission this data retroactively from April 2013–March 2014 as soon as practicable. The Exchange will also provide the Commission with this data on a monthly basis from March 2014 through the end of the pilot.

average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the limit or straddle state (or halt if applicable) is 30% away from the price before the start of the limit or straddle state.

In addition, the Exchange will provide to the Commission, no later than September 30, 2014, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. This data will be submitted under separate cover. Confidential treatment under the Freedom of Information Act is requested regarding the analysis.

The Exchange is now proposing to extend the pilot period to February 20, 2015. The Exchange believes the benefits to market participants from this provision should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in limit or straddle states will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the provisions of Rule 6.15 would likely apply in many instances during limit and straddle states. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a limit or straddle state. Thus, the Exchange believes that the protections of current Rule should continue while the industry gains further experience operating the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a limit or straddle state from certain aspects of the Exchange Rule 6.15. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot would ensure that limit orders that are filled during a limit or straddle state would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that the proposal will allow for the least amount of market disruption as the pilot will continue as it currently does maintaining the status quo. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2014–008 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–C2–2014–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2014–008 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07886 Filed 4–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71857; File No. SR–CBOE–2014–033]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exchange Rule 6.25

April 3, 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 April 1, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend a pilot program related to Rule 6.25 (Nullification and Adjustment of Options Transactions). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to extend the effectiveness of the Exchange's current rule applicable to obvious errors. Interpretation and Policy .06 to Rule 6.25, explained in further detail below, is currently operating on a pilot program set to expire on April 8, 2014. The Exchange proposes to extend the pilot program to February 20, 2015.

On April 5, 2013, the Commission approved, on a pilot basis, amendments to Exchange Rule 6.25 that stated that options executions will not be adjusted or nullified if the execution occurs while the underlying security is in a limit or straddle state as defined by the Plan. Under the terms of this current pilot program, though options executions will generally not be adjusted or nullified while the underlying security is in a limit or straddle state, such executions may be reviewed by the Exchange should the Exchange decide to do so under its own motion.

Pursuant to a comment letter filed in connection with the order approving the establishment of the pilot, the Exchange committed to submit monthly data regarding the program.[3] In addition, the Exchange agreed to submit an overall analysis of the pilot in conjunction with the data submitted under the Plan and any other data as requested by the Commission.[4] The Exchange now notes that each month, the Exchange shall provide to the Commission, and the public, a dataset containing the data for each straddle and limit state in optionable stocks that had at least one trade on the Exchange.[5] For each trade on the Exchange, the Exchange will provide (a) the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state, and (b) for

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange, Incorporated, date April 4, 2013.

[4] *Id.*

[5] The Exchange also notes that it will be supplying the Commission this data retroactively from April 2013–March 2014 as soon as practicable. The Exchange will also provide the Commission with this data on a monthly basis from March 2014 through the end of the pilot.

the trades on the Exchange, the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle and limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's limit or straddle state compared to the last available option price as reported by OPRA before the start of the limit or straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the limit or straddle state (or halt if applicable) is 30% away from the price before the start of the limit or straddle state.

In addition, the Exchange will provide to the Commission, no later than September 30, 2014, assessments relating to the impact of the operation of the obvious error rules during limit and straddle states including: (1) An evaluation of the statistical and economic impact of limit and straddle states on liquidity and market quality in the options markets, and (2) an assessment of whether the lack of obvious error rules in effect during the straddle and limit states are problematic. This data will be submitted under separate cover. Confidential treatment under the Freedom of Information Act is requested regarding the analysis.

The Exchange is now proposing to extend the pilot period until February 20, 2015. The Exchange believes the benefits to market participants from this provision should continue on a pilot basis. The Exchange continues to believe that adding certainty to the execution of orders in limit or straddle states will encourage market participants to continue to provide liquidity to the Exchange, and, thus, promote a fair and orderly market during these periods. Barring this provision, the provisions of Rule 6.25 would likely apply in many instances during limit and straddle states. The Exchange believes that continuing the pilot will protect against any unanticipated consequences in the options markets during a limit or straddle state. Thus, the Exchange believes that the protections of current Rule should continue while the industry gains further experience operating the Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange further believes that it is necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a limit or straddle state from certain aspects of the Exchange Rule 6.25. The Exchange believes the application of the current rule will be impracticable given the lack of a reliable NBBO in the options market during limit and straddle states, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. Extension of this pilot would ensure that limit orders that are filled during a limit or straddle state would have certainty of execution in a manner that promotes just and equitable principles of trade, removes impediments to, and perfects the mechanism of a free and open market and a national market system. Thus, the Exchange believes that the protections of the pilot should continue while the industry gains further experience operating the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that, by extending the expiration of the pilot, the proposed rule change will allow for further analysis of the pilot and a determination of how the pilot shall be structured in the future. In doing so, the proposed rule change will also serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that the proposal will allow for the least amount of market disruption as the pilot will continue as it currently does maintaining the status quo. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[11]

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

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At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–033 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–CBOE–2014–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–033 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

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efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71863; File No. SR–ISE–2013–72]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, to More Specifically Address the Number and Size of Counterparties to a Qualified Contingent Cross Order

April 3, 2014.

I. Introduction

On December 18, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change notice to amend Rules 504 (Series of Options Contracts Open for Trading) and 715 (Types of Orders) to more specifically address the number and size of counterparties to a Qualified Contingent Cross Order (''QCC Order''). The proposed rule change was published for comment in the **Federal Register** on January 7, 2014.[3] On February 18, 2014, the Commission extended the time period for Commission action to April 7, 2014.[4] The Commission received three comment letters on the proposal.[5] On April 2, 2014, the Exchange responded to the comment letters.[6] Additionally, on April 2, 2014, the Exchange submitted an amendment to the proposed rule change.[7] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Background

As originally approved on ISE, a QCC Order was required to be comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade (''QCT''), coupled with a contra-side order to buy or sell an equal number of contracts.[8] Following discussions regarding the QCC Order with Commission staff, the Exchange learned that Commission staff interpreted the Exchange's rules relating to QCC Orders to permit only a single order on the originating side of the QCC Order and a single order on the contra-side, with each such order comprised of a single party and meeting the 1,000 contract minimum size requirement. In a Regulatory Information Circular published by the Exchange on November 25, 2013, the Exchange explained that it had always interpreted the QCC Order definition to mean that a QCC Order must be comprised of an unsolicited order to buy or sell at least 1,000 contracts that is identified as part of a QCT, coupled with a contra-side order that could be made up of multiple orders, each of which could be less than 1,000 contracts.[9] ISE also stated that it would seek to amend its rules governing QCC Orders to codify its interpretation in its rules.[10]

On December 18, 2013, the Exchange filed two proposed rule changes with the Commission. In addition to this filing, the Exchange filed SR–ISE–2013–71, a proposed rule change for immediate effectiveness to amend the definition of a QCC Order such that it must involve a single order for at least 1,000 contracts on the originating side,[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71208 (December 31, 2013), 79 FR 0881 (January 7, 2014).

[4] *See* Securities Exchange Act Release No. 71560 (February 18, 2014), 79 FR 10218 (February 24, 2014).

[5] *See* letters to Elizabeth M. Murphy, Secretary, Commission, from Janet McGuiness, Executive Vice President, NYSE Euronext, dated March, 11, 2014 (''NYSE Letter''), Darren Story, CFA, dated March 14, 2014 (''Story Letter''), and Doug Patterson, CCO, CutlerGroup, LP, dated March 28, 2014 (''Cutler Letter'').

[6] See letter to Elizabeth M. Murphy, Secretary, Commission, from Michael J. Simon, Secretary and General Counsel, ISE, dated April 2, 2014 (''ISE Response'').

[7] The Commission notes that Amendment No. 1 is not subject to notice and comment because it does not alter the substance of the proposed rule change or raise any novel regulatory issues, but rather describes how the Exchange surveils QCC Orders. *See* Section III below.

[8] *See* Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533 (March 2, 2011) (SR–ISE–2010–73) (''Original QCC Approval Order'').

[9] *See* ISE Regulatory Information Circular 2013–022 (November 25, 2013).

[10] *Id.*

[11] In the case of Mini Options, the minimum size is 10,000 contracts.

but may consist of multiple orders on the opposite, contra-side, so long as each contra-side order is for at least 1,000 contracts.[12] In that filing, the Exchange explained,

> It was always the Exchange's intent and understanding when drafting the rule text that a QCC Order could involve multiple contra-parties of the QCC trade when the originating QCC Order consisted of at least 1,000 contracts. However, the rule language addressing the contra-side of a QCC Order is drafted from the perspective of how the QCC Order gets entered into the ISE system. Specifically, the contra-side order to a QCC Order will always be entered as a single order, even if that order consists of multiple contra-parties who are allocated their portion of the trade in a post-trade allocation. Notwithstanding the foregoing, the literal wording of the current QCC Order rule could result in a more limited interpretation of the rule. Therefore, the Exchange now proposes to make it clear that a QCC Order must involve a single order for at least 1,000 contracts on the originating side, but that it may consist of multiple orders on the opposite, contra-side, so long as each of the contra-side orders is for at least 1,000 contracts.[13]

III. Description of the Proposed Rule Change

In this filing, the Exchange proposes to remove the requirement that contra-side orders of QCC Orders be for at least 1,000 contracts each, thus permitting multiple contra-side orders on a QCC Order with a total number of contracts equaling the originating order size, but without any size requirement for such contra-side orders. Under this proposal, the requirements for the QCC Order's originating order remain unchanged, and thus would require the originating order to be a single order for a single party of at least 1,000 contracts, and the QCC Order must also continue to satisfy all other requirements of a QCC Order under the Exchange's rules.

The Exchange believes that removing the size limit placed on contra-parties to QCC Orders may increase liquidity and, potentially, improve the prices at which QCC Orders get executed, as the Exchange states that the ability for market participants to provide liquidity in response to large sized orders is directly proportional to the size and associated risk of the resulting position. As support, the Exchange states that smaller sized trades are often done at a better price than larger sized trades, which convey more risk. The Exchange believes that the ability to pool together multiple market participants to participate on the contra-side of a trade for any size, as opposed to only allowing market participants to participate for a minimum of 1,000 contracts, would have a direct and positive impact on the ability of those market participants to provide the best price as they compete to participate in the order without being compelled to provide liquidity with a large minimum quantity. Further, the Exchange states that allowing several participants to offer liquidity to a QCC Order serves to ensure that the order receives the best possible price available in the market and argues that restricting interaction to only participants who are willing to trade a minimum of 1,000 contracts simply guarantees an inferior price because a trade will be limited to few liquidity providers who are taking on more risk as opposed to multiple liquidity providers being able to share the overall risk and trade at a better price.

In the proposal, the Exchange stresses that the concern has always been and should continue to be for the originating order–*i.e.,* the unsolicited part of the order that is seeking liquidity–and not the professional responders and providers of liquidity. The Exchange believes that allowing smaller orders to participate on the other side (*i.e.,* contra-side) of QCC Orders not only provides the best price and opportunity for a trade to occur in a tight and liquid market, but ensures that the highest possible number of liquidity providers are able to participate, and states that limiting participation only to liquidity providers who are willing to participate on the trade for 1,000 contracts conversely could result in an inferior price by shutting out some participants due to the large size and thereby minimizing the opportunity for competition and price improvement.

In Amendment No. 1, the Exchange represents that it tracks and monitors QCC Orders to determine which is the originating/agency side of the order and which is the contra-side(s) of the order to ensure that Members are complying with the minimum 1,000 contract size limitation on the originating/agency side of the QCC Order. The Exchange states that it checks to see if Members are aggregating multiple orders to meet the 1,000 contract minimum on the originating/agency side of the trade in violation of the requirements of the rule. The rule requires that the originating/agency side of the trade consist of one party who is submitting a QCC Order for at least 1,000 contracts. The Exchange represents that it enforces compliance with this portion of the rule by checking to see if a Member breaks up the originating/agency side of the order in a post trade allocation to different clearing firms, allocating less than 1,000 contracts to a party or multiple parties. For example, a Member enters a QCC Order into the system for 1,500 contracts and receives an execution. Subsequent to the execution, the Member allocates the originating/agency side of the order to two different clearing firms on a post trade allocation basis, thereby allocating 500 contracts to one clearing firm and 1,000 contracts to another clearing firm. The Exchange states that this type of transaction would not meet the requirements of a QCC Order under the current rule.

With regard to order entry, the Exchange clarifies that a Member must mark the originating/agency side as the first order in the system and the contra-side(s) as the second. The Exchange states that it monitors order entries to ensure that Members are properly entering QCC Orders into the system.

IV. Summary of Comment Letters and ISE's Response to Comments

The Commission received three comment letters opposing the proposed rule change.[14] As described in more detail below, the commenters primarily expressed concerns about QCC Orders generally, as opposed to the rule modifications proposed by the Exchange.

In the NYSE Letter, the commenter does not raise new concerns, but rather concurs with the issues expressed in a comment letter submitted by the Chicago Board Options Exchange (''CBOE'') in response to a separate filing by another exchange—SR–Phlx–2013–106–which proposed to permit multiple contra-side parties on either side of a QCC Order and eliminate the minimum size requirement, but which was subsequently withdrawn. The commenter asserts that CBOE's comments are applicable to the instant proposal.[15] Specifically, this commenter echoes CBOE's belief that QCC trades, by their nature, harm options markets by enabling market participants to effect listed options transactions without exposing their order to the market—hampering liquidity by reduced transparency and eliminating the possibility of price improvement.[16] In

[12] *See* Securities Exchange Act Release No. 71183 (December 24, 2013), 78 FR 79721 (December 31, 2013) (SR–ISE–2013–71).

[13] *Id.* at 79722.

[14] *See supra* note 5.

[15] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Angelo Evangelou, Associate General Counsel, Chicago Board Options Exchange, Incorporated, dated December 13, 2013 (''CBOE Letter''). SR–Phlx–2013–106 was withdrawn on February 3, 2014. CBOE did not submit a comment letter on this filing.

[16] *See* NYSE Letter at 1; *see also* CBOE Letter at 2–3.

addition, the commenter concurs with CBOE's conclusion that an expansion of the use of the QCC Order by reducing the minimum size required to participate in a QCC trade would exacerbate the harm to the options markets resulting from QCC trades.[17]

Another commenter to the instant filing claims that market participants use QCC Orders to disadvantage customers and avoid due diligence obligations.[18] In support of this contention, the commenter notes that QCC Orders allow market participants to execute the stock portion of a stock/option order outside the NBBO, resulting in inferior net execution prices for customers.[19] The commenter states that such use of QCC Orders allows orders to be effected which do not need to adhere to best-executions on a net cash basis to the detriment of customers, and argues that requiring exposure of orders would curtail this abuse.[20]

This commenter also argues that the fee structure in place for QCC Orders creates a conflict of interest among market participants in that a rebate is paid to executing brokers that initiate a QCC Order while a fee is charged to the counter-parties.[21] The commenter believes that the incentive to obtain the rebate offered for QCC Orders can cause brokers to ignore their responsibility to obtain the best price on a trade and mitigate unnecessary fees whenever possible.[22]

The third commenter requested that the Commission disapprove the proposal, stating that the filing defies the general principles that all orders be exposed to as many sources of liquidity as possible.[23] The commenter believes that without exposure there is no incentive for market makers to display liquidity, provide liquidity, or offer price improvement, resulting in the general public failing to receive the best possible price on any order.[24]

In response to the comment letters, ISE states that it does not believe that the commenters raise any issues related to removing the contra-party size restriction for QCC Orders as proposed.[25] Further, ISE notes that the issues raised by the commenters were well vetted by the Commission prior to the Original QCC Approval Order and therefore does not believe that the commenters raise new issues relevant to the current proposal.[26]

V. 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.[27] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[28] 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.

In its original approval of the QCC Order for ISE, the Commission noted the benefits of contingent trades to investors and the market as a whole.[29] Specifically, in providing for an exemption from certain requirements of Regulation NMS for QCTs, the Commission recognized that contingent trades can be ''useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options*'' [italics added].[30] In the Original QCC Approval Order, the Commission also reiterated the finding from its Original QCT Exemption that those transactions that meet the specified requirements of the QCT exemption could be of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process.[31]

In analyzing ISE's original QCC Order, the Commission weighed the benefits of QCTs, of which QCC Orders are a subset, against the benefits provided by the general requirement for exposure of orders in the options markets.[32] In the Original QCC Approval Order, the Commission stated that the QCC Order strikes an appropriate balance for the options market in that it is narrowly drawn and establishes a limited exception to the general principle of exposure and retains the general principle of customer priority in the options markets because QCC Orders are required to be: (1) Part of a QCT under Regulation NMS; (2) for at least 1,000 contracts; (3) executed at a price at or between the national best bid or offer; and (4) cancelled if there is a Priority Customer Order on ISE's limit order book at the same price.[33] The Commission specifically noted that a QCC Order must not only be part of a QCT by satisfying each of the six underlying requirements of the NMS QCT Exemption, but must be for a minimum size of 1,000 contracts, and that these requirements provide another limit to its use by ensuring only transactions of significant size may avail themselves of this order type.[34] Given the requirements for QCC Orders, the Commission also noted its belief that those customers participating in QCC Orders would likely be sophisticated investors who should understand that their order would not be exposed for potential price improvement, and that these customers should be able to themselves assess whether the net prices they are receiving for their QCC Order are competitive.[35] The Commission also specifically noted that broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders.[36]

In considering ISE's proposal to eliminate the minimum size requirement for the contra-side of QCC Orders, the Commission has again weighed whether the benefits of this order type, as proposed to be modified, to investors and the market outweigh the benefits provided by the general requirement for exposure of orders in the options markets. The Commission notes that ISE's proposal does not change the requirements that a QCC Order must be: (1) Part of a QCT under Regulation NMS; (2) executed at a price at or between the national best bid or offer; and (3) cancelled if there is a Priority Customer Order on ISE's limit order book. In addition, the changes to QCC Orders under SR–ISE–2013–71[37] permit multiple contra-side orders for QCC Orders, so long as each such contra-side order is for at least 1,000 contracts. In this filing, the only

[17] *See* NYSE Letter at 1; *see also* CBOE Letter at 3.

[18] *See* Story Letter at 1.

[19] *See* Story Letter at 1–2.

[20] *See id.*

[21] *See* Story Letter at 3.

[22] *See id.*

[23] *See* Cutler Letter at 1.

[24] *See id.*

[25] *See* ISE Response at 1.

[26] *Id.*

[27] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C.

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Original QCC Approval Order, *supra* note 8, at 11540–11541.

[30] *See* Securities Exchange Act Release No. 54389 (August 31, 2006, 71 FR 52829, 52830 (September 7, 2006) (''Original QCT Exemption'').

[31] *See* Original QCC Approval Order, *supra* note 8 at text accompanying footnote 115.

[32] *Id.* at 11541.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *See supra* note 12.

requirement that ISE proposes to change is to eliminate the requirement that contra-side orders of a QCC Order be for at least 1,000 contracts.

The Commission believes that this change to the minimum size requirement for the contra-side(s) of QCC Orders is narrowly tailored and, significantly, the Exchange's rule text clearly requires that the originating side of a QCC Order must be comprised of a single order (*i.e.,* a single party) for at least 1,000 contracts. The Commission believes that retention of the requirements that the original side be comprised of a single order from a single party and that such single order be for at least 1,000 contracts will continue to ensure that sophisticated investors, who are aware that their orders will not be exposed for price improvement, and who themselves should be able to assess whether the net prices for their QCC Orders are competitive, will initiate QCC Orders in an effort to effectuate a complex transaction that complies with all the requirements of the QCC Order.

The proposed rule change will allow multiple contra-parties with order sizes of less than 1,000 to aggregate their interest to pair against the originating side of a QCC Order to facilitate the execution of the QCC Order. The Commission believes that allowing smaller orders from multiple parties to participate on the contra-side of QCC Orders may provide a better opportunity for QCC Orders to be executed and, potentially, at better prices. The Commission acknowledges that limiting participation on the contra-side of a QCC Order only to liquidity providers who are willing to participate on the trade for 1,000 contracts, could result in less interest in the trade than if contra-side orders were not required to meet the 1,000 contract minimum, potentially diminishing the opportunity for competition and price improvement. The Commission believes that the proposed modification to the definition of QCC Order is narrowly drawn in that it does not impact the fundamental aspects of this order type, and merely permits QCC Orders to include multiple contra-parties, regardless of size on the contra-side, while preserving the 1,000 contract minimum on the originating side of a QCC Order. Accordingly, the Commission finds the proposed rule consistent with the Act.

The issues raised in the comment letters do not specifically address the changes proposed in the instant filing, and the Commission agrees with ISE that the commenters on the proposed rule change do not present any arguments that were not considered fully in Original QCC Approving Order (*i.e.,* QCC Orders harm the market by not requiring exposure), or are outside the scope of this proposal (*i.e.,* fee rebates for initiating QCC Orders create a conflict of interest for brokers).[38]

The Commission notes that, given the differing requirements as between the originating side and contra-side for QCC Orders, it is essential that the Exchange be able to clearly identify and monitor—throughout the life of a QCC Order, beginning at time of order entry on the Exchange through the post-trade allocation process—each side of the QCC Order and ensure that the requirements of the order type are being satisfied including, importantly, those relating to the originating side. The Commission believes this to be critical so that the Exchange can ensure that market participants are not able to circumvent the requirements of the QCC Order (as amended by this proposed rule change), each of which the Commission continues to believe are critical to ensuring that the QCC Order is narrowly drawn.[39] Further, the Commission notes that, in Amendment No. 1, the Exchange has made certain representations regarding its enforcement and surveillance of its Members' use of QCC Orders, including, for example, not only at the time of order entry, but through the post-trade allocation process as well.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[40] that the proposed rule change (SR–ISE–2013–72), as modified by Amendment No.1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07892 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[38] In addition, the Commission again emphasizes, as it did in the Original QCC Approval Order, that broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders. *See supra* note 36.

[39] The Commission expects the Exchange to have the capability to enable it to surveil that such requirements are being met. Though the Exchange has stated its ability to do so in Amendment No. 1, if the Exchange is not able to have such monitoring at any point in time, the Commission would expect the Exchange to take other steps to ensure that the QCC Order cannot be improperly used. For example, if the Exchange were not able to identify and monitor which side of a QCC Order is the originating order, the Commission would expect that it would require that both sides of the QCC Order meet the more stringent requirements of the originating side, *i.e.,* that it be for a single order for at least 1,000 contracts.

[40] 15 U.S.C. 78s(b)(2).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71853; File No. SR–CME–2014–11]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Clarifications to Its Chapter 7 Delivery Rules

April 3, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2014, Chicago Mercantile Exchange Inc. (''CME'') 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 CME. CME filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME is filing the proposed rule change that is limited to its business as a derivatives clearing organization. More specifically, the proposed rule change would clarify certain aspects of CME's Chapter 7 rules with respect to deliveries of futures products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

may be examined at the places specified in Item IV below. CME 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

CME is registered as a DCO with the Commodity Futures Trading Commission (''CFTC'') and offers clearing services for many different futures and swaps products. The proposed rule change that is the subject of this filing is limited to its business as a DCO clearing futures contracts.

Per existing CME Rule 702, CME guarantees financial performance (i.e., replacement cost) for all physically deliverable futures products. In assessing the current rulebook, CME noted that certain provisions in current Chapter 7 should be clarified to more clearly state CME's obligations in deliveries and delivery failures as the existing rule contains some language that may be seen as inconsistent with the overriding impact of CME Rule 702. As a result, CME is now proposing clarifying amendments to more clearly state CME's obligations for deliveries and delivery failures as specified below.

The proposed amendments to CME Rules 730–732 and 742.A delete the operational mechanics of the currency delivery rules in light of the guaranty of financial performance per Rule 702 for deliveries.

The proposed amendments to CME Rule 743.B clarify that the clearing member causing a currency delivery failure is liable to CME for any financial performance paid by CME to the contra-clearing member. The proposed amendments to CME Rule 743.A delete the reference to charging a clearing member overdraft fees for late or inaccurate deliveries.

Finally, CME is proposing changes to CME Rule 702 to harmonize and more clearly state that CME is responsible for financial performance to the clearing member that did not cause or contribute to the delivery failure by strengthening the operative language (the current rule states that CME ''shall seek to ensure financial performance . . .''). ''Financial performance'' is defined as payment of the commercially reasonable costs of the affected clearing member for replacing the failed delivery and includes any fines, penalties and fees incurred in replacing the delivery and does not include physical performance or legal fees. The changes further include a deadline for affected clearing members to seek a claim for financial performance and codification of the requirement to submit supporting documentation.

The rule change that is described in this filing is limited to CME's business as a DCO clearing products under the exclusive jurisdiction of the CFTC and does not materially impact CME's security-based swap clearing business in any way. The above listed change is a clarification to existing rules and does not result in changes to the operational processes or the nature or level of the risks posed to CME or clearing members. The change will be effective on filing and CME plans to operationalize it on March 27, 2014. CME notes that it has also certified the proposed rule change that is the subject of this filing to its primary regulator, the CFTC, in a separate filing, CME Submission No. 14–077.

CME believes the proposed rule change is consistent with the requirements of the Exchange Act including Section 17A.[5] The proposed change is intended to clarify existing CME obligations for deliveries in a manner consistent with CFTC Regulation 39.14(g), which requires DCOs to state their obligations with respect to deliveries, including obligations to make or accept deliveries. The proposed change simply clarifies existing practices by revising current rules to more clearly state that, in the event of a delivery failure, CME's obligations will be for financial performance to the clearing member whose actions or omissions did not cause or contribute with respect to the delivery failure (the proposed change also clearly defines the term ''financial performance''). These clarifications to CME's existing delivery process rules will provide greater clarity to the marketplace regarding CME's obligations in the delivery process and as such are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and, in general, to protect investors and the public interest consistent with Section 17A(b)(3)(F) of the Exchange Act.[6]

Furthermore, the proposed change is limited in its effect to futures products currently offered under CME's authority to act as a DCO. These products are under the exclusive jurisdiction of the CFTC. CME notes that the policies of the CFTC with respect to administering the Commodity Exchange Act are comparable to a number of the policies underlying the Exchange Act, such as promoting the prompt and accurate clearance of transactions and protecting investors and the public interest.

Because the proposed change is limited to making clarifications to more clearly state CME's obligations in the delivery process under already existing CME rules, the change is therefore consistent with the requirements of Section 17A of the Exchange Act[7] and is properly filed under Section 19(b)(3)(A)[8] and Rule 19b–4(f)(1)[9] thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition. The proposed change clarifies existing CME practices and simply states that in the event of a delivery failure, CME's obligations will be for financial performance to the clearing member whose actions or omissions did not cause or contribute with respect to the delivery failure and defines financial performance to be payment of the commercially reasonable costs of the affected clearing member for replacing the failed delivery and includes any fines, penalties and fees incurred in replacing the delivery and does not include physical performance or legal fees.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding this proposed rule change. CME has not received any unsolicited written comments from 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)[10] of the Act and Rule 19b–4(f)(1)[11] thereunder, as CME has designated that this rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 15 U.S.C. 78q–1.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(1).

effective upon filing. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CME–2014–11 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–CME–2014–11. 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 CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/rule-filings.html.*

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–CME–2014–11 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07883 Filed 4–8–14; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71854; File No. SR–ISEGemini–2014–11]

Self-Regulatory Organizations; ISE Gemini Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Permit Market Makers To Enter Opening Only Orders in Appointed Options Classes

April 3, 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 26, 2014, ISE Gemini, LLC (the ''Exchange'' or ''ISE Gemini'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

ISE Gemini is proposing to amend Rule 805(a) to permit market makers to enter Opening Only Orders in the options classes to which they are appointed. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 25, 2014 ISE Gemini's sister exchange, the International Securities Exchange, LLC (''ISE''), filed an immediately effective rule change to permit market makers on that exchange to enter Opening Only Orders in the options classes to which they are appointed.[3] That ISE filing restored functionality that was previously available to ISE market makers through the use of immediate-or-cancel (''IOC'') orders prior to the introduction of the ISE's T7 trading system, which introduced Opening Only Orders on that exchange, and limited IOC orders to intraday.[4] As was previously the case on the ISE, market makers on ISE Gemini are not presently permitted to submit Opening Only Orders in the options classes to which they are appointed.[5] The Exchange therefore proposes to amend Rule 805(a), which is based on the ISE rule amended by the filing referenced above, to similarly permit ISE Gemini market makers to enter Opening Only Orders in their appointed options classes.[6] The proposed rule change is meant to conform the rules of ISE Gemini to the rules of other options exchanges, including the ISE, where market makers presently have the ability to enter Opening Only Orders in their appointed classes.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71685 (March 11, 2014), 79 FR 14774 (March 17, 2014) (SR–ISE–2014–11).

[4] Prior to the launch of the ISE's T7 trading system, ISE market makers could submit IOC orders at any time prior to the opening of trading, which, like Opening Only Orders, would execute during the opening rotation, with any unexecuted portion being cancelled.

[5] Market makers are currently permitted to submit the following order types in their appointed options classes: IOC orders, market orders, fill-or-kill orders, and certain block orders and non-displayed penny orders. *See* ISE Gemini Rule 805(a).

[6] An ''Opening Only Order'' is a limit order that can be entered for the opening rotation only. Any portion of the order that is not executed during the opening rotation is cancelled.

[7] *See* supra note 3. As another example, market makers on the MIAX Options Exchange (''MIAX'') similarly have the ability to enter ''opening only'' orders in their appointed classes. *See* MIAX Rule 605(a).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that it is 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 Exchange believes that allowing market makers to use Opening Only Orders will give those members greater flexibility to update prices during the opening rotation. Specifically, market makers have requested that they be permitted to use Opening Only Orders so that they may use this order type to update their prices in single series during the opening process more efficiently, and thereby more readily, than relying on quoting systems that are designed to update prices across multiple series. As explained above, ''opening only'' orders types are available to market makers on other exchanges, including ISE Gemini's sister exchange. Moreover, because any portion of an Opening Only Order that is not executed during the opening rotation is cancelled, this proposed rule change is generally consistent with Rule 805(a), which was intended to prevent market makers from having both standing limit orders and quotes in the same options class.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] 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 permits market makers to use functionality already available to other ISE Gemini members, and to market makers on other exchanges, who are currently able to submit Opening Only Orders or other similar order types.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that the proposal will allow market makers, during the opening process, to use an order type that more efficiently update their prices. The Exchange also stated that Opening Only Orders are presently available to other ISE Gemini members and to market makers on competing options exchanges. The Commission believes that the proposed rule change presents no novel issues. Moreover, the Commission believes that the proposed rule change is consistent with the protection of investors and the public interest, because it allows the market makers to more efficiently, and thereby more readily, display updated prices to the public. Therefore, the Commission waives the 30-day operative delay requirement and designates the proposed rule change to be operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2014–11 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–ISEGemini–2014–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISEGemini–2014–11 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07884 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71851; File No. 4–631]

Joint Industry Plan; Order Approving the Seventh Amendment to the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

April 3, 2014.

I. Introduction

On February 24, 2014, NYSE Euronext, on behalf of New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (''NYSE MKT''), and NYSE Arca, Inc. (''NYSE Arca''), and the following parties to the National Market System Plan: BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''), filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] a proposal to amend the Plan to Address Extraordinary Market Volatility (''Plan'').[3] The proposal represents the seventh amendment to the Plan (''Seventh Amendment''), and reflects changes unanimously approved by the Participants. The Seventh Amendment to the Plan: (i) Extends the pilot period of the Plan to February 20, 2015; and (ii) makes conforming changes to Appendix B of the Plan regarding when the Participants are required to submit specified summary data to the Commission. The Seventh Amendment was published for comment in the **Federal Register** on March 11, 2014.[4] The Commission received no comment letters in response to the Notice. This order approves the Seventh Amendment to the Plan.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

II. Description of the Proposal

A. Purpose of the Plan

The Participants filed the Plan in order to create a market-wide limit up-limit down mechanism that is intended to address extraordinary market volatility in ''NMS Stocks,'' as defined in Rule 600(b)(47) of Regulation NMS under the Act.[5] The Plan sets forth procedures that provide for market-wide limit up-limit down requirements that would be designed to prevent trades in individual NMS Stocks from occurring outside of the specified price bands.[6] These limit up-limit down requirements would be coupled with Trading Pauses, as defined in Section I(Y) of the Plan, to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity).

As set forth in Section V of the Plan, the price bands would consist of a Lower Price Band and an Upper Price Band for each NMS Stock.[7] The price bands would be calculated by the Securities Information Processors (''SIPs'' or ''Processors'') responsible for consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Act.[8] Those price bands would be based on a Reference Price[9] for each NMS Stock that equals the arithmetic mean price of Eligible Reported Transactions for the NMS Stock over the immediately preceding five-minute period. The price bands for an NMS Stock would be calculated by applying the Percentage Parameter for such NMS Stock to the Reference Price, with the Lower Price Band being a Percentage Parameter[10] below the Reference Price, and the Upper Price Band being a Percentage Parameter above the Reference Price. Between 9:30 a.m. and 9:45 a.m. ET and 3:35 p.m. and 4:00 p.m. ET, the price bands would be calculated by applying double the Percentage Parameters as set forth in Appendix A of the Plan.

The Processors would also calculate a Pro-Forma Reference Price for each NMS Stock on a continuous basis during Regular Trading Hours. If a Pro-Forma Reference Price did not move by one percent or more from the Reference Price in effect, no new price bands would be disseminated, and the current Reference Price would remain the effective Reference Price. If the Pro-Forma Reference Price moved by one percent or more from the Reference Price in effect, the Pro-Forma Reference Price would become the Reference Price, and the Processors would disseminate new price bands based on the new Reference Price. Each new Reference Price would remain in effect for at least 30 seconds.

When one side of the market for an individual security is outside the applicable price band, the Processors would be required to disseminate such National Best Bid[11] or National Best Offer[12] with an appropriate flag identifying it as non-executable. When the other side of the market reaches the applicable price band, the market for an individual security would enter a Limit State,[13] and the Processors would be

[3] *See* Letter from Martha Redding, Chief Counsel, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated February 21, 2014 (''Transmittal Letter'').

[4] *See* Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (''Notice'').

[5] 17 CFR 242.600(b)(47). *See also* Section I(H) of the Plan.

[6] *See* Section V of the Plan.

[7] Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the Plan.

[8] 17 CFR 242.603(b). The Plan refers to this entity as the Processor.

[9] *See* Section I(T) of the Plan.

[10] As initially proposed by the Participants, the Percentage Parameters for Tier 1 NMS Stocks (*i.e.,* stocks in the S&P 500 Index or Russell 1000 Index and certain ETPs) with a Reference Price of $1.00 or more would be five percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for Tier 2 NMS Stocks (*i.e.,* all NMS Stocks other than those in Tier 1) with a Reference Price of $1.00 or more would be 10 percent and less than $1.00 would be the lesser of (a) $0.15 or (b) 75 percent. The Percentage Parameters for a Tier 2 NMS Stock that is a leveraged ETP would be the applicable Percentage Parameter set forth above multiplied by the leverage ratio of such product. On May 24, 2012, the Participants amended the Plan to create a 20% price band for Tier 1 and Tier 2 stocks with a Reference Price of $0.75 or more and up to and including $3.00. The Percentage Parameter for stocks with a Reference Price below $0.75 would be the lesser of (a) $0.15 or (b) 75 percent. *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

[11] 17 CFR 242.600(b)(42). *See also* Section I(G) of the Plan.

[12] *Id.*

[13] A stock enters the Limit State if the National Best Offer equals the Lower Price Band and does

Continued

required to disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation.[14] All trading would immediately enter a Limit State if the National Best Offer equals the Lower Limit Band and does not cross the National Best Bid, or the National Best Bid equals the Upper Limit Band and does not cross the National Best Offer. Trading for an NMS Stock would exit a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market did not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute Trading Pause, which would be applicable to all markets trading the security.

These limit up-limit down requirements would be coupled with Trading Pauses [15] to accommodate more fundamental price moves (as opposed to erroneous trades or momentary gaps in liquidity). As set forth in more detail in the Plan, all trading centers [16] in NMS Stocks, including both those operated by Participants and those operated by members of Participants, would be required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the limit up-limit down and Trading Pause requirements specified in the Plan.

Under the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless inadvertently may be submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

As stated by the Participants in the Plan, the limit up-limit down mechanism is intended to reduce the negative impacts of sudden, unanticipated price movements in NMS Stocks,[17] thereby protecting investors and promoting a fair and orderly market.[18] In particular, the Plan is designed to address the type of sudden price movements that the market experienced on the afternoon of May 6, 2010.[19] The initial date of Plan operations was April 8, 2013.[20]

B. Seventh Amendment to the Plan

The Seventh Amendment proposes two changes to the Plan. First, the Participants propose to amend the Plan to extend the pilot period of the Plan to February 20, 2015. Second, the Participants propose to amend Appendix B of the Plan regarding when the Participants are required to submit specified summary data assessments to the Commission to require that the assessments be provided by September 30, 2014. The Commission received no comment letters in response to the Notice.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Seventh Amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[21] Specifically, the Commission finds that the Seventh Amendment is consistent with Section 11A of the Act [22] and Rule 608 thereunder [23] in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, removes impediments to, and perfects the mechanism of, a national market system.

First, the Participants proposed to amend Section VIII(C) of the Plan to extend the current one-year pilot, which is scheduled to end on April 8, 2014, to have the pilot set to end on February 20, 2015.[24] As initially contemplated, the Plan would have been fully implemented across all NMS Stocks within six months of initial Plan operations, which meant there would have been full implementation of the Plan for six months before the end of the pilot period. However, pursuant to the Fourth Amendment to the Plan,[25] the Participants amended Section VIII.B of the Plan, which modified the implementation schedule of Phase II of the Plan to extend the time period when the Plan would fully apply to all NMS Stocks. Accordingly, the Plan was not implemented across all NMS Stocks until December 8, 2013.[26] Subsequently, the Sixth Amendment to the Plan [27] was filed on an immediately effective basis to extend the implementation date for full implementation of the Plan to February 24, 2014. Prior to February 24, 2014, the Plan was only in effect from 9:30 a.m. E.T. to 3:45 p.m. E.T., and did not include the fifteen minutes of trading preceding the close.[28] Accordingly, if the pilot were allowed to expire as currently scheduled on April 8, 2014, there will be less than two months of full operation of the Plan before the end of the pilot period. The Participants note that this short period of full implementation of the Plan will not provide sufficient time for either the Participants or the Commission to assess the impact of the Plan and determine whether the Plan should be modified prior to approval on a permanent basis, and that the pilot period should be extended to provide sufficient time to review data based on full implementation of the Plan and assess the operation of the Plan.[29] The Participants further represent that the proposed amendment is consistent with the approval order for the Plan, in which the Commission stated that having a pilot period would allow ''the public, the Participants, and the Commission to assess the operation of the Plan and whether the Plan should be

not cross the National Best Bid, or the National Best Bid equals the Upper Price Band and does not cross the National Best Offer. *See* Section VI(B) of the Plan.

[14] *See* Section I(D) of the Plan.

[15] The primary listing market would declare a Trading Pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the Trading Pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan.

[16] As defined in Section I(X) of the Plan, a trading center shall have the meaning provided in Rule 600(b)(78) of Regulation NMS under the Act.

[17] 17 CFR 242.600(b)(47).

[18] *See* Transmittal Letter, *supra* note 3.

[19] The limit up-limit down mechanism set forth in the Plan would replace the existing single-stock circuit breaker pilot. *See e.g.,* Securities Exchange Act Release Nos. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025); 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033).

[20] *See* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013).

[21] In approving the Seventh Amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78k–1.

[23] 17 CFR 242.608.

[24] *See* Notice, *supra,* note 4 at 13697.

[25] *See* Securities Exchange Act Release No. 69287 (April 3, 2013), 78 FR 21483 (April 10, 2013).

[26] *See* Notice, *supra,* note 4 at 13697.

[27] *See* Securities Exchange Act Release No. 71247 (January 7, 2014), 79 FR 2204 (January 13, 2014).

[28] *See* Notice, *supra,* note 4 at 13697.

[29] *See id.*

modified prior to approval on a permanent basis.'' [30]

Second, the Participants propose to amend Section III to Appendix B of the Plan to delete the requirement that assessments of Plan operations be provided at least two months prior to the end of the pilot period, and instead propose that the assessments be provided by September 30, 2014, nearly five months before the end of the pilot period.[31] As originally contemplated, such assessments would have been based on approximately four months' worth of data from full implementation of the Plan. Under the proposal, such data will be based on nearly seven months of data from full operation of the Plan, providing the Participants with more data on which to base their assessments. The Participants continue to believe that they would be able to assess the Plan based on a similar data set, and that revising the time when such assessments would be provided to the Commission would provide the Participants with sufficient time to conduct such assessments.[32] In addition, providing the Commission with such assessments earlier than two months before the end of the pilot period will provide additional time for the Commission to review such assessments to inform any determination of whether the Plan should be modified prior to approval on a permanent basis.

For the reasons noted above, the Commission believes that the proposal to amend Section VII(C)(1) and Section I of Appendix A of the Plan is consistent with Section 11A of the Act. The Commission reiterates its expectation that the Participants will continue to monitor the scope and operation of the Plan and study the data produced, and will propose any modifications to the Plan that may be necessary or appropriate.[33] Therefore, the Commission finds that the Seventh Amendment to the Plan is consistent with Section 11A of the Act [34] and Rule 608 thereunder.[35]

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [36] and Rule 608 thereunder,[37] that the Seventh Amendment to the Plan (File No. 4–631) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07881 Filed 4–8–14; 8:45 am]

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[30] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 at 33508 (June 6, 2012).

[31] *See* Notice, *supra,* note 4 at 13698.

[32] *See id.*

[33] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012).

[34] 15 U.S.C. 78k–1.

[35] 17 CFR 242.608.

[36] 15 U.S.C. 78k–1.

[37] 17 CFR 242.608.

[38] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71869; File No. SR–NYSEArca-2014–36]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to Rule 6.65A(c), Which Addresses How the Exchange Treats Obvious and Catastrophic Errors During Periods of Extreme Market Volatility, Until February 20, 2015

April 4, 2014.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2014, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to Rule 6.65A(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until February 20, 2015. The pilot period for subsection (c) is currently set to expire on April 8, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot period applicable to Rule 6.65A(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until February 20, 2015. The pilot period for subsection (c) is currently set to expire on April 8, 2014.

Background

Rule 6.65A (described below) was adopted in connection with the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the ''Plan'').[4] The Plan was developed in response to events that occurred on May 6, 2010.[5] On May 6, 2010, the U.S. equity markets experienced excessive volatility in an abbreviated time period resulting in, among other things, the prices of a large number of individual securities declining by significant amounts in a very short time period before abruptly returning to prices consistent with their pre-decline levels.[6] This extreme volatility resulted in a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from the pre-decline prices. As part of the effort to address the events of May 6, 2010 and

[4] *See* Securities and Exchange Act Release No. 69340 (April 8, 2013), 78 FR 22004 (April 12, 2013) (SR–NYSEArca-2013–10) (''Approval Order'').

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the Plan).

[6] *See* Approval Order, 78 FR, at 22004, n.7 (*citing* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at, *http://www.sec.gov/news/studies/2010/marketevents-report.pdf).*

to restore investor confidence in the markets, the equity exchanges filed the Plan.

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands, which are described in more detail in the Plan.[7] In sum, the Price Bands consist of a Lower Price Band and an Upper Price Band for each NMS Stock and are calculated by the Processors.[8] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[9]

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[10] Trading for an NMS Stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the LULD Plan, which would be applicable to all markets trading the security. In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State.[11] If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS Stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

The Plan was initially approved for a one-year pilot, which began on April 8, 2013, and would, if not amended, end on April 8, 2014.[12] As initially contemplated, the Plan would have been fully implemented across all NMS Stocks within six months of initial Plan operations, which meant there would have been full implementation of the Plan for six months before the end of the pilot period.[13] The Plan, however, was amended several times since inception and, ultimately, was not implemented across all NMS Stocks until February 24, 2014.[14] As a result, if the pilot period were to end in April 2014, there would be less than two months of full operation of the Plan. Because the goal of the pilot was to provide an opportunity to assess whether the Plan should be modified prior to approval on a permanent basis, the Participants recently filed the Seventh Amendment to the Plan to extend the pilot period of the Plan until February 20, 2015 (the ''Seventh Amendment'').[15]

Rule 6.65A

Coincident with the Plan, the Exchange adopted Rule 6.65A, which provided for how the Exchange would treat orders, market-making quoting obligations, and errors in options overlying NMS Stocks when the Plan is in effect.[16] Subsections (a) to (b) Rule 6.65A, which address the treatment of orders when the underlying NMS Stock is in a Limit State or Straddle State, and Market Maker quoting obligations, respectively, ''shall be in effect during a pilot period to coincide with the pilot period for the Plan.'' [17] These provisions need not be amended and will align with the Plan upon approval of the Seventh Amendment to the Plan.

Subsection (c) to Rule 6.65A, which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, ''shall be in effect for a one-year pilot period,'' which began on April 8, 2013.[18] The pilot period will expire on April 8, 2014. In order to align the pilot period for Rule 6.65A(c) with the proposed Seventh Amendment to the Plan, the Exchange proposes to extend the pilot period for subsection (c) to Rule 6.65A until February 20, 2015. The Exchange believes that extending the pilot period for Rule 6.65A(c) would allow the Exchange additional time to collect and evaluate data related to this provision now that the Plan has been fully implemented.

When the Exchange initially adopted subsection (c), the Exchange committed to review the operation of this provision and to analyze the impact of Limit and Straddle States accordingly.[19] In addition, at least two months prior to the end of the pilot—*i.e.,* prior to February 2014—the Exchange agreed to provide the Commission with certain data requested to evaluate the impact of the elimination of the Obvious Error rule under these circumstances.[20] As noted above, however, the Plan was not fully implemented until February 24, 2014.

Thus, in connection with the proposed amendment, the Exchange proposes to revise the data that the Exchange will gather in order to address the Commission's concern about whether market quality and liquidity for options is maintained despite these changes to the Obvious Error rules. In addition, the Exchange proposes to revise the date by which certain assessments will be provided to the Commission.

First, in lieu of the dataset described in the Exchange's Comment Letter,[21] the Exchange shall provide to the Commission and the public a revised dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in April 2013, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State. For each of those option classes

[7] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[8] *See* Section V(A) of the Plan.

[9] *See* Section VI(A) of the Plan.

[10] *See* Section VI(B)(1) of the Plan.

[11] *See* Section VII(A)(2) of the Plan.

[12] *See supra* n.5. *See also* Section VIII of the Plan.

[13] *See* Securities and Exchange Act Release No. 71649 (March 8, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (notice) (the ''Seventh Amendment'').

[14] *Id.*

[15] *Id.* The Seventh Amendment to the Plan also seeks to move the time by which Participants would be required to submit assessments of Plan operations, pursuant to Appendix B of the Plan, until September 30, 2014.

[16] *See* Approval Order.

[17] Subsection (a) to Rule 6.65A provides that if the underlying NMS Stock is in a Limit State or Straddle State, the Exchange shall reject all incoming Market Orders and will not elect Stop Orders. Subsection (b) to Rule 6.65A provides that when evaluating whether a Lead Market Maker has met its market-making quoting requirement pursuant to Rule 6.37B(b) or a Market Maker has met its market-making quoting requirement pursuant to Rule 6.37B(c) in options overlying NMS Stocks, the Exchange shall consider as a mitigating circumstance the frequency and duration of occurrences when an underlying NMS Stock is in a Limit State or a Straddle State.

[18] Subsection (c) to Rule 6.65A provides that electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State are not subject to review under Rule 6.87(a) for Obvious Errors or Rule 6.87(d) for Catastrophic Errors. Nothing in Rule 6.65A(c) prevents electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State from being reviewed on Exchange motion pursuant to 6.87(b)(3).

[19] Specifically, the Exchange committed to: ''(1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States.'' *See* Approval Order, 78 FR at 22008.

[20] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet L. McGinness, Executive Vice President and Corporate Secretary, General Counsel, NYSE Markets, dated April 5, 2013 (''Comment Letter'').

[21] *Id.*

affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
  - Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
  - high execution price, low execution price;
  - number of trades for which a request for review for error was received during Straddle and Limit States;
  - an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

The Exchange notes that it will update the data available on the Exchange's Web site for the period April 2013 through January 2014 with the revised dataset once the Exchange has completed its analysis and review of such data. Prospectively, the data made available to the public will be based on the proposed revised dataset described above.

In addition, by September 30, 2014, the Exchange shall provide to the Commission assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan, per the Seventh Amendment to the Plan.[22]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[23] in general, and furthers the objectives of Section 6(b)(5),[24] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposal to extend the pilot program of Rule 6.65A(c) until February 20, 2015, which will align that pilot program with the Pilot Period for the Plan, as proposed in the Seventh Amendment to the Plan, will ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes that the extension of Rule 6.65A(c) will help encourage market participants to continue to provide liquidity during extraordinary market volatility.

Moreover, the Exchange believes that revising the dataset that it provides to the Commission and the public would remove impediments to, and perfect the mechanisms of, a free and open market because the revised dataset will provide more information from which to assess the impact of Rule 6.65A(c). In addition, the Exchange believes that extending the time for the Exchange to provide its overall assessment of the Rule 6.65A(c) pilot to September 30, 2014 is appropriate and in the public interest, for the protection of investors, and the maintenance of a fair and orderly market because it will align the timing of such assessments with the time that the Participants have proposed to provide the Commission with assessments pursuant to Appendix B of the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will not impose any burden on competition and will instead provide certainty regarding the treatment and execution of options orders, specifically the treatment of Obvious and Catastrophic Errors during periods of extraordinary volatility in the underlying NMS Stock, and will facilitate appropriate liquidity during a Limit State or Straddle State.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and Rule 19b–4(f)(6)(iii) thereunder.[26]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that waiver of this requirement would ensure the pilot program would align with the pilot period for the Plan and would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may

[22] *See supra* n. 15.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2014–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2014–36. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2014–36 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07951 Filed 4–8–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71870; File No. SR–NYSEMKT–2014–31]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Period Applicable to Rule 953.1NY(c), Which Addresses How the Exchange Treats Obvious and Catastrophic Errors During Periods of Extreme Market Volatility, Until February 20, 2015

April 4, 2014.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 1, 2014 NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot period applicable to Rule 953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until February 20, 2015. The pilot period for subsection (c) is currently set to expire on April 8, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot period applicable to Rule 953.1NY(c), which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, until February 20, 2015. The pilot period for subsection (c) is currently set to expire on April 8, 2014.

Background

Rule 953.1NY (described below) was adopted in connection with the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS, as it may be amended from time to time (the ''Plan'').[4] The Plan was developed in response to events that occurred on May 6, 2010.[5] On May 6, 2010, the U.S. equity markets experienced excessive volatility in an abbreviated time period resulting in, among other things, the prices of a large number of individual securities declining by significant amounts in a very short time period before abruptly returning to prices consistent with their pre-decline levels.[6] This extreme volatility resulted in a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from the pre-decline prices. As part of the effort to

[28] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities and Exchange Act Release No. 69339 (April 8, 2013), 78 FR 22011 (April 12, 2013) (SR–NYSEMKT–2013–10) (''Approval Order'').

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the Plan).

[6] *See* Approval Order, 78 FR, at 22011, n.7 (*citing* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at, *http://www.sec.gov/news/studies/2010/marketevents-report.pdf).*

address the events of May 6, 2010 and to restore investor confidence in the markets, the equity exchanges filed the Plan.

The Plan is designed to prevent trades in individual NMS Stocks from occurring outside of specified Price Bands, which are described in more detail in the Plan.[7] In sum, the Price Bands consist of a Lower Price Band and an Upper Price Band for each NMS Stock and are calculated by the Processors.[8] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as unexecutable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[9]

Trading in an NMS Stock immediately enters a Limit State if the National Best Offer (Bid) equals but does not cross the Lower (Upper) Price Band.[10] Trading for an NMS Stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the LULD Plan, which would be applicable to all markets trading the security. In addition, the Plan defines a Straddle State as when the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State.[11] If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS Stock if such Trading Pause would support the Plan's goal to address extraordinary market volatility.

The Plan was initially approved for a one-year pilot, which began on April 8, 2013, and would, if not amended, end on April 8, 2014.[12] As initially contemplated, the Plan would have been fully implemented across all NMS Stocks within six months of initial Plan operations, which meant there would have been full implementation of the Plan for six months before the end of the pilot period.[13] The Plan, however, was amended several times since inception and, ultimately, was not implemented across all NMS Stocks until February 24, 2014.[14] As a result, if the pilot period were to end in April 2014, there would be less than two months of full operation of the Plan. Because the goal of the pilot was to provide an opportunity to assess whether the Plan should be modified prior to approval on a permanent basis, the Participants recently filed the Seventh Amendment to the Plan to extend the pilot period of the Plan until February 20, 2015 (the ''Seventh Amendment'').[15]

Rule 953.1NY

Coincident with the Plan, the Exchange adopted Rule 953.1NY, which provided for how the Exchange would treat orders, market-making quoting obligations, and errors in options overlying NMS Stocks when the Plan is in effect.[16] Subsections (a) to (b) Rule 953.1NY, which address the treatment of orders when the underlying NMS Stock is in a Limit State or Straddle State, and Market Maker quoting obligations, respectively, ''shall be in effect during a pilot period to coincide with the pilot period for the Plan.'' [17] These provisions need not be amended and will align with the Plan upon approval of the Seventh Amendment to the Plan.

Subsection (c) to Rule 953.1NY, which addresses how the Exchange treats Obvious and Catastrophic Errors during periods of extreme market volatility, ''shall be in effect for a one-year pilot period,'' which began on April 8, 2013.[18] The pilot period will expire on April 8, 2014. In order to align the pilot period for Rule 953.1NY(c) with the proposed Seventh Amendment to the Plan, the Exchange proposes to extend the pilot period for subsection (c) to Rule 953.1NY until February 20, 2015. The Exchange believes that extending the pilot period for Rule 953.1NY(c) would allow the Exchange additional time to collect and evaluate data related to this provision now that the Plan has been fully implemented.

When the Exchange initially adopted subsection (c), the Exchange committed to review the operation of this provision and to analyze the impact of Limit and Straddle States accordingly.[19] In addition, at least two months prior to the end of the pilot—*i.e.,* prior to February 2014—the Exchange agreed to provide the Commission with certain data requested to evaluate the impact of the elimination of the Obvious Error rule under these circumstances.[20] As noted above, however, the Plan was not fully implemented until February 24, 2014.

Thus, in connection with the proposed amendment, the Exchange proposes to revise the data that the Exchange will gather in order to address the Commission's concern about whether market quality and liquidity for options is maintained despite these changes to the Obvious Error rules. In addition, the Exchange proposes to revise the date by which certain assessments will be provided to the Commission.

First, in lieu of the dataset described in the Exchange's Comment Letter,[21] the Exchange shall provide to the Commission and the public a revised dataset containing the data for each Straddle State and Limit State in NMS Stocks underlying options traded on the Exchange beginning in April 2013, limited to those option classes that have at least one (1) trade on the Exchange during a Straddle State or Limit State.

[7] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[8] *See* Section V(A) of the Plan.

[9] *See* Section VI(A) of the Plan.

[10] *See* Section VI(B)(1) of the Plan.

[11] *See* Section VII(A)(2) of the Plan.

[12] *See supra* n.5. *See also* Section VIII of the Plan.

[13] *See* Securities and Exchange Act Release No. 71649 (March 8, 2014), 79 FR 13696 (March 11, 2014) (File No. 4–631) (notice) (the ''Seventh Amendment'').

[14] *Id.*

[15] *Id.* The Seventh Amendment to the Plan also seeks to move the time by which Participants would be required to submit assessments of Plan operations, pursuant to Appendix B of the Plan, until September 30, 2014.

[16] *See* Approval Order.

[17] Subsection (a) to Rule 953.1NY provides that if the underlying NMS Stock is in a Limit State or Straddle State, the Exchange shall reject all incoming Market Orders and will not elect Stop Orders. Subsection (b) to Rule 953.1NY provides that when evaluating whether a Specialist has met its market-making quoting requirement pursuant to Rule 925.1NY(b) or a Market Maker has met its market-making quoting requirement pursuant to Rule 925.1NY(c) in options overlying NMS Stocks, the Exchange shall consider as a mitigating circumstance the frequency and duration of occurrences when an underlying NMS Stock is in a Limit State or a Straddle State.

[18] Subsection (c) to Rule 953.1NY provides that electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State are not subject to review under Rule 975MY(a) for Obvious Errors or Rule 975NY(d) for Catastrophic Errors. Nothing in Rule 953.1NY(c) prevents electronic transactions in options that overlay an NMS Stock that occur during a Limit State or a Straddle State from being reviewed on Exchange motion pursuant to 975NY(b)(3).

[19] Specifically, the Exchange committed to: ''(1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States.'' *See* Approval Order, 78 FR at 22015.

[20] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Janet L. McGinness, Executive Vice President and Corporate Secretary, General Counsel, NYSE Markets, dated April 5, 2013 (''Comment Letter'').

[21] *Id.*

For each of those option classes affected, each data record will contain the following information:

- Stock symbol, option symbol, time at the start of the Straddle or Limit State, an indicator for whether it is a Straddle or Limit State.
- For activity on the Exchange:
- Executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer;
- high execution price, low execution price;
- number of trades for which a request for review for error was received during Straddle and Limit States;
- an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit or Straddle state compared to the last available option price as reported by OPRA before the start of the Limit or Straddle State (1 if observe 30% and 0 otherwise). Another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit or Straddle state (or halt if applicable) is 30% away from the price before the start of the Limit or Straddle state.

The Exchange notes that it will update the data available on the Exchange's Web site for the period April 2013 through January 2014 with the revised dataset once the Exchange has completed its analysis and review of such data. Prospectively, the data made available to the public will be based on the proposed revised dataset described above.

In addition, by September 30, 2014, the Exchange shall provide to the Commission assessments relating to the impact of the operation of the Obvious Error rules during Limit and Straddle States as follows: (1) Evaluate the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and (2) Assess whether the lack of Obvious Error rules in effect during the Straddle and Limit States are problematic. The timing of this submission would coordinate with Participants' proposed time frame to submit to the Commission assessments as required under Appendix B of the Plan, per the Seventh Amendment to the Plan.[22]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[23] in general, and furthers the objectives of Section 6(b)(5),[24] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the proposal to extend the pilot program of Rule 953.1NY(c) until February 20, 2015, which will align that pilot program with the Pilot Period for the Plan, as proposed in the Seventh Amendment to the Plan, will ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes that the extension of Rule 953.1NY(c) will help encourage market participants to continue to provide liquidity during extraordinary market volatility.

Moreover, the Exchange believes that revising the dataset that it provides to the Commission and the public would remove impediments to, and perfect the mechanisms of, a free and open market because the revised dataset will provide more information from which to assess the impact of Rule 953.1NY(c). In addition, the Exchange believes that extending the time for the Exchange to provide its overall assessment of the Rule 953.1NY(c) pilot to September 30, 2014 is appropriate and in the public interest, for the protection of investors, and the maintenance of a fair and orderly market because it will align the timing of such assessments with the time that the Participants have proposed to provide the Commission with assessments pursuant to Appendix B of the Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes will not impose any burden on competition and will instead provide certainty regarding the treatment and execution of options orders, specifically the treatment of Obvious and Catastrophic Errors during periods of extraordinary volatility in the underlying NMS Stock, and will facilitate appropriate liquidity during a Limit State or Straddle State.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and Rule 19b–4(f)(6)(iii) thereunder.[26]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to extend the pilot program prior to its expiration on April 8, 2014. The Exchange also stated that waiver of this requirement would ensure the pilot program would align with the pilot period for the Plan and would ensure that trading in options that overlay NMS Stocks continues to be appropriately modified to reflect market conditions that occur during a Limit State or a Straddle State. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the

[22] *See supra* n. 15.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2014–31 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–NYSEMKT–2014–31. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2014–31 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07952 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71855; File No. SR–BOX–2014–12]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program That Suspends Certain Obvious Error Provisions During Limit Up-Limit Down States in Securities That Underlie Options Traded on the Exchange

April 3, 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 April 2, 2014, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretive Material 1 to Rule 7080 to extend, through February 20, 2015, the pilot program that suspends certain obvious error provisions during limit up-limit down states in securities that underlie options traded on the Exchange. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Exchange proposes to extend through February 20, 2015 the pilot that permits the Exchange to suspend certain provisions in BOX Rule 7170 (Obvious and Catastrophic Errors) during limit up-limit down states in securities that underlie options traded on the Exchange (''Pilot''). The Pilot is currently scheduled to expire on April 8, 2014.[3]

The Pilot allows the Exchange to exclude transactions executed during a Limit State or Straddle State from provisions in BOX Rule 7170. This does not include Rule 7170(e) and (f), which specify when a trade resulting from an erroneous print or quote in the underlying security may be adjusted or busted.

The remaining provisions in BOX Rule 7170 provide a process by which a transaction may be busted or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Under these provisions, the theoretical price is the national best bid price for the option with respect to a sell order and the national best offer for the option with respect to a buy order.[4] During a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the limit state. Consequently, the Exchange

[3] *See* Securities Exchange Act Release No. 69368 (April 12, 2013) 78 FR 23323 (April 18, 2013) (SR–BOX–2013–20).

[4] Rule 7170 provides that if there are no quotes from other options exchanges for comparison purposes, the theoretical price will be determined by designated personnel in the MRC. However, given that options market makers and other industry professionals will have difficulty pricing options during Limit States and Straddle States, the Exchange does not believe it would be reasonable for BOX personnel to derive theoretical prices to be applied to transactions executed during such unusual market conditions.

believed that these provisions would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and could produce undesirable effects.

The Exchange proposes to extend the operation of this Pilot to analyze the impact of the Limit and Straddle States.[5] The Exchange will also continue to evaluate whether adopting a provision for reviewing trades on its own motion during Limit and Straddle States is necessary and appropriate.

Additionally, the Exchange represents that it will conduct its own analysis concerning the elimination of the obvious error rule during Limit and Straddle States and agrees to provide the Commission with relevant data to assess the impact of the Pilot. As part of its analysis, the Exchange will evaluate (1) the options market quality during Limit and Straddle States, (2) assess the character of incoming order flow and transactions during Limit and Straddle States, and (3) review any complaints from members and their customers concerning executions during Limit and Straddle States. The Exchange also agrees to provide to the Commission data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above.

Specifically, the Exchange agrees to provide the following data to the Commission to help evaluate the impact of the Pilot. By September 30, 2014 the Exchange shall provide an assessment that evaluates the statistical and economic impact of Limit and Straddle States on liquidity and market quality in the options markets; and assess whether the lack of obvious error rules in effect during the Straddle and Limit States is problematic. On a monthly basis, the Exchange shall provide both the Commission and public a dataset containing the data for each Straddle and Limit State in optionable stocks.[6] Further, the Exchange will provide the Commission a historical dataset from the beginning of the Pilot at the Exchange's earliest convenience.[7]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the proposed extension will allow the Pilot to remain in effect until the end of the pilot period of the Plan to Address Extraordinary Market Volatility (''Plan'').[10] The Exchange believes that it continues to be necessary and appropriate in the interest of promoting fair and orderly markets to exclude transactions executed during a Limit State or Straddle State from the provision of BOX Rule 7170. Specifically the Exchange believes the application of the current rule will be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and that the resulting actions (i.e., busted trades or adjusted prices) may not be appropriate given market conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change does not impose any new or additional burden on BOX Options Participants, and only extends the current Pilot, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement is consistent with the protection of investors and the public interest because it will permit the Pilot, scheduled to end on April 8, 2014, to continue without interruption. The Exchange also stated that it believes the proposal is necessary and appropriate to assure a fair and orderly market during Limit States and Straddle States. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[5] During the Pilot, the Exchange will provide the Commission with data regarding how the Limit and Straddle States affect the quality of the options market.

[6] The dataset will include the options for each underlying security that reaches a limit or straddle state and has at least one (1) trade on the Exchange during the straddle or limit state. For each of those options affected the data record will contain the stock symbol, option symbol, time at the start of the straddle or limit state, an indicator for whether it is a straddle or limit state. For activity on the Exchange the data record will contain the executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during straddle or limit states, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's straddle or limit state compared to the last available option price as reported by OPRA before the start of the straddle or limit state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving straddle or limit state (or halt if applicable) is 30% away from the price before the start of the straddle or limit state.

[7] *Id.*

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* Securities Exchange Act Release No. 71649 (March 5, 2014), 79 FR 13696 (March 11, 2014) (Joint Industry Plan; Notice of Filing of the Seventh Amendment to the National Market System Plan to Address Extraordinary Market Volatility).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2014–12 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–BOX–2014–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2014–12 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71859; File No. SR–CBOE–2014–029]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Enhance the Exchange Audit Trail

April 3, 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 27, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to enhance its audit trail by adding an additional element to existing Rules 6.73 (Responsibility of Floor Brokers) and 7.12 (PAR Official). The text of the proposed rule change is provided below. (additions are *italicized;* deletions are [bracketed])

* * * * *

Chicago Board Options Exchange, Incorporated Rules

* * * * *

Rule 6.73. Responsibilities of Floor Brokers

(a)–(c) *No changes.*

. . . Interpretations and Policies:

.01–.04 *No changes.*

.05 Representation. Pursuant to Rule 6.73(a), a Floor Broker's representation of an order shall require the Floor Broker to electronically record the time the order is initially represented in the trading crowd via Exchange-approved functionality.

* * * * *

Rule 7.12. PAR Official

(a) No change.

(b) The PAR Official shall be responsible for the following obligations with respect to the classes of options assigned to him/her:

(i)–(iv) No change.

(v) A PAR Official shall electronically record the time an order is initially represented by the PAR Official in the trading crowd.

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add a new interpretation and policy to Rule 6.73 and new language to Rule 7.12(b). The proposed change will require Floor Brokers and PAR Officials to electronically capture the time in which orders are initially verbally presented in the Exchange's trading crowd via a ''Represent Button'' which will be located on PAR workstations and other Exchange-approved devices including, i.e. Floor Broker Workstation (''FBW'') and PULSe.[3] This will enhance the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that there are currently other devices utilized on the Exchange's trading floor, but these devices are not utilized to represent orders in Exchange trading crowds and will not be required to have this functionality.

Exchange's audit trail and surveillance of open out-cry trading.

Currently, Trading Permit Holders are permitted to use Exchange-approved devices to systematize orders pursuant to Exchange Rule 6.24.[4] However, the Exchange does not currently require an electronic capture of the time when orders are represented in the trading crowd on any of these devices.

The proposed rule change will require the electronic capture of the time an order is initially verbally represented in the trading crowd. As proposed, this obligation will be fulfilled via an electronic mechanism, a ''Represent Button,'' made available on Exchange-approved devices, including, for example, Exchange-supplied PAR workstations, FBWs and PULSe workstations.[5] The Exchange believes this proposed addition would help to track the time when an order is initially represented in the trading crowd for open outcry trading.

The procedure Floor Brokers and PAR Officials currently follow to represent orders and consummate trades on the Exchange's trading floor will not change aside from the added step of capturing the time an order was initially represented in the trading crowd.

The following is an example of how the proposed ''Represent Button'' would operate:

- At 10:00:00, the National Best Bid and Offer (''NBBO'') is 1.10–1.20. A Floor Broker enters a trading crowd to represent an already systematized order resident on a FBW to buy 200 contracts at 1.15. Concurrent with the representation in the crowd, the ''Represent Button'' on that FBW must be pressed.
- At 10:00:10, while the NBBO remains 1.10–1.20, a Market-Maker (''MM–A'') in the trading crowd verbally commits to trade against the order for 200 contracts priced at 1.15. A trade has occurred.
- At 10:00:11, the NBBO updates to 1.05–1.10. At the same time, while the NBBO is 1.05–1.10, the order is transmitted to a PAR workstation for endorsement and processing.[6]
- Finally, at 10:00:12, while the NBBO is still 1.05–1.10, the Floor Broker completes the endorsement of the trade and reporting process via PAR.

With the addition of the proposed rule text, open out-cry trading on the Exchange will generally continue to operate as it currently does. The proposed rule text, however, merely adds another requirement to capture the representation time electronically. With the creation of the additional requirement, the Exchange is attempting to enhance its audit trail for regulatory purposes.

The Exchange will announce the implementation date of the proposed rule change in a Regulatory Circular to be published no later than 30 days following the approval date. The Exchange represents that all devices currently utilized to represent orders in the trading crowd by Floor Brokers and PAR Officials will have this functionality by the time of implementation of the obligation.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation [sic] transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed addition to Rules 6.73 and 7.12 would promote just and equitable principles of trading by enhancing the Exchange's audit trail. The proposed requirement applies to all participants that handle agency orders in the trading crowd, and, as such, we do not believe the requirement is unfairly discriminatory. In addition, all Floor Brokers and PAR Officials will have the same requirement to utilize the Represent Button, making the rule equitable to similarly situated participants on the Exchange's trading floor. These times will promote the Exchange's ability to develop and implement surveillances that adequately cover the Exchange's Rules including, but not limited to, due diligence requirements of Floor Brokers[10] and other Exchange priority rules. The proposed rule change is attempting to protect investors and the public interest by enhancing the audit trail used to monitor trading on the Exchange trading floor.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[11] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Trading Permit Holders and persons associated with its Trading Permit Holders with the Act, the rules and regulations thereunder, and the rules of the Exchange. In particular, the proposed additions will enhance the Exchange's audit trail improving the regulation of the Exchange. With an enhanced audit trail, the Exchange will be able to better monitor trading activity on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the proposed rule change will not impose any burden on any intramarket competition as it will be applied to similarly situated groups trading on the Exchange's trading floor equally. The Exchange does not believe the proposed rule change will impose any burden on intermarket completion as the proposed changes merely pose an electronic recording component to the Exchange's open outcry representation

[4] Orders must be systematized in accordance with Rule 6.24 (Required Order Information). Generally, subject to certain exceptions, each order, cancellation of, or change to an order transmitted to the Exchange must be ''systematized,'' in a format approved by the Exchange, either before it is sent to the Exchange or upon receipt on the floor of the Exchange. An order is systematized if: (i) The order is sent electronically to the Exchange; or (ii) the order that is sent to the Exchange non-electronically (*e.g.,* telephone orders) is input electronically into the Exchange's systems contemporaneously upon receipt on the Exchange, and prior to representation of the order.

[5] Any newly introduced floor based order management device must have the ''Represent Button'' functionality before it is approved to be used on the Exchange trading floor if it will be utilized to represent orders.

[6] Orders represented on FBW must be sent to a PAR workstation for endorsement and processing because the post-execution process cannot be completed on FBW. The Exchange notes that, at this time, the PAR workstations are systematically configured to require the usage of the ''Represent Button'' upon selection of the order.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] *See* Exchange Rule 6.73.

[11] 15 U.S.C. 78f(b)(1).

requirements on the trading floor to enhance the Exchange's audit trail.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and 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–CBOE–2014–029 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–CBOE–2014–029. 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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–029, and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07889 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71862; File No. SR–Topaz–2013–20]

Self-Regulatory Organizations; Topaz Exchange, LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1, to More Specifically Address the Number and Size of Counterparties to a Qualified Contingent Cross Order

April 3, 2014.

I. Introduction

On December 18, 2013, the Topaz Exchange, LLC (d/b/a ISE Gemini) (the ''Exchange'' or ''Topaz'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change notice to amend Rule 715 (Types of Orders) to more specifically address the number and size of counterparties to a Qualified Contingent Cross Order (''QCC Order''). The proposed rule change was published for comment in the **Federal Register** on January 7, 2014.[3] On February 18, 2014, the Commission extended the time period for Commission action to April 7, 2014.[4] On April 2, 2014, the Exchange submitted an amendment to the proposed rule change.[5] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Background

As originally approved on Topaz, a QCC Order was required to be comprised of an order to buy or sell at least 1,000 contracts that is identified as being part of a qualified contingent trade (''QCT''), coupled with a contra-side order to buy or sell an equal number of contracts.[6] Following discussions regarding the QCC Order with Commission staff, the Exchange learned that Commission staff interpreted the Exchange's rules relating to QCC Orders to permit only a single order on the originating side of the QCC Order and a single order on the contra-side, with each such order comprised of a single party and meeting the 1,000 contract minimum size requirement. In a Regulatory Information Circular published by the Exchange on November 25, 2013, the Exchange explained that it had always interpreted the QCC Order definition to mean that a QCC Order must be comprised of an unsolicited order to buy or sell at least 1,000 contracts that is identified as part of a QCT, coupled with a contra-side order that could be made up of multiple orders, each of which could be less than 1,000 contracts.[7] The Exchange also stated that it would seek to amend its rules governing QCC Orders to codify its interpretation in its rules.[8]

On December 18, 2013, the Exchange filed two proposed rule changes with the Commission. In addition to this filing, the Exchange filed SR–Topaz–2013–19, a proposed rule change for immediate effectiveness to amend the definition of a QCC Order such that it must involve a single order for at least 1,000 contracts on the originating side,[9] but may consist of multiple orders on the opposite, contra-side, so long as each contra-side order is for at least

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 71209 (December 31, 2013), 79 FR 867 (January 7, 2014).

[4] *See* Securities Exchange Act Release No. 71562 (February 18, 2014), 79 FR 10220 (February 24, 2014).

[5] The Commission notes that Amendment No. 1 is not subject to notice and comment because it does not alter the substance of the proposed rule change or raise any novel regulatory issues, but rather describes how the Exchange surveils QCC Orders. *See* Section III below.

[6] *See* Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (File No. 10–209).

[7] *See* ISE-Gemini Regulatory Information Circular 2013–021 (November 25, 2013).

[8] *Id.*

[9] In the case of Mini Options, the minimum size is 10,000 contracts.

1,000 contracts.[10] In that filing, the Exchange explained,

> It was always the Exchange's intent and understanding when drafting the rule text that a QCC Order could involve multiple contra-parties of the QCC trade when the originating QCC Order consisted of at least 1,000 contracts. However, the rule language addressing the contra-side of a QCC Order is drafted from the perspective of how the QCC Order gets entered into the Exchange system. Specifically, the contra-side order to a QCC Order will always be entered as a single order, even if that order consists of multiple contra-parties who are allocated their portion of the trade in a post-trade allocation. Notwithstanding the foregoing, the literal wording of the current QCC Order rule could result in a more limited interpretation of the rule. Therefore, the Exchange now proposes to make it clear that a QCC Order must involve a single order for at least 1,000 contracts on the originating side, but that it may consist of multiple orders on the opposite, contra-side, so long as each of the contra-side orders is for at least 1,000 contracts.[11]

III. Description of the Proposed Rule Change

In this filing, the Exchange proposes to remove the requirement that contra-side orders of QCC Orders be for at least 1,000 contracts each, thus permitting multiple contra-side orders on a QCC Order with a total number of contracts equaling the originating order size, but without any size requirement for such contra-side orders. Under this proposal, the requirements for the QCC Order's originating order remain unchanged, and thus would require the originating order to be a single order for a single party of at least 1,000 contracts, and the QCC Order must also continue to satisfy all other requirements of a QCC Order under the Exchange's rules.

The Exchange believes that removing the size limit placed on contra-parties to QCC Orders may increase liquidity and, potentially, improve the prices at which QCC Orders get executed, as the Exchange states that the ability for market participants to provide liquidity in response to large sized orders is directly proportional to the size and associated risk of the resulting position. As support, the Exchange states that smaller sized trades are often done at a better price than larger sized trades, which convey more risk. The Exchange believes that the ability to pool together multiple market participants to participate on the contra-side of a trade for any size, as opposed to only allowing market participants to participate for a minimum of 1,000 contracts, would have a direct and positive impact on the ability of those market participants to provide the best price as they compete to participate in the order without being compelled to provide liquidity with a large minimum quantity. Further, the Exchange states that allowing several participants to offer liquidity to a QCC Order serves to ensure that the order receives the best possible price available in the market and argues that restricting interaction to only participants who are willing to trade a minimum of 1,000 contracts simply guarantees an inferior price because a trade will be limited to few liquidity providers who are taking on more risk as opposed to multiple liquidity providers being able to share the overall risk and trade at a better price.

In the proposal, the Exchange stresses that the concern has always been and should continue to be for the originating order—*i.e.,* the unsolicited part of the order that is seeking liquidity—and not the professional responders and providers of liquidity. The Exchange believes that allowing smaller orders to participate on the other side (*i.e.,* contra-side) of QCC Orders not only provides the best price and opportunity for a trade to occur in a tight and liquid market, but ensures that the highest possible number of liquidity providers are able to participate, and states that limiting participation only to liquidity providers who are willing to participate on the trade for 1,000 contracts conversely could result in an inferior price by shutting out some participants due to the large size and thereby minimizing the opportunity for competition and price improvement.

In Amendment No. 1, the Exchange represents that it tracks and monitors QCC Orders to determine which is the originating/agency side of the order and which is the contra-side(s) of the order to ensure that Members are complying with the minimum 1,000 contract size limitation on the originating/agency side of the QCC Order. The Exchange states that it checks to see if Members are aggregating multiple orders to meet the 1,000 contract minimum on the originating/agency side of the trade in violation of the requirements of the rule. The rule requires that the originating/agency side of the trade consist of one party who is submitting a QCC Order for at least 1,000 contracts. The Exchange represents that it enforces compliance with this portion of the rule by checking to see if a Member breaks up the originating/agency side of the order in a post trade allocation to different clearing firms, allocating less than 1,000 contracts to a party or multiple parties. For example, a Member enters a QCC Order into the system for 1,500 contracts and receives an execution. Subsequent to the execution, the Member allocates the originating/agency side of the order to two different clearing firms on a post trade allocation basis, thereby allocating 500 contracts to one clearing firm and 1,000 contracts to another clearing firm. The Exchange states that this type of transaction would not meet the requirements of a QCC Order under the current rule.

With regard to order entry, the Exchange clarifies that a Member must mark the originating/agency side as the first order in the system and the contra-side(s) as the second. The Exchange states that it monitors order entries to ensure that Members are properly entering QCC Orders into the system.

IV. 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.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] 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.

In its original approval of the QCC Order for use on the International Securities Exchange, LLC (''ISE''), the Commission noted the benefits of contingent trades to investors and the market as a whole.[14] Specifically, in providing for an exemption from certain requirements of Regulation NMS for QCTs, the Commission recognized that contingent trades can be ''useful trading tools for investors and other market participants, particularly those who trade the securities of issuers involved in mergers, different classes of shares of the same issuer, convertible securities, and *equity derivatives such as options*''

[10] *See* Securities Exchange Act Release No. 71181 (December 24, 2013), 78 FR 79718 (December 31, 2013) (SR–Topaz–2013–19).

[11] *Id.* at 79719.

[12] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 63955 (February 24, 2011), 76 FR 11533, 11540–11541 (March 2, 2011) (SR–ISE–2010–73) (''Original QCC Approval Order'').

[italics added].[15] In the Original QCC Approval Order, the Commission also reiterated the finding from its Original QCT Exemption that those transactions that meet the specified requirements of the QCT exemption could be of benefit to the market as a whole and a contribution to the efficient functioning of the securities markets and the price discovery process.[16]

In analyzing ISE's original QCC Order, the Commission weighed the benefits of QCTs, of which QCC Orders are a subset, against the benefits provided by the general requirement for exposure of orders in the options markets.[17] In the Original QCC Approval Order, the Commission stated that the QCC Order strikes an appropriate balance for the options market in that it is narrowly drawn and establishes a limited exception to the general principle of exposure and retains the general principle of customer priority in the options markets because QCC Orders are required to be: (1) part of a QCT under Regulation NMS; (2) for at least 1,000 contracts; (3) executed at a price at or between the national best bid or offer; and (4) cancelled if there is a Priority Customer Order on ISE's limit order book at the same price.[18] The Commission specifically noted that a QCC Order must not only be part of a QCT by satisfying each of the six underlying requirements of the NMS QCT Exemption, but must be for a minimum size of 1,000 contracts, and that these requirements provide another limit to its use by ensuring only transactions of significant size may avail themselves of this order type.[19] Given the requirements for QCC Orders, the Commission also noted its belief that those customers participating in QCC Orders would likely be sophisticated investors who should understand that their order would not be exposed for potential price improvement, and that these customers should be able to themselves assess whether the net prices they are receiving for their QCC Order are competitive.[20] The Commission also specifically noted that broker-dealers are subject to a duty of best execution for their customers' orders, and that duty does not change for QCC Orders.[21]

In considering Topaz's proposal to eliminate the minimum size requirement for the contra-side of QCC Orders, the Commission has again weighed whether the benefits of this order type, as proposed to be modified, to investors and the market outweigh the benefits provided by the general requirement for exposure of orders in the options markets. The Commission notes that Topaz's proposal does not change the requirements that a QCC Order must be: (1) part of a QCT under Regulation NMS; (2) executed at a price at or between the national best bid or offer; and (3) cancelled if there is a Priority Customer Order on Topaz's limit order book. In addition, the changes to QCC Orders under SR–Topaz–2013–19[22] permit multiple contra-side orders for QCC Orders, so long as each such contra-side order is for at least 1,000 contracts. In this filing, the only requirement that the Exchange proposes to change is to eliminate the requirement that contra-side orders of a QCC Order be for at least 1,000 contracts.

The Commission believes that this change to the minimum size requirement for the contra-side(s) of QCC Orders is narrowly tailored and, significantly, the Exchange's rule text clearly requires that the originating side of a QCC Order must be comprised of a single order (*i.e.,* a single party) for at least 1,000 contracts. The Commission believes that retention of the requirements that the original side be comprised of a single order from a single party and that such single order be for at least 1,000 contracts will continue to ensure that sophisticated investors, who are aware that their orders will not be exposed for price improvement, and who themselves should be able to assess whether the net prices for their QCC Orders are competitive, will initiate QCC Orders in an effort to effectuate a complex transaction that complies with all the requirements of the QCC Order.

The proposed rule change will allow multiple contra-parties with order sizes of less than 1,000 to aggregate their interest to pair against the originating side of a QCC Order to facilitate the execution of the QCC Order. The Commission believes that allowing smaller orders from multiple parties to participate on the contra-side of QCC Orders may provide a better opportunity for QCC Orders to be executed and, potentially, at better prices. The Commission acknowledges that limiting participation on the contra-side of a QCC Order only to liquidity providers who are willing to participate on the trade for 1,000 contracts, could result in less interest in the trade than if contra-side orders were not required to meet the 1,000 contract minimum, potentially diminishing the opportunity for competition and price improvement. The Commission believes that the proposed modification to the definition of QCC Order is narrowly drawn in that it does not impact the fundamental aspects of this order type, and merely permits QCC Orders to include multiple contra-parties, regardless of size on the contra-side, while preserving the 1,000 contract minimum on the originating side of a QCC Order. Accordingly, the Commission finds the proposed rule consistent with the Act.[23]

The Commission notes that, given the differing requirements as between the originating side and contra-side for QCC Orders, it is essential that the Exchange be able to clearly identify and monitor—throughout the life of a QCC Order, beginning at time of order entry on the Exchange through the post-trade allocation process—each side of the QCC Order and ensure that the requirements of the order type are being satisfied including, importantly, those relating to the originating side. The Commission believes this to be critical so that the Exchange can ensure that market participants are not able to circumvent the requirements of the QCC Order (as amended by this proposed rule change), each of which the Commission continues to believe are critical to ensuring that the QCC Order is narrowly drawn.[24] Further, the Commission notes that, in Amendment No. 1, the Exchange has made certain representations regarding its enforcement and surveillance of its Members' use of QCC Orders, including, for example, not only at the time of

[15] *See* Securities Exchange Act Release No. 54389 (August 31, 2006, 71 FR 52829, 52830 (September 7, 2006) (''Original QCT Exemption'').

[16] *See* Original QCC Approval Order, *supra* note 14 at text accompanying footnote 115.

[17] *Id.* at 11541.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *See supra* note 10.

[23] The Commission notes that three commenters submitted comment letters to SR–ISE–2013–72, a proposed rule change of ISE substantively identical to, and filed contemporaneously with, SR–Topaz–2013–20. On April 2, 2014, ISE responded to the comment letters. *See http://www.sec.gov/comments/sr-ise-2013-72/ise201372.shtml. See also* Securities Exchange Act Release No. 71863 (April 3, 2014) (SR–ISE–2013–72 approval order).

[24] The Commission expects the Exchange to have the capability to enable it to surveil that such requirements are being met. Though the Exchange has stated its ability to do so in Amendment No. 1, if the Exchange is not able to have such monitoring at any point in time, the Commission would expect the Exchange to take other steps to ensure that the QCC Order cannot be improperly used. For example, if the Exchange were not able to identify and monitor which side of a QCC Order is the originating order, the Commission would expect that it would require that both sides of the QCC Order meet the more stringent requirements of the originating side, *i.e.,* that it be for a single order for at least 1,000 contracts.

order entry, but through the post-trade allocation process as well.

For the foregoing reasons, the Commission believes that the proposed rule change is consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [25] that the proposed rule change (SR–Topaz–2013–20), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07891 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71860; File No. SR–CBOE–2014–035]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Fix Technical Errors

April 3, 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 April 1, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to fix technical errors in its rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make an administrative change to correct an inadvertent typographical error in Interpretation and Policy .03 in Rule 4.21. Additionally, the Exchange proposes to make an administrative change to correct the erroneous failure to delete Interpretation and Policy .01 from Exchange Rule 8.93. The Exchange proposes to make the proposed changes so the text properly reflects the intention of the Exchange to remove Rule 8.93 in its entirety and to fix the typographical error in Rule 4.21. Both the inadvertent typographical error and the erroneous failure to delete part of Rule 8.93 are explained below.

In Interpretation and Policy .03 of Rule 4.21, there is an inadvertent typographical error where the word ''United'' (as in ''the United States of America'') was instead spelled as ''Unites.'' The Exchange is proposing to correct this erroneous typographical error to avoid any confusion and to better reflect the intention of the Exchange for this interpretation and policy to say ''United States,'' rather than ''Unites States.''

The Exchange recently filed a rule change, SR–CBOE–2013–110, to eliminate the e-DPM program from the Exchange rules.[3] As part of that filing, there was an erroneous failure to delete Rule 8.93 in its entirety, unintentionally failing to remove Interpretation and Policy .01 from the corresponding rule. This error can be found in the remaining text of Rule 8.93 under the Interpretations and Policies section, where the phrase ''[w]hen the underlying security for a class is in a limit up-limit down state, as defined in Rule 6.3A, e-DPMs shall have no quoting obligations in the class'' was inadvertently not deleted along with the rest of Rule 8.93. The Exchange is now proposing to amend this error to more accurately reflect the intention and practice of the Exchange and to avoid any confusion.

[3] See Securities Exchange Act Release No. 34–71227 (Jan. 2, 2014), 79 FR 1398 (Jan. 8, 2014) (order approving SR–CBOE–2013–110).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [6] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change is consistent with these provisions as it will more accurately reflect the intentions of the Exchange to eliminate Rule 8.93 and the corresponding e-DPM program and also correct the inadvertent typographical error in Interpretation and Policy .03 of Rule 4.21. There are no substantive changes being made in the proposed rule changes, and thus, the current practices of the Exchange will remain the same. The Exchange believes the proposed rule changes will help to avoid confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] *Id.*

Exchange does not believe the proposed rule changes impose any burden on intramarket competition because they applies [sic] to all Trading Permit Holders. Additionally, the Exchange does not believe the proposed rule change will impose any burden on intermarket competition as it is merely attempting to correct the erroneous failure to delete Rule 8.93 in its entirety and to correct a typographical error in Rule 4.21. The Exchange does not propose any substantive changes to the Exchange's operations or its rules that the Exchange believes could have any impact on competition (intermarket or intramarket).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–035 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–CBOE–2014–035. 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 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–035, and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07890 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71858; File No. SR–CBOE–2014–028]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule of Its CBOE Stock Exchange

April 3, 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 26, 2014, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fees Schedule of its CBOE Stock Exchange (''CBSX''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX proposes to amend its Fees Schedule. Currently, the Exchange assesses no fees for cross trades that are not part of stock option trades (and are not otherwise specified on the Fees Schedule). However, CBSX has determined that it is economically prudent to assess fees for such transactions at this time. As such, CBSX proposes to amend its Fees Schedule to assess a fee of $0.0010 per share for cross trades that are not part of stock option trades for transactions in securities priced $1 or greater, and a fee of 0.10% of the dollar value of the transaction for cross trades that are not part of stock option trades for transactions in securities priced less than $1. These fees apply to all portions of cross trades that are not part of stock option trades and are not covered by another specific fee listed on the CBSX Fees Schedule.

The proposed changes are to take effect on April 1, 2014.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. CBSX desires to assess fees for such transactions to assist in funding CBSX's operational, regulatory and administrative costs. The amounts of the proposed fees are within the range of fees assessed by CBSX for other transactions. CBSX further believes that the proposed changes are equitable and not unfairly discriminatory because all market participants will be assessed the same fees. CBSX believes that it is equitable and not unfairly discriminatory to assess different fees for transactions in securities priced $1 or greater and transactions in securities prices less than $1 due to different liquidity profiles and trading incentives for securities priced at the two levels. Moreover, CBSX currently offers similarly-differentiated pricing for other types of executions.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBSX does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees will be assessed to all market participants. CBSX does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fees only affect trading on CBSX. CBSX desires to assess fees for such transactions to assist in funding CBSX's operational, regulatory and administrative costs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and paragraph (f) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2014–028 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–CBOE–2014–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2014–028 and should be submitted on or before April 30, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–07888 Filed 4–8–14; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: NAS Data Release Request

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 31, 2014, vol. 79, no. 21, page 5512. The information enables the FAA to evaluate the validity of the user's request for National Airspace (NAS) data from FAA systems and equipment.

DATES: Written comments should be submitted by May 9, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0668.

Title: NAS Data Release Request.

Form Numbers: FAA Form 1200–5.

Type of Review: Renewal of an information collection.

Background: This data collection is the genesis for granting approval to release filtered NAS data. The information provided sets the criteria for the FAA Data Release Request Committee (DRRC) to approve or disapprove individual requests for NAS data. The information submitted by the requestor determines the requestor's eligibility to use FAA NAS data. The agency currently uses the collected information to determine suitability for procuring NAS data for use in various evaluations.

Respondents: Approximately 9 data requestors annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 hours.

Estimated Total Annual Burden: 27 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 3, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–07902 Filed 4–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting: RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems

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

ACTION: Notice of RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the fifth meeting of RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems.

DATES: The meeting will be held May 22, 2014 from 1:00 p.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662 or (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 228—Minimum Operational Performance Standards for Unmanned Aircraft Systems. The agenda will include the following:

Specific Working Group Sessions Before Plenary

May 19–21

All Day, Working Group 1—DAA, MacIntosh-NBAA Room & Colson Board Room.

All Day, Working Group 2—C2, ARINC & Hilton-A4A Rooms

May 22

Working Group 1—DAA, MacIntosh-NBAA Room & Colson Board Room.

Working Group 2—CNPC, ARINC & Hilton-A4A Rooms

May 22 (Starting at 1:00 p.m.)

- Welcome/Introductions/Administrative Remarks/SC–228 Participation Guidelines
- Agenda Overview
- Review/Approval of Minutes from Plenary #4 (RTCA Paper No. 046–14/SC228–013) held Thursday, February 28, 2014 at RTCA
- Review of RTCA SC–228 Steering Committee Activity.
- Briefings from UAS Test Sites
- Status of coordination efforts with SC–147
- Report from WG–1 for Detect and Avoid progress on the DAA MOPS
- Report from WG–2 for Command and Control progress on the CNPC MOPS
- Other Business
- Date, Place and Time of Next Meeting(s)
  - (Plenary #6—28 August 2014 @RTCA)
- Adjourn Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 2, 2014.

Paige L. Williams,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2014–07906 Filed 4–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixteenth Meeting: RTCA Special Committee 222, Inmarsat AMS(R)S

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

ACTION: Meeting Notice of RTCA Special Committee 222, Inmarsat AMS(R)S.

SUMMARY: The FAA is issuing this notice to advise the public of the sixteenth meeting of the RTCA Special Committee 222, Inmarsat AMS(R)S. The purpose of this meeting is to resolve comments received during the FRAC process on the SwiftBroadband Appendix to DO–262(B) and the updated Iridium Appendix to DO–262(B).

DATES: The meeting will be held April 25, 2014 from 9:00 a.m.–5:00 p.m.

ADDRESSES: RTCA Headquarters, 1150 18th St. NW., Suite 910, Washington DC 20036. This meeting is expected to be largely virtual, conducted over Webex with a telephone bridge. Dr. LaBerge and Mr. Robinson will be present at RTCA. Those who plan to attend in person at the RTCA offices should notify Jennifer Iversen by April 11, 2014 to assure that appropriate space is reserved. Please contact Jennifer Iversen (*jiversen@rtca.org*) if you intent to attend in person or remotely.

FOR FURTHER INFORMATION CONTACT: Jennifer Iversen may be contacted directly at email: jiversen@rtca.org or by The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 330–0662/(202) 833–9339, fax (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 222. The agenda will include the following:

April 25, 2014

- Greetings & Attendance.
- Review summary of February meetings (15th Plenary).
- Resolve FRAC comments on SwiftBroadband material.
- Resolve FRAC comments on Iridium material.
- Discuss Change 4 to DO–210D and approve for FRAC, if appropriate.
- Other items as appropriate and time permitting. Please submit other items to Chuck LaBerge (*laberge.engineering@gmail.com*) by April 11.
- Schedule for 17th Plenary. The 17th Plenary session will be for the purpose of resolving any comments received during the FRAC process for Change 4 to DO–210D.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 2, 2014.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2014–07904 Filed 4–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, May 6 and Wednesday, May 7, 2014 from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at CGH Technologies, Inc., 600 Maryland Ave. SW., Suite 800W, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Hemdal, ATPAC Executive Director, 600 Independence Avenue SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, May 6 and Wednesday, May 7, 2014 from 8:30 a.m. to 5:00 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Call for Safety Items
2. Approval of minutes of the previous meeting
3. Introduction of New Areas of Concern or Miscellaneous items
4. Items of Interest
5. Status updates to existing Areas of Concern
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statement should notify Ms. Heather Hemdal no later than May 4, 2014. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on April 1, 2014.

Heather Hemdal,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2014–07907 Filed 4–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement: State Route 18 From State Route-64 at Bolivar to State Route-100, Hardeman County, Tennessee

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to Rescind a Notice of Intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on March 7, 2007 to prepare an EIS for the proposed project to improve State Route 18 from State Route-64 at Bolivar to State Route-100, Hardeman County, Tennessee, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Claxton, Planning and Program Management Team Leader, Federal Highway Administration—Tennessee Division Office, 404 BNA Drive, Suite 508, Nashville, TN 37217. 615–781–5770.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of

Transportation (TDOT), is rescinding the notice of intent to prepare an EIS for an upgrade to the existing State Route 18 from State Route-64 at Bolivar to State Route-100, Hardeman County. The proposed project was approximately 10 miles in length and had been developed to bypass downtown Bolivar.

TDOT conducted public involvement and agency coordination, developed a purpose and need for the project and developed preliminary alternatives. In August of 2012, TDOT circulated and requested comments on a Preliminary Draft EIS (PDEIS) that was sent to agencies participating in Tennessee's Environmental Streamlining Agreement, including FHWA. Following the PDEIS, TDOT further considered the cost of the project, the project purpose and need and a southern bypass of Bolivar, a separate project that had been approved in a 2004 NEPA Finding of No Significant Impact. They also considered the adverse comments received from the public and resource agencies related to purpose and need, environmental impacts and project cost. Upon full consideration of the issues identified, FHWA and TDOT determined that they would not pursue the State Route 18 (Bolivar Northern Bypass) project.

Comments and questions concerning the proposed action should be directed to FHWA at the address provided above.

(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 proposed program.)

Dated: April 3, 2014.

Theresa Claxton,

Planning and Program Mgmt. Team Leader, Nashville, TN.

[FR Doc. 2014–07939 Filed 4–8–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2014–0053]

Request for Comments of a Previously Approved Information Collection

AGENCY: Maritime Administration (MARAD), Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 20, 2013 (**Federal Register** 77203, Vol. 78, No. 245).

DATES: Comments must be submitted on or before May 9, 2014.

FOR FURTHER INFORMATION CONTACT: Michael Yarrington, Chief, Office of Marine Insurance, MAR–712, Maritime Administration, Room W23–312, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–1915.

SUPPLEMENTARY INFORMATION:

Title: War Risk Insurance, Applications and Related Information.

OMB Control Number: 2133–0011.

Type of Request: Renewal of a Previously Approved Information Collection.

Abstract: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, the Secretary of the U.S. Department of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. This collection is required for the program.

Affected Public: Vessel owners or charterers interested in participating in MARAD's war risk insurance program.

Estimated Number of Respondents: 20.

Estimated Number of Responses: 20.

Annual Estimated Total Annual Burden Hours: 256.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: April 1, 2014.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2014–07900 Filed 4–8–14; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 362X)]

Norfolk Southern Railway Company—Discontinuance of Service Exemption—in Isle of Wight County and the City of Suffolk, Va.

On March 20, 2014, Norfolk Southern Railway Company (NSR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over approximately 17.8 miles of rail line in Isle of Wight County and the independent City of Suffolk, Va., extending from milepost FD 19.2 in Suffolk to milepost FD 37.0 near Franklin, Va. (the Line). The Line traverses United States Postal Service Zip Codes 23434, 23437, and 23851, and includes the stations of Franklin, Holland, and Suffolk (the petition states that Suffolk will remain an active station because a portion of that station is located east of the subject discontinuance limits). According to the petition, the Line is stub-ended and therefore not capable of handling overhead traffic.

NSR states that, based on information in its possession, the Line does not contain federally granted rights-of-way. Any documentation in NSR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by July 8, 2014.

Because this is a discontinuance proceeding and not an abandonment proceeding, interim trail use/rail banking and public use conditions are not appropriate. Similarly, no environmental or historic documentation is required under 49 CFR 1105.6(c)(2) and 1105.8(b).

Any offer of financial assistance under 49 CFR 1152.27(b)(2) to subsidize continued rail service will be due no later than July 18, 2014, or 10 days after service of a decision granting the petition for exemption, whichever occurs sooner. Each offer must be accompanied by a $1,600 filing fee. *See* 49 CFR 1002.2(f)(25).

All filings in response to this notice must refer to Docket No. AB 290 (Sub-No. 362X) and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Avenue NW., Suite 300, Washington, DC 20037. Replies to the petition are due on or before April 29, 2014.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: April 4, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–07942 Filed 4–8–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0769]

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 June 9, 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. 2900–0769'' 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: 2900–0769.

Type of Review: Extension of a currently approved collection.

Abstract: The 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: 50,000.

Customer Satisfaction Surveys: 20,000.

Focus Groups: 20,000.

Customer Comment Cards: 2,500.

Small Discussion Groups: 2,500.

Qualitative Customer Satisfaction Surveys: 2,500.

In-Person Observation Testing: 2,500.

Estimated Average Burden per Respondent:

Customer Satisfaction Surveys: 30 minutes.

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: 100,000.

Customer Satisfaction Surveys: 40,000

Focus Groups: 40,000.

Customer Comment Cards: 5,000.

Small Discussion Groups: 5,000.

Qualitative Customer Satisfaction Surveys: 5,000.

In-Person Observation Testing: 5,000.

Dated: April 4, 2014.

By direction of the Acting Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–07927 Filed 4–8–14; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mazama Pocket Gophers; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2013–0021; 4500030113]

RIN 1018–AZ37

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mazama Pocket Gophers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for three subspecies of the Mazama pocket gopher (the Olympia pocket gopher, *Thomomys mazama pugetensis;* the Tenino pocket gopher, *T. m. tumuli;* and the Yelm pocket gopher, *T. m. yelmensis*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,607 acres (650 hectares) in Thurston County, Washington, fall within the boundaries of the critical habitat designation for the Olympia, Tenino, and Yelm pocket gophers. All critical habitat proposed for the Roy Prairie pocket gopher (*T. m. glacialis*) in Pierce County, Washington, is exempted under section 4(a)(3)(B)(i) of the Act; as a consequence, there is no final critical habitat for this subspecies. The effect of this regulation is, therefore, to designate critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher found in Thurston County, Washington, under the Act.

DATES: This rule is effective on May 9, 2014.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/wafwo/mpg.html.* Comments and materials we received, as well as some supporting documentation we used in preparing this final rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0021. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at: *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0021, at *http://www.fws.gov/wafwo/mpg.html,* and, by appointment, at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503–1263; by telephone 360–753–9440; or by facsimile 360–753–9405. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for the following three subspecies of the Mazama pocket gopher endemic to the State of Washington: The Olympia pocket gopher (*Thomomys mazama pugetensis*); the Tenino pocket gopher (*T. m. tumuli*); and the Yelm pocket gopher (*T. m. yelmensis*). We also set forth our reasons for not designating critical habitat for a fourth subspecies: The Roy Prairie pocket gopher (*T. m. glacialis*). Under the Endangered Species Act of 1973, as amended (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We published a proposed rule to list as threatened and designate critical habitat for the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers (collectively, we refer to these as the four Thurston/Pierce subspecies of the Mazama pocket gopher throughout this rule) on December 11, 2012 (77 FR 73770). The final rule listing the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers as threatened species under the Act is published elsewhere in today's **Federal Register**. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data available after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher. This rule:

- Designates as critical habitat approximately 1,607 ac (650 ha) of land for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher, including 676 ac (273 ha) for the Olympia pocket gopher, 399 ac (162 ha) for the Tenino pocket gopher, and 532 ac (215 ha) for the Yelm pocket gopher. All of the critical habitat areas for these three subspecies are in Thurston County, Washington.
- Exempts, under section 4(a)(3)(B)(i) of the Act, all 4,840 ac (1,958 ha) of critical habitat proposed for the Roy Prairie pocket gopher (*T. m. glacialis*) on Department of Defense lands in Pierce County, Washington; as a consequence, there is no final critical habitat for this subspecies.

This rule consists of: A final designation of critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. These three subspecies of the Mazama pocket gopher are endemic to the State of Washington and found only in Thurston County, and have been assigned the status of threatened under the Act elsewhere in today's **Federal Register**. This rule designates critical habitat necessary for the conservation of three of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Although critical habitat was proposed for the Roy Prairie subspecies of the Mazama pocket gopher, which occurs in Pierce and Thurston Counties, all of the area proposed for that subspecies was on Department of Defense lands and has been exempted from critical habitat in this final rule under section 4(a)(3) of the Act.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on April 3, 2013 (78 FR 20074), and requested public comments on our DEA. We have incorporated the comments and have completed the final economic analysis (FEA). Additional economic analysis conducted in response to public comments is captured in the final memorandum to the economic analysis (IEc 2014). Both documents are available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0021.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from two knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information received from the public during our three open comment periods, which were open a total of 135 days. We also held two public information workshops and a public hearing in April 2013.

Previous Federal Actions

The full candidate history and previous Federal actions for the four Thurston/Pierce subspecies are described in the proposed rule to list and designate critical habitat for four subspecies of the Mazama pocket gopher, published December 11, 2012 (77 FR 73770). We published a notice of availability of the DEA and announcement of public information meetings and a public hearing on April 3, 2013 (78 FR 20074), and a 6-month extension of the final determination for the proposed listing and determination of critical habitat for the four subspecies of the Mazama pocket gopher on September 3, 2013 (78 FR 54218). Details regarding the comment periods on the proposed rulemaking are provided below.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher during three comment periods. The first comment period, announced in association with the publication of the proposed rule on December 11, 2012 (77 FR 73770), was open for 60 days and closed on February 11, 2013. We then made available the DEA of the proposed critical habitat designation and reopened the comment period on the proposed rule for an additional 30 days, from April 3, 2013, to May 3, 2013 (78 FR 20074; April 3, 2013). We also contacted appropriate Federal, State, tribal, county, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the DEA. During this open comment period, we held three public information workshops (two in Lacey, Washington, and one in Salem, Oregon) and a public hearing (in Olympia, Washington) in April 2013, on the proposed rule to list the four Thurston/Pierce subspecies of the Mazama pocket gopher and the associated proposed critical habitat designations. On September 3, 2013, we announced a 6-month extension of the final determination on the proposed listing and designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher (78 FR 54218) and reopened the comment period for an additional 45 days, ending October 18, 2013.

During the three public comment periods, we received approximately 220 comment letters and emails from individuals and organizations, as well as individual comments received as speaker testimony at the public hearing held on April 18, 2013. These comments addressed the proposed critical habitat or proposed listing (or both) for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Comments relevant to the listing of the Mazama pocket gophers are addressed in a separate rulemaking, published elsewhere in today's issue of the **Federal Register**. We received comment letters from two peer reviewers, one State agency, and two Federal agencies. No Native American tribes are potentially affected by the proposed designation.

All substantive information provided during comment periods has either been incorporated directly into this final designation or is addressed below. Comments we received are grouped into general issues specifically relating to the proposed critical habitat designation for the four Thurston/Pierce subspecies of the Mazama pocket gopher, and are addressed in the following summary and incorporated into the final rule as appropriate.

Comments From Peer Reviewers

In accordance with our peer review policy published July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the four Thurston/Pierce subspecies of the Mazama pocket gopher and their habitats, biological needs, and threats. Two peer reviewers responded, and both were supportive of the Service's evaluation of the best scientific and commercial data available in proposing to list the four Thurston/Pierce subspecies of the Mazama pocket gopher and designate critical habitat for these subspecies. We received responses from one of the peer reviewers on the proposed critical habitat designation. Our requests for peer review were limited to a request for review of the merits of the scientific information in our documents; if peer reviewers volunteered their personal opinions on matters not directly relevant to the science of our designation, we do not respond to those comments here.

(1) *Comment:* One peer reviewer recommended that peripheral areas that support pocket gopher populations, or could provide that support, should be included in the designation of critical habitat. The reviewer stated that the existence of peripheral populations, along with larger, core populations, is a reflection of overall population health, as those peripheral populations provide the evolutionarily important stepping-stone opportunities for gene exchange between core areas. These peripheral populations are likely to be ephemeral, because of poor or limited resources and overall size of the patch, but they are also likely to be recolonized on a regular basis.

Our Response: Although we are aware of the potential importance of peripheral populations, because of the size of the area these individual populations occupy (i.e., below the 50-ac (20-ha) minimum patch size identified in our primary constituent elements (PCEs)), they did not meet our definition of critical habitat for the subspecies. In addition, because of the inherent uncertainty of the long-term persistence of individual peripheral populations and their contribution to core populations, we did not believe we had sufficient justification to propose these areas as critical habitat in this case, as we do not consider them to provide the physical or biological features essential to the conservation of the species. However, this does not mean that these undesignated areas are unimportant or will not contribute to the long-term conservation of the Mazama pocket gopher. During the recovery planning process, we anticipate the areas occupied by these peripheral populations to be evaluated for their potential contribution to the subspecies' conservation. Although these areas are not included in the critical habitat designation, individuals in these peripheral populations are still protected under the Act (16 U.S.C. 1531 et seq.), and these protections from ''take'' of the species under section 9 and section 7 of the Act extend to the avoidance of harming the habitat on which these peripheral populations depend. Information regarding the role of peripheral populations was added to

the final listing rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher, which is published elsewhere in today's **Federal Register**

(2) *Comment:* One peer reviewer recommended that all soils that may be occupied or vegetative cover that may be used by any one of the subspecies be listed as ''suitable'' for the other subspecies.

Our Response: In our PCEs, vegetative cover was discussed as being the same for all subspecies. We have revised the soils discussion to more broadly include soil types (describing soil qualities) as well as including the soil series names which the various subspecies may occupy. However, not all soil series in which the four subspecies have been found occur within the presumed range of each of the four subspecies, and furthermore not all soil series occur within each of the units designated as critical habitat. Note that the PCEs only apply to areas identified as critical habitat; the regulatory effect of critical habitat does not apply anywhere outside of the designated units. Given the current level of uncertainty regarding the absolute ranges of the four Thurston/Pierce subspecies of the Mazama pocket gopher, it is prudent to acknowledge the collective list of soil types known to be used by Mazama pocket gophers could be suitable for any of the four Thurston/Pierce subspecies. We have revised our final listing rule (published elsewhere in today's **Federal Register**), as well as the *Physical or Biological Features* section of this rule, to acknowledge the potential broader use of soil types by each of the four Thurston/Pierce subspecies of the Mazama pocket gopher. We have retained our more specific identification of the soil types known to be used by each of the Mazama pocket gopher subspecies for the purposes of describing the PCEs for each subspecies and identification of those specific areas that provide the PCEs.

Comments From State Agencies

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments we received from State agencies regarding the proposal to designate critical habitat for the four Thurston/Pierce subspecies are addressed below.

We received critical habitat comments from the Washington Department of Fish and Wildlife (WDFW) related to biological information, PCEs, critical habitat exclusions, and recommendations for the management of habitat.

WDFW provided a number of recommended technical corrections or edits to the proposed critical habitat designation for the Mazama pocket gopher. We have evaluated and incorporated this information into this final rule where appropriate to clarify the final critical habitat designation. In instances where the Service may have disagreed with an interpretation of the technical information that was provided, we have responded in separate communication with the agency.

(3) *Comment:* WDFW and another commenter observed that four proposed critical habitat subunits (1–A, 1–B, 1–C, and 1–D) had more than one subspecies name associated with each subunit. The other commenter asserted that because critical habitat subunits l–A, l–B, l–C and l–D appear to be occupied by two subspecies of the Mazama pocket gopher, this implies that at least some populations of these subspecies are not isolated by geography and should probably not be defined as separate subspecies.

Our Response: The critical habitat proposed for each of the subspecies of the Mazama pocket gopher drew heavily on species occurrence records compiled in the WDFW Heritage Database. A graduate student presented work suggesting that the four Thurston/Pierce subspecies of the Mazama pocket gopher should be considered a single clade and collapsed under the subspecies name ''*yelmensis.*'' However, that presentation did not result in revision or annulment of the subspecies' taxonomy. Regardless, some detection sites and voucher specimens were erroneously labeled with the name ''*Thomomys mazama yelmensis.*'' This resulted in erroneous collection records of ''*T. m. yelmensis*'' within the range of other subspecies, which was codified in the 2005 Status Report for the Mazama pocket gopher (Stinson 2005) and the WDFW Heritage Database. Due to this error, the appropriate way to label these proposed critical habitat subunits was not entirely clear at the time the proposed rule was published, and we included the name *T. m. yelmensis* on the subunits where collection records for them existed. However, upon further review, we do not believe that more than one subspecies was ever naturally present in the same place, nor does our error mean that the subspecies' taxonomy has been changed; the artifact of two subspecies names in a single polygon reflects a mistake based on an erroneous assumption that the taxonomy had been changed. Our final critical habitat designation no longer reflects this error. In fact, there is no overlap between the subspecies for this designation, and as reflected in this final rule, we have changed our final critical habitat units to reflect the fact that only a single subspecies occurs within each unit. WDFW has similarly revised their most recent draft recovery plan for the Mazama pocket gopher to reflect this correction (Stinson 2013).

(4) *Comment:* WDFW stated that determining occupancy of an area by Mazama pocket gopher should not be based on a single survey year. On a similar subject, we received a public comment disputing the occupancy of a portion of a subunit proposed as critical habitat.

Our Response: The Service agrees that occupancy of any site by Mazama pocket gophers is likely subject to fluctuations in population size and forage availability; therefore pocket gophers may not necessarily be detected at occupied sites every year. The Service takes a conservative approach to habitat evaluation when determining occupancy for the designation of critical habitat. Since occupancy is linked to the Mazama pocket gopher's ability to disperse into suitable habitat, we consider a site likely occupied at the time of listing if Mazama pocket gophers are detected in some years, but not others (an ''intermittently'' occupied site), or if a site has both suitable habitat and is near enough to a source population that it is likely occupied. If intermittently occupied sites were not considered ''occupied'' in those years when Mazama pocket gophers were not detected, there is a very real possibility that development or other irreversible land uses might permanently convert that suitable habitat to another form of landscape, within which Mazama pocket gophers will not be able to breed and across which gophers will not be able to disperse, effectively reducing available suitable habitat and limiting dispersal capacity at the same time.

In our proposed designation, occupancy of critical habitat was determined at the subunit level based on a positive detection during a survey conducted within the previous 5 years on at least a portion of the subunit. Occupancy determinations were not made at less biologically relevant scales below the subunit level (e.g., at the individual ownership/parcel scale), so it is possible that a portion of a unit or a subunit may not be currently occupied, but is part of a larger unit or subunit that is considered occupied. However, even if pocket gophers are not detected in some portion of a subunit in any given year, because the PCEs are present

(e.g., requisite soil and vegetation types, barriers to dispersal absent or permeable) and the area is adjacent or contiguous to an occupied portion of the subunit, we consider the whole subunit as likely occupied. This is the likely dynamic state of occupancy for the majority of areas included in critical habitat as units and subunits. It is known that some areas where Mazama pocket gophers are documented to occur in one year may not appear to be occupied the next, but the gophers then reappear in subsequent years, as they move about the landscape (for example, at the Rocky Prairie Natural Area Preserve (NAP)). For this reason, we determined that occupancy is most reasonably evaluated at the scale of the unit or subunit.

As described in our listing rule (published elsewhere in today's **Federal Register**), Mazama pocket gophers are not colonial, but are relatively solitary and highly territorial; therefore juveniles are likely to disperse from their natal sites into nearby suitable habitat. Such movements result in apparent changes of the occupancy status of a specific site over time, as juveniles disperse and colonize new sites, or conversely, as territorial individuals die and specific sites become unoccupied. In addition, since vegetation structure varies spatially and temporally, yielding a mosaic of suitable habitat patches at any given time, it is likely that any Mazama pocket gophers existing in the context of an expanse of habitat with contiguous suitable soil types (e.g., subunit level) shift their location in response to available resources; thus habitat that is occupied at some times may not be occupied at others. We also note that in some cases portions of a subunit may appear to be intermittently occupied, when in actuality it may just be that gophers are only intermittently detected on the site due to factors such as differences in level of survey effort, survey conditions, survey timing, and overall gopher abundance. Information regarding this aspect of occupancy has been added to the final listing rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher, which is published elsewhere in today's **Federal Register**, and in the *Physical or Biological Features* and Critical Habitat sections of this rule. As noted above, we consider all such habitat to be likely occupied by the species, as we do not consider it biologically relevant to determine occupancy at a scale below that of the unit or subunit. However, in the context of critical habitat, even if such an intermittently occupied area were considered to be ''unoccupied'' at the time of listing, for the reasons described above and in the Critical Habitat section of this document, to be conservative we have evaluated such areas as if they were unoccupied, and all such areas included in this final critical habitat rule have been determined to be essential for the conservation of the species.

(5) *Comment:* WDFW pointed out that the expert panel cited in the proposed critical habitat rule did not have the empirical data necessary to make an informed decision about minimum habitat patch size that would provide a high likelihood for long-term persistence of the Mazama pocket gopher, implying that the panel decision should not be used in estimating the area size necessary for persistence.

Our Response: The Service relies upon the best available scientific and commercial data to inform the decisions necessary for creating listing and critical habitat rules. In this case, we drew on the knowledge of a team of experts who were assembled to assist with the construction of a habitat modeling exercise. In the absence of studies demonstrating the minimum possible patch size for persistence of the Mazama pocket gopher, we used the 50-ac (20-ha) size as the smallest area necessary for recovery of Mazama pocket gopher populations, which was the agreed-upon estimate of the expert panel. We acknowledge the uncertainty with this estimate, but there are currently no studies regarding minimum patch size available for the Mazama pocket gopher, nor are there any obvious means by which a better answer can be obtained. Thus, the best scientific data available in this case is the opinion of an informed expert panel. We also note that areas ultimately identified as critical habitat should not necessarily be interpreted as the sole areas necessary for species recovery; areas outside of designated critical habitat can play an important role in the conservation of the species as well. See also response to Comment (1).

(6) *Comment:* WDFW stated that genetics and population dynamics of gophers suggest that the maintenance of networks of smaller habitat patches may be as important as preserving larger patches of isolated habitat.

Our Response: The Service agrees that both small and large habitat patches may be important to the recovery of the Mazama pocket gopher and does not feel that the decision to identify only larger habitat patches as critical habitat disregards the importance of networked smaller patches. Successfully maintaining smaller patches may be much more difficult than maintaining or restoring large patches. See also our response to Comment (1).

Comments From Federal Agencies

Department of Transportation, Federal Aviation Administration

(7) *Comment:* The Federal Aviation Administration (FAA) and another commenter stated that if the Service had considered the full range of economic impacts associated with the designation of critical habitat at the Olympia Airport from restricted aviation development and lost revenue opportunity, a justified economic case could be made to exclude airport property from critical habitat designation. They believe that by considering only the incremental impact from additional consultation with the Service imposed by the designation of critical habitat, the economic analysis is incomplete. Furthermore, the FAA expressed concern that restrictions on land use that may be associated with critical habitat could interfere with the ability of airport operators to maintain specific design criteria and safety standards, or to schedule timely repair when safety standards are altered. The FAA requested exclusion of airport properties from critical habitat designation, based on potential economic impacts and safety considerations.

Our Response: The baseline utilized in the DEA is the existing state of regulation, prior to the designation of critical habitat, which provides protection to the species under the Act, as well as protection under other Federal, State, and local laws and guidelines. To characterize the ''world without critical habitat,'' the DEA also endeavors to forecast these conditions into the future over the time frame of the analysis (20 years in this case), recognizing that such projections are subject to uncertainty. This baseline projection presumes that the species will be listed (as critical habitat would not be designated absent a listing) and therefore recognizes that the four Thurston/Pierce subspecies of the Mazama pocket gopher will be subject to a variety of Federal, State, and local protections throughout most of their ranges, due to their listed status under the Act and regardless of the designation of critical habitat. The DEA then considers the incremental effects of critical habitat, above and beyond this baseline. Based on the incremental impacts of the rule, we were unable to conclude that the Olympia Airport warranted exclusion as a result of economic impacts. Please refer to the *Exclusions Based on Economic Impacts*

discussion in the Exclusions section of this document for further details on this analysis specific to the Olympia Airport.

The Olympia Airport Unit contains the largest known area occupied by the Olympia pocket gopher in Washington State. As it is occupied by the subspecies, any activities with a Federal nexus at this site that may affect the Olympia pocket gopher, such as actions funded by the FAA, will be subject to consultation under section 7 of the Act. This requirement is in effect due to the presence of the listed species, regardless of the designation of critical habitat. The regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions avoid ''adverse modification'' of critical habitat. Where the habitat in question is already occupied by the listed species, if there is a Federal nexus, the action agency already consults with the Service to ensure its actions will not jeopardize the continued existence of the species. In this case, any actions associated with safety procedures with a Federal nexus will already be subject to consultation under the jeopardy standard. In our experience, it is unlikely that the additional consideration of adverse modification due to the designation of critical habitat would result in any significant project modifications beyond those already recommended or necessary to avoid jeopardy to the subspecies. Furthermore, if the action was found likely to destroy or adversely modify critical habitat, or to jeopardize the subspecies, the Service is required, to the extent feasible, to provide reasonable and prudent alternatives (RPAs) that would allow the action to proceed and comply with section 7(a)(2) of the Act. RPAs must be technologically and economically feasible, must allow for the intended purpose of the action to be met, must avoid jeopardy or adverse modification, and must be within the authority of the action agency to implement. In our experience, in the vast majority of cases the Service is able to work with the action agency to successfully avoid adverse modification. For these reasons, we do not anticipate that the designation of critical habitat at the Olympia Airport will interfere with the ability of the airport operator to comply with safety standards or impair aviation safety.

Natural Resources Conservation Service, U.S. Department of Agriculture

(8) *Comment:* The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) stated they support exclusion of the Colvin Ranch property under section 4(b)(2) of the Act as a result of ongoing management under a Grasslands Reserve Program agreement. NRCS believes the current level of grazing management on this property has resulted in healthy native prairie populations, and will continue to provide benefits to the native prairie populations, including the Mazama pocket gopher, which exceed benefits provided by a critical habitat designation. The landowner also commented that he believes Colvin Ranch's current management plan exceeds the benefits that may be realized from designation of critical habitat on their property.

Our Response: The Service concurs with this assessment and has excluded this property from the final critical habitat designation for Mazama pocket gopher (see Exclusions section of this document).

Comments From the Public

(9) *Comment:* One commenter asserted that the Service has not demonstrated that the Rocky Prairie Unit for the Tenino pocket gopher (formerly identified as subunit 1–D in the proposed rule) has the necessary PCEs to meet the criteria as critical habitat, and cited *Alaska Oil and Gas Association* v. *Salazar* (Nos. 3:11–cv–0025–RRB, 3:11–cv–0036–RRB, 3:11–cv–0106–RRB, Jan. 11, 2013) as support for their comment.

Our Response: In determining what areas meet the definition of critical habitat for the Mazama pocket gopher, we first identified those areas occupied by the subspecies at the time of listing and that provide the essential physical or biological features, which may require special management considerations or protection. The most important considerations in delineating the areas to include in the proposed critical habitat subunits were occupancy and the extent of the appropriate soil type. The majority of the private land designated as critical habitat for the Tenino pocket gopher in the Rocky Prairie Unit is identified in the USDA NRCS Geographic Information Systems (GIS) soils data layer as the Spanaway-Nisqually soil type. This soil type is a well-drained, prairie-associated soil known to be suitable for the Tenino pocket gopher, as evidenced by the persistence of a population intermittently detected at the Rocky Prairie NAP, which is contiguous with the critical habitat unit along the western perimeter. In the *Alaska Oil and Gas Association* v. *Salazar* case, the Court ruled that the Service's record did not adequately support the presence of all components of one of the PCEs in areas designated as critical habitat. The proposal and designation of the Rocky Prairie Unit for the Tenino pocket gopher is based on an expanse of appropriate soil and vegetation. We recognize that the habitat is somewhat degraded and not optimally suitable across the majority of the unit; however this area does contain the PCEs for the Tenino pocket gopher, and the habitat could easily be enhanced and maintained in such a way that the Tenino pocket gopher populations could be recovered there. Restoration work conducted by Joint Base Lewis McChord (JBLM), the Center for Natural Lands Management (CNLM), and WDFW on south Puget Sound prairies has shown that native prairie vegetative communities can be reestablished on even heavily degraded prairies over a short period of years.

(10) *Comment:* One commenter stated that the Service should not designate any private property as habitat for the Mazama pocket gopher. Another commenter asserted that the designation of critical habitat on private lands in the Rocky Prairie Unit for the Tenino pocket gopher was not warranted.

Our Response: According to section 4(a)(3)(A) of the Act, the Secretary of the Interior shall, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered species or a threatened species, designate critical habitat for that species. As directed by the Act, we proposed as critical habitat those areas that we believe are occupied by the species at the time of listing and that contain the physical or biological features essential for the conservation of the species, which may require special management considerations or protection. To the extent that those areas may not, in fact, be occupied, we conclude that they are nonetheless essential for conservation of the species.

The Act does not provide for any distinction between landownerships in those areas that meet the definition of critical habitat. However, the Act does allow the Secretary to consider whether certain areas may be excluded from final critical habitat. An area may be excluded under section 4(b)(2) of the Act if the benefits of excluding it outweigh the benefits of including it in critical habitat, unless that exclusion would result in the extinction of the species. In this case, as directed by the statute, the Secretary has considered whether any areas should be excluded from the final designation based on economic impacts, national security impacts, or other relevant impacts. In the case of private landowners, the Secretary has excluded private lands

from the final designation of critical habitat in cases where she has determined that the benefits of excluding areas with conservation agreements or other partnerships outweighs the benefits of including those areas in critical habitat (see Exclusions section of this document).

The area known as Rocky Prairie was proposed as a single critical habitat subunit (1–D in the proposed rule) made up of properties belonging to three different landowners (although the portion of proposed Subunit 1–D owned by the State is excluded from the final designation, leaving two private landowners in what is now called the Rocky Prairie Unit for the Tenino pocket gopher). Rocky Prairie is the source location for the subspecies *Thomomys mazama tumuli* (the Tenino pocket gopher); the subspecies is known from no other location, making this entire unit critical to the recovery of the subspecies. The Rocky Prairie NAP portion of the proposed subunit, owned by WDNR and found along the western edge of the privately held land, is documented as being intermittently occupied, most recently verified through live trapping by WDFW in 2012, and visual confirmation of mounding activity by Service biologists in 2013. The appearance of intermittent occupancy may be due to an interaction between the small size of the property and the territorial nature of the Mazama pocket gopher, causing the site to undergo intermittent extinctions and recolonizations from a nearby source population, or possibly, but less likely, it could be due to a lack of detection on the part of the surveying biologists. While the Rocky Prairie NAP is the only site in the proposed Subunit 1–D with confirmed, if intermittent, occupancy, it is too small to be considered sufficient for the conservation of the species over time. We determined 50 ac (20 ha) to be the minimum patch size necessary for a population of Mazama pocket gophers to persist. The proposal of critical habitat in Rocky Prairie, which included private property, was predicated on the following: (1) Subunit 1–D, as proposed, was documented as occupied by *T. m. tumuli;* (2) all areas within the proposed subunit provide the PCEs for *T. m. tumuli;* (3) Rocky Prairie is the only location from which *T. m. tumuli* is known, and therefore the conservation of this subspecies within its historical range is entirely dependent on this area; (4) within the proposed Subunit 1–D, the State-owned NAP comprises only 35 ac (14 ha) of habitat, which alone does not meet the minimum patch size of 50 ac (20 ha) established for Mazama pocket gophers, and does not comprise enough acreage to ensure recovery of the subspecies; (5) suitable habitat for *T. m. tumuli* is relatively continuous between the NAP and the adjacent private properties, and dispersal between these areas is possible; and (6) the perception of intermittent occupancy of the NAP indicates that there is a nearby source population adjacent to the NAP (although there have been some years when gophers were not detected at the NAP, they subsequently reappeared in later years. These individuals must have entered the NAP from a nearby source population, which, given the relatively limited dispersal distances of pocket gophers, most logically would have come from the large areas of suitable habitat on the private lands immediately adjacent to the NAP). Based on all of these considerations, we find it reasonable to conclude that all of the areas within the Rocky Prairie Unit are likely occupied by the Tenino pocket gopher, and as all of these areas provide the PCEs for the subspecies, they are all appropriately identified as critical habitat. However, even if some portions of the unit were considered to be unoccupied at the time of listing, because this is the only known location for *T. m. tumuli* and the area on the NAP is insufficient to provide for the conservation of this subspecies, we consider the entire unit, which provides the requisite physical or biological features for *T. m. tumuli,* to be essential to the conservation of the species.

According to documents submitted to the Service, the privately held portion of the Rocky Prairie Unit was surveyed on June 4, 2012. However, the Service does not believe that the survey effort was adequate to establish absence of the subspecies, as the survey was conducted across 590 acres over a period of approximately 9 hours and did not adhere to the established WDFW survey protocol. The survey was never submitted to WDFW for validation, and WDFW biologists indicate it was inconsistent with their established survey protocol for the Mazama pocket gopher based on the contractor's description of the survey methods and would not have been validated. Considering the factors above, the Service concludes that the identification of proposed Subunit 1–D (referred to in this final rule as the Rocky Prairie Unit for the Tenino pocket gopher), in its entirety, as critical habitat is appropriate because the unit, as designated, is likely occupied at the time of listing and provides the PCEs for *T. m. tumuli.* However, even if portions of the unit were not occupied at the time of listing, for the reasons described above, we have determined that this unit, in its entirety, is essential to the recovery of the subspecies *T. m. tumuli,* the Tenino pocket gopher; therefore this area still meets the statutory definition of critical habitat and is appropriately designated.

(11) *Comment:* One commenter stated that designating critical habitat on lands that will require maintenance or restoration of the PCEs is not appropriate. Another commenter stated that the designation of critical habitat would require special management of the habitat under section 7 of the Act, based on the requirement for individuals or organizations who receive Federal funds to consult on any alterations to known occupied habitat, such as construction, grading, and activities as simple as mowing.

Our Response: By definition under section 3(5)(A)(i) of the Act, the essential physical or biological features associated with occupied critical habitat ''may require special management considerations or protection.'' The prairies of western Washington were anthropogenically maintained through the practice of burning by the first peoples for millennia. Mazama pocket gophers in and around the south Puget Sound evolved in areas kept free of woody vegetation through burning and, as such, have been dependent upon human processes to maintain their habitat. It is impractical to expect that any area designated as critical habitat would maintain itself in the state necessary to conserve Mazama pocket gophers; thus all areas designated as critical habitat will likely require some level of management to maintain appropriate habitat. Since pocket gophers are restricted to the soil types to which they are adapted, and there is a finite amount of acreage of those soils, the soil type and its continued accessibility to the Mazama pocket gopher for burrowing and foraging is of greater importance than vegetation for the conservation of the species, as vegetation can be relatively easily restored but soils cannot.

Critical habitat may require special management to maintain optimal condition for listed species, but the designation of critical habitat does not, by itself, impose a duty on the landowner to engage in those special management activities. Anywhere a Federal nexus exists, any Federal agency activity that may affect the species or its designated critical habitat is subject to consultation under section 7. In these cases, a Federal agency proposing an action that may affect the listed species or its designated critical habitat would be required to conduct an

evaluation to determine whether or not it may affect the species, and if critical habitat is designated, whether or not it may affect that habitat.

(12) *Comment:* Some commenters questioned whether it was necessary to designate critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher within Urban Growth Areas (UGAs) which they believe creates an unnecessary regulatory burden in those areas, if there are alternate areas available outside of those boundaries where the subspecies could be recovered.

Our Response: The Act requires that we designate critical habitat for listed species on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. In our proposed rule, it is our practice to identify all areas that meet our definition of critical habitat for the species. In the case of the Mazama pocket gopher, we identified all areas occupied by the four Thurston/Pierce subspecies at the time of listing, and that provide the physical or biological features essential to their conservation, which may require special management considerations or protection. As described in the final rule listing the four Thurston/Pierce subspecies of the Mazama pocket gopher as threatened under the Act (published elsewhere in today's **Federal Register**), one of the primary threats to the four Thurston/Pierce subspecies is the consequence of past and ongoing degradation and permanent destruction of their habitat. For the four Thurston/Pierce subspecies of the Mazama pocket gopher, those specific geographic areas that meet our definition of critical habitat include areas occupied by Mazama pocket gophers within UGA boundaries, and which provide the essential physical or biological features for their conservation, such as specific soil types utilized by the pocket gophers. The Secretary may exclude some areas from the final critical habitat after considering the economic impact, impact on national security, or any other relevant impact of the designation. As our final economic analysis did not indicate any disproportionate economic impacts resulting from the designation, and no impacts to national security or other relevant impacts were identified that outweighed the benefits of including these areas in critical habitat, any areas that meet our definition of critical habitat for the Mazama pocket gopher within the UGA are included in this final critical habitat designation.

(13) *Comment:* One commenter suggested that Washington State reclamation requirements for a gravel mining site located within the proposed designation of critical habitat would result in improved suitable habitat conditions for Mazama pocket gophers at this site after being mined, compared to if mining were prohibited at this site.

Our Response: The Service has no data to support the commenter's conclusion, but careful consideration of Mazama pocket gopher habitat characteristics suggest that while the vegetative aspect of the habitat may be improved, the net result would be detrimental. Mazama pocket gophers evolved in structured soils associated with glacial outwash. These soils have deep underlying beds of gravel, which quickly drains away any water that may accumulate on the surface. Moving or removing the soil from the surface would change the soil structure, while extracting the gravel from below the soil would change the drainage characteristics of the soil at the surface. Since the underlying gravel formation is what provides the well-drained feature of these soils necessary for pocket gopher survival (i.e., largely prevents burrows and tunnels from being persistently inundated by water), any changes in soil characteristics caused by mining will likely result in an unrecoverable loss of a large amount of existing and restorable habitat. In this particular instance, the subspecies (the Tenino pocket gopher) represented at the mining site has the smallest known range of any of the four Thurston/Pierce subspecies, and the removal of significant acres of existing and restorable habitat from within its range could have a detrimental impact on recovery of the subspecies.

(14) *Comment:* One commenter noted that the proposed rule specifically identifies modification of soil profiles or composition and structure of vegetation, including actions such as grading and mowing, as actions that would adversely modify critical habitat. The commenter interprets this to mean that a landowner would essentially be prohibited from grading or mowing his or her property because such activities would put the property owner at risk of violating the ''take'' prohibitions in the Act. The commenter also states that a citizen suit could be brought under the Act asserting such a take has occurred or been wrongfully permitted by the Washington Department of Natural Resources or other regulatory body authorizing ongoing mining operations. For these reasons, the commenter disputes the conclusion that only Federal agencies are directly affected by designation of critical habitat and that no small business entities or private property owners are directly affected.

Our Response: We believe the commenter is confusing the regulatory effects that may be associated with the listing of the species under the Act, and the automatic protections associated with listing itself, with the regulatory effects separately attributable to the designation of critical habitat. The prohibition against ''take'' of a listed species under section 9 of the Act applies to individuals of the listed species. Therefore, if the listed species is present, it is accurate that the landowner risks violation of section 9 of the Act if they should implement some action that results in take of that species (the Act defines ''take'' as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct''), but section 9 is not attributable to the designation of critical habitat. Although in most cases ''take'' refers to a direct effect on an individual of the species, ''take'' may also apply to actions that result in modification of the habitat of the species, in cases where such modification may be considered to constitute ''harm'' to the listed species. Once a species is listed under the Act, the provisions prohibiting take come into effect. These prohibitions are, however, completely independent of the designation of critical habitat. That is, the prohibition against take of the listed species applies regardless of whether critical habitat is designated.

It is possible that there could be some economic impact associated with actions required to avoid take of a listed species; however, section 4(b)(1)(A) of the Act is clear that listing decisions are to be made solely on the basis of the best scientific and commercial data available. The Act does not provide for the consideration of potential economic impacts in association with a listing determination; therefore such impacts are not factored into our economic analysis.

Section 4(b)(2) of the Act, on the other hand, requires the consideration of potential economic impacts associated with the designation of critical habitat. However, as we have explained elsewhere, the regulatory effect of critical habitat under the Act directly impacts only Federal agencies, as a result of the requirement that those agencies avoid ''adverse modification'' of critical habitat. Specifically, section 7(a)(2) of the Act states that, ''Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by

such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical . . .'' This then, is the direct regulatory impact of a critical habitat designation, and serves as the foundation of our economic analysis. We define it as an ''incremental impact'' because it is an economic impact that is incurred above and beyond the baseline impacts that may stem from the listing of the species (for example, costs associated with avoiding take under section 9 of the Act, mentioned by the commenter), thus it ''incrementally'' adds to those baseline costs. However, in most cases, and especially where the habitat in question is already occupied by the listed species, if there is a Federal nexus, the action agency already consults with the Service to ensure its actions will not jeopardize the continued existence of the species; thus the additional costs of consultation to further ensure the action will not destroy or adversely modify critical habitat are usually relatively minimal. Because the Act provides for the consideration of economic impacts associated only with the designation of critical habitat, and because the direct regulatory effect of critical habitat is the requirement that Federal agencies avoid destruction or adverse modification of critical habitat, the direct economic impacts of a critical habitat designation in occupied areas are generally limited to the costs of consultations on actions with a Federal nexus, and are primarily borne by Federal action agencies. As described in our final economic analysis, in some cases private individuals may incur some costs as third-party applicants in an action with a Federal nexus. Beyond this, while small business entities may possibly experience some economic impacts as a result of a listing of a species as endangered or threatened under the Act, small businesses generally do not experience any economic impacts as a direct result of the designation of critical habitat.

We encourage any landowner concerned about potential take of listed species on their property to contact the Service (see **FOR FURTHER INFORMATION CONTACT**) to explore options for developing a safe harbor agreement or habitat conservation plan that can provide for the conservation of the species and offer management options to landowners, associated with a permit for protect the party from violations under section 9 of the Act.

(15) *Comment:* One commenter stated that the designation of critical habitat on agricultural lands would be a ''death blow'' for many members of the agricultural community. Another commenter had specific questions about the effects of critical habitat designation on property values and how potential loss of value might be mitigated or compensated to the owner.

Our Response: The Service proposed to designate 775 acres (ac) (314 hectares (ha)) of active agricultural land as critical habitat in the proposed rule, wholly owned by three individual landowners. One landowner had a long-standing conservation agreement that allowed us to exclude his entire property, totaling 378 ac (153 ha), due to demonstrable benefit to the Mazama pocket gopher and its habitat (see Exclusions section of this document). This benefit has been provided through the landowner's conscientious stewardship, which outweighed the conservation benefit of designation of critical habitat on his property. This means that only two private landowners who are part of the agricultural community may be affected by the designation of critical habitat, rather than the ''many'' referenced in the comment above. The designation of critical habitat is intended to highlight the value of a particular area to the recovery of an endangered or threatened species, since critical habitat is only identified if it is considered essential to the recovery of a species. The Service carefully considered the areas necessary to recover each subspecies of the Mazama pocket gopher we deemed to be threatened before designating critical habitat. We encourage any member of the public whose land has been designated as critical habitat to contact the Service about potential partnerships and ways to continue using the land that are compatible with the conservation of the Mazama pocket gopher and its habitat. Also see our responses to Comments (11) and (14) for an explanation of the Federal nexus limitations of critical habitat. There are many kinds of conservation agreements available through the Service (contact the person listed under **FOR FURTHER INFORMATION CONTACT**) or our partner agencies that may provide greater regulatory certainty for a guarantee of conservation benefit to the species or habitat.

(16) *Comment:* One commenter stated that there is enough conserved habitat upon which to recover the four subspecies of the Mazama pocket gopher found in Thurston and Pierce Counties without the designation of critical habitat.

Our Response: The designation of critical habitat is not an optional exercise. According to section 4(a)(3)(A) of the Act, the Secretary of the Interior shall, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered species or a threatened species, designate critical habitat for that species. We have determined that critical habitat is both prudent and determinable for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Therefore, as required by the Act, we proposed for critical habitat those areas occupied by the species at the time of listing and that contain the physical or biological features essential for the conservation of the species, which may require special management considerations or protection.

The Service acknowledges that there are conserved prairies that superficially appear to have potential Mazama pocket gopher habitat, but are currently unoccupied by Mazama pocket gophers. At this time, there are insufficient data to enable us to conclude with confidence that these areas provide suitable habitat. While recent efforts to improve survivorship during translocation of Mazama pocket gophers into unoccupied habitat have resulted in the multi-year persistence of an experimental population, it is impossible to speak to the long-term success of these efforts. Absent better data, the most reasonable conclusion is that the optimal places to conserve the species are where each subspecies currently exists, or has been known to exist, on the landscape; that is, where habitat is undeniably suitable. There may be opportunities to expand recovery efforts to include unoccupied conserved prairies in the future, but at this time, the Service has outlined the areas we believe are essential to the recovery of the subspecies by highlighting the critical habitat identified in this rule. We focused our identification of the proposed critical habitat on areas with documented occupancy by the four Thurston/Pierce subspecies of the Mazama pocket gopher and that provide the PCEs for those subspecies, as we consider these areas to be key to the recovery of the pocket gophers. However, as detailed further in our response to Comment (10), above, due to the life history strategy of the pocket gophers and the tendency for occupancy of some specific sites to appear to be intermittent in some cases, it is possible that portions of some of the areas we identified as occupied at the time of listing may be considered unoccupied. As discussed in

the Critical Habitat section of this document, we have further evaluated any such areas as if they were unoccupied at the time of listing, and determined that all areas in this final critical habitat rule are essential to the conservation of the species.

Comments on Economic Analysis

(17) *Comment:* One commenter said the Service must factor the economic impact of the critical habitat designation into account when assessing whether to exclude areas from critical habitat designations, and decide whether the benefits of including the area outweigh the benefits of excluding it. They further stated that this in turn requires an assessment of whether any additional regulatory benefits will come from critical habitat designation that can outweigh the burdens the designation imposes.

Our Response: Our economic analysis identifies those economic impacts that are attributable specifically to the designation of critical habitat, for the purposes of considering whether the benefits of excluding those areas (for example, to avoid disproportionate economic impacts) may outweigh the benefit of including them in critical habitat. It is the Service's position that, at a minimum, critical habitat almost always carries with it at least some educational value for landowners, in terms of clearly identifying those areas that we consider to provide physical or biological features essential for the conservation of the species. In addition, critical habitat carries with it the requirement under section 7(a)(2) of the Act that Federal agencies avoid actions that will destroy or adversely modify critical habitat; this is a benefit that is not conveyed by existing regulatory mechanisms absent a formal Federal rulemaking to designate critical habitat. In our analyses, as described in detail in the Exclusions section of this document, we weigh the benefits that come with critical habitat against the burdens or costs that may be associated with it.

In the case of the four Thurston/Pierce subspecies of the Mazama pocket gopher, since each area proposed as critical habitat is also currently occupied by one of the subspecies, many regulatory protections will already be in place as a result of their listed status under the Act, and these protections would exist regardless of whether critical habitat were designated. Therefore, as explained in our DEA, the incremental impact of the designation that is attributable to critical habitat is relatively limited, and is primarily represented by the administrative costs of Federal agencies conducting section 7 consultations under the adverse modification standard, above and beyond the costs of consultations under the jeopardy standard (which must always occur in areas occupied by the listed species, or occupied areas that may be affected by the proposed action, regardless of critical habitat). Further, it is possible that in some areas, an action may occur in a unit or subunit of critical habitat designated in this final rule that, as a result of exclusion, will take place in an area where occupancy has not necessarily been definitively documented (for example, where all remaining critical habitat within a unit or subunit is on private lands, and access has not been granted to survey for the presence of the Mazama pocket gopher). In such cases, if an action with a Federal nexus that may affect critical habitat were to be proposed, it is possible that the incremental economic impact of critical habitat would be higher than estimated in the DEA. We have considered the potential economic impact that may be expected in such a case, to the extent permitted by the available data. This information is included in the addendum to our final economic analysis, available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2013–0021.

(18) *Comment:* One commenter stated that the Draft Economic Analysis failed to address the impact of the designation of critical habitat in an area that contains a gravel mining operation.

Our Response: The proposed critical habitat acreage in the area mentioned by the commenter is considered to be occupied by the Mazama pocket gopher. As noted in the DEA and related incremental effects memorandum, once a species is formally listed under the Act, its presence within critical habitat will require implementation of certain conservation efforts to avoid jeopardy concerns. In occupied critical habitat, section 7 consultation (which is conducted only for actions with a Federal nexus) would therefore consider not only the potential for jeopardy to the continued existence of the species, but also the potential for destruction or adverse modification of critical habitat. In practice, however, we note that because the ability of these species to exist is very closely tied to the quality of their habitats, significant alterations of their occupied habitat may result in jeopardy as well as adverse modification. Therefore, we anticipate that recommendations to avoid jeopardy as a result of section 7 consultation analyses will likely be similar to recommendations to avoid adverse modification in occupied areas of habitat. Additional detail concerning potential gravel mining activities in proposed critical habitat, along with related consultation requirements, has been added to the final memorandum to our economic analysis (IEc 2014). Due to uncertainty regarding the timing of gravel extraction activities and uncertainty surrounding the potential for a Federal nexus, we do not quantify a specific number of consultations that may occur or any related administrative burden. However, were a Federal nexus to exist for gravel mining, because all units with potential gravel mining activities are considered occupied by one or more of the species, no incremental project modifications are expected to occur beyond what may be required to avoid jeopardy of the species, and any incremental impacts would be limited to the administrative burden of the portion of consultations considering adverse modification. Such an administrative burden would be unlikely to exceed $5,000 (in undiscounted dollars) per consultation, and no more than one consultation per gravel mining action is expected to occur. Therefore, should consultation occur, incremental administrative impacts attributable to the designation of critical habitat would be small.

In addition, to be conservative, we considered the potential economic impacts of the designation on the gravel mining operation in question as if the area were not occupied by the Mazama pocket gopher. Details are available in the addendum to our final economic analysis, but here we briefly summarize our findings in this regard: The gravel mining operation in question occurs in what was proposed Subunit 1–D (439 ac (178 ha) total), and is now the Rocky Prairie Unit for the Tenino pocket gopher (399 ac (162 ha) total). Following the exclusion of 35 ac (14 ha) of State lands at Rocky Prairie NAP, the area within the proposed subunit that was surveyed on a regular basis and where occupancy by the pocket gopher was definitively documented is no longer included within the final critical habitat unit (see also our Response to Comment (10), above). Approximately 380 ac (154 ha) of the 399 ac (162 ha) of the critical habitat in the Rocky Prairie Unit is within the bounds of privately owned lands where gravel mining or other mineral extraction is planned; this area contains suitable habitat and is within the historical range of the only known location of the Tenino pocket gopher. Although we consider this site likely occupied by the Tenino pocket gopher, even if the parcel were not presently occupied by the listed species, we have

no evidence to suggest that there is a probable Federal nexus for any action at this site; therefore there would be no direct economic impact of critical habitat. Possible indirect effects of critical habitat, if any, are too speculative to quantify. Furthermore, if there were a Federal nexus and the action was found likely to destroy or adversely modify critical habitat, the Service is required, where possible, to provide reasonable and prudent alternatives (RPAs) that would allow the action to proceed; such alternatives must be technologically and economically feasible. In our experience, in the vast majority of cases the Service is able to work with the action agency to successfully avoid adverse modification.

(19) *Comment:* Several commenters stated that areas where subspecies of the Mazama pocket gopher were determined to be threatened would bear a greater economic burden than areas where subspecies of the Mazama pocket gopher were not determined to need Federal protection.

Our Response: The Act, as it was written, does not allow the economic effects of listing a species as an endangered species or threatened species to be considered when making a status determination. Potential economic impacts are allowable for consideration only in association with the designation of critical habitat. The mandate of the Act is to examine the evidence of threats to a species (or subspecies) in an unbiased way, based on the best scientific and commercial data available, and determine whether or not it is in danger of extinction (endangered) or likely to become so within the foreseeable future (threatened). We have determined that the Olympia, Roy Prairie, Tenino, and Yelm subspecies of the Mazama pocket gopher are threatened and warrant protection under the Act (see the final listing rule published elsewhere in today's **Federal Register**). Regardless of the Federal listing process, all eight subspecies of the Mazama pocket gopher in the State of Washington are listed as threatened by the State and, as such, will continue to require compliance with State regulations.

The Act only provides for the consideration of economic impacts in association with critical habitat, and not in association with the listing of a species; therefore our analysis of potential economic impacts is limited to the consideration of those impacts that are attributable solely to the designation of critical habitat. As previously stated, determinations regarding the status of the species are to be made ''solely on the basis of the best scientific and commercial data available'' to the Secretary. Therefore, any actual or perceived ''burdens'' imposed by the listing of the species (for example, actions that may be necessary to avoid violating section 9 of the Act) are not considered in the weighing process for evaluating the relative benefits of including an area in critical habitat versus the benefits of excluding it from the final designation, as the regulatory consequences of listing the species will be incurred regardless of whether critical habitat is designated.

(20) *Comment:* One local Chamber of Commerce (Chamber) stated that limiting the economic analysis to the anticipated costs of section 7 consultation and compliance, as was done in the DEA, omits necessary analysis of the incremental impacts under section 9 of the Act of critical habitat designation on these private landowners. Further, the Chamber believes that the DEA should be expanded to include anticipated costs to Thurston County jurisdictions and property owners associated with changes to Thurston County land use plans and associated zoning that Washington State's Growth Management Act (GMA) will require, either in the short term, or in future planning update cycles, resulting from critical habitat designation of resource lands and properties located within cities and urban growth areas. The Chamber also notes that protections stemming from critical habitat designation may extend to ''buffering'' properties to support the population in the area immediately around the Olympia Airport, with associated extended impact of the proposal to an expanded group of properties. These costs are expected to be substantial.

Our Response: Again, we believe the commenter is confusing the regulatory effects that may be associated with the listing of the species under the Act, and the associated automatic protections of the listing, with the regulatory effects separately attributable to the designation of critical habitat (see response to Comment (14), above). In this case, we believe the commenter has erred by attributing potential costs under section 9 of the Act to critical habitat designation. Section 9 addresses acts that are prohibited with respect to any endangered or threatened species of fish or wildlife listed pursuant to section 4 of the Act; there is no prohibited act under section 9 that would occur as a consequence of critical habitat designation. As described in our response to Comment (14), the regulatory effect of critical habitat is the requirement under section 7 of the Act that Federal agencies insure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat. As a result, the greatest economic impact of critical habitat is most frequently associated with the additional costs of section 7 consultation and compliance above and beyond the jeopardy standard (in occupied areas), under the standard of adverse modification.

We do not anticipate significant additional costs to be incurred on adjacent properties as a result of critical habitat designation at the Olympia Airport. We are not sure what the commenter is referring to by ''buffering'' of the critical habitat to support future expansion of the population at the Olympia Airport. The final designation of critical habitat is limited to those boundaries identified in this final rule; critical habitat does not extend beyond those boundaries, and the boundaries cannot change without engaging in rulemaking to revise the critical habitat.

(21) *Comment:* Several commenters expressed concern that the designation of Mazama pocket gopher critical habitat would result in economic impacts to municipalities and development in general, including delaying or precluding public works projects such as public school facilities, utilities, and other services like wastewater treatment. Another commenter asked what the expected reduction in property values and loss in local property tax revenue would be from the critical habitat designation, as well as asked what the economic impacts would be from any resulting reduction in the amount of productive land that could be used by ranchers and farmers.

Our Response: Chapter 3 of the DEA states that potential project modifications for all activities, including development projects, in critical habitat areas occupied by the four Thurston/Pierce subspecies of the Mazama pocket gopher are likely to occur due to the presence of the subspecies themselves, not because of the designation of critical habitat. As each of the critical habitat units and subunits designated for the Mazama pocket gopher are considered occupied by one of the subspecies, all impacts to public works activities are baseline impacts (i.e., impacts realized due to the listing of the subspecies, not to designation of critical habitat). Thus, the DEA does not forecast any increase in costs related to transportation projects or other public works projects as a result of critical habitat designation. Accordingly, the DEA also does not

forecast any diminution of property values or property tax revenues as a result of designation, nor does the DEA forecast a reduction in land available for productive use in farming or ranching applications. This conclusion follows from the fact that each unit and subunit designated is considered occupied by one of the subspecies. Thus, any of these potential impacts would be considered baseline effects (also see response to Comment (14), above).

(22) *Comment:* One commenter requested substantiated data demonstrating a positive benefit (e.g., to economic growth, to the ecosystem) from listing the four Thurston/Pierce subspecies of the Mazama pocket gopher, and asked whether there had been an evaluation of the economic impact of the pending action.

Our Response: As detailed in our response to Comment (19), above, in making a determination as to whether a species meets the Act's definition of an endangered species or threatened species, under section 4(b)(1)(A) of the Act, the Secretary is to make that determination based *solely* on the basis of the best scientific and commercial data available (emphasis added). Producing a positive benefit to the listing, cannot by law enter into the determination. The evaluation of economic impacts comes into play only in association with the designation of critical habitat under section 4(b)(2) of the Act, as described in detail in our response to Comment (14). Chapter 3 of the DEA does provide a qualitative discussion of potential benefits attributable to the conservation of the species. Specifically, the DEA focuses on potential benefits related to critical habitat designation. It concludes that, because material changes in land or water management are not envisioned as a result of critical habitat designation, no incremental economic benefits are forecast to result from designation of critical habitat. There may be ancillary benefits related to species conservation resulting from the listing of the species. For example, species conservation efforts may result in improved environmental quality, which in turn may have collateral human health or recreational use benefits. In addition, conservation efforts undertaken for the benefit of an endangered or threatened species may enhance shared habitat for other wildlife.

(23) *Comment:* One commenter requested that a portion of the proposed critical habitat designation on the Olympia Airport be removed from critical habitat due to future anticipated development at that specific location.

Our Response: All areas proposed as critical habitat at the Olympia Airport were identified as critical habitat because they are occupied by the Olympia pocket gopher and those areas provide the essential physical or biological features, which may require special management considerations or protection. Such areas may be removed from the final designation if we should determine that they do not, in fact, meet our criteria for critical habitat (for example, they do not provide the essential features), or if they are excluded by the Secretary. Section 4(b)(2) of the Act provides the Secretary with the discretion to exclude certain areas upon a determination that excluding such areas provides a greater benefit than including them in critical habitat. In this case, since the Airport anticipates potentially developing the area that is presently occupied by the listed species, we cannot conclude that there is a greater benefit to exclusion from critical habitat than from inclusion. However, we note that, as described in detail in earlier responses, since the area in question is presently occupied by the listed species, the Olympia Airport would be required to consult on any anticipated development activity with a Federal nexus under the jeopardy standard of section 7, regardless of whether the area is included in critical habitat.

Summary of Changes From Proposed Rule

In our proposed rule, published December 11, 2012 (77 FR 73770), we proposed 9,234 ac (3,737 ha) of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher in one unit comprised of eight subunits in Thurston and Pierce Counties, Washington. The proposed critical habitat represented 6,345 ac (2,567 ha) on Federal lands, 820 ac (331 ha) on State lands, 1,258 ac (509 ha) on private lands, and 811 ac (329 ha) on lands owned by local municipalities or nonprofit conservation organizations.

We received a number of site-specific comments related to critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher; completed our analysis of areas considered for exemption under section 4(a)(3)(B)(i) of the Act and for exclusion under section 4(b)(2) of the Act; reviewed the application of our criteria for identifying critical habitat across the range of these four subspecies to refine our designation; and completed the final economic analysis of the designation as proposed. We fully considered all comments from peer reviewers and the public on the proposed critical habitat rule and the associated economic analysis to develop this final designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher. This final rule incorporates changes to our proposed critical habitat based on the comments that we received and have responded to in this document, and considers completed final management plans to conserve the subspecies under consideration.

As described in our Response to Comment (3), above (see Summary of Comments and Recommendations), in our proposed rule we inadvertently perpetuated an error reflecting the range of the Yelm pocket gopher. That error began when detection sites and voucher specimens were erroneously labeled with the name ''*Thomomys mazama yelmensis,*'' apparently based on the mistaken understanding that the taxonomy of the subspecies had been revised and amended. This error was carried forward into the 2005 Status Report for the Mazama pocket gopher (Stinson 2005) and the WDFW Heritage Database, which we relied on, in part, to determine the distribution of the Mazama pocket gopher subspecies in our critical habitat proposal. Consequently, in some cases we identified the Yelm pocket gopher as sympatric (overlapping in range) with other subspecies of the Mazama pocket gopher, and as a result, four of the subunits were mistakenly identified as proposed critical habitat for more than one subspecies of the Mazama pocket gopher (proposed Subunit 1–A, 91st Division Prairie—Roy Prairie and Yelm pocket gophers; proposed Subunit 1–B, Marion Prairie—Roy Prairie and Yelm pocket gophers; proposed Subunit 1–C, Olympia Airport—Olympia and Yelm pocket gophers; proposed Subunit 1–D, Rocky Prairie—Tenino and Yelm pocket gophers). Upon further review, however, we do not believe that more than one subspecies was ever naturally present in the same place, and the artifact of two subspecies' names in a single polygon reflects an erroneous assumption that the taxonomy had been changed. This resulted in collection records inaccurately showing the Yelm pocket gopher as co-occurring with other subspecies within the four subunits identified above. Our final critical habitat no longer reflects this error; there is no overlap between the subspecies within the critical habitat units delineated in this designation.

As we have now determined that only one subspecies occurs in each of the critical habitat subunits that were initially proposed, it no longer makes sense to amalgamate the critical habitat

for all four subspecies of the Mazama pocket gopher into a single unit with multiple subunits. Each subspecies of the Mazama pocket gopher is listed separately as a threatened species based on its own status (see the final listing rule published elsewhere in today's **Federal Register**), and critical habitat is determined separately for each subspecies. Therefore, we believe it makes sense to designate critical habitat in separate units specific to each subspecies. As a result, in this final rule, we are designating critical habitat in three units for the Olympia, Tenino, and Yelm pocket gophers as follows:

- Critical habitat for the Olympia pocket gopher is designated in one unit, the Olympia Airport Unit (Subunit 1–C in the proposed rule).
- Critical habitat for the Tenino pocket gopher is designated in one unit, the Rocky Prairie Unit (Subunit 1–D in the proposed rule).
- Critical habitat for the Yelm pocket gopher is designated in one unit composed of two subunits: the Tenalquot Prairie Subunit (Subunit 1–E in the proposed rule) and the Rock Prairie Subunit (Subunit 1–H in the proposed rule).

As described elsewhere, although critical habitat was identified for the Roy Prairie pocket gopher in two of the proposed critical habitat subunits, those subunits are exempted from this final designation under section 4(a)(3) of the Act.

In addition to the changes described above, our final designation of critical habitat reflects the following changes from the proposed rule:

(1) As directed by section 4(a)(3)(B)(i) of the Act, we have exempted 6,345 ac (2,567 ha) of Department of Defense lands at JBLM based on the completion of an endangered species management plan (ESMP) under their 2006 Integrated Natural Resources Management Plan (INRMP) that we have determined, in writing, provides a conservation benefit to the Mazama pocket gopher. The areas proposed included lands occupied by the Roy Prairie pocket gopher in two subunits and the Yelm pocket gopher in a third subunit. The exemption of JBLM lands resulted in the elimination of two proposed subunits in their entirety (proposed subunits 1–A and 1–B, 91st Division Prairie and Marion Prairie, respectively) from the critical habitat designation. These two subunits were the only proposed subunits occupied by the Roy Prairie pocket gopher and represented all critical habitat proposed in Pierce County, Washington. Therefore, as a result of this exemption, there is no final critical habitat designated in Pierce County, Washington, and no critical habitat is designated for the Roy Prairie pocket gopher. We also exempted JBLM lands in Thurston County where they were proposed, which resulted in the reduction of proposed critical habitat Subunit 1–E (in this final rule, Tenalquot Prairie Subunit for the Yelm pocket gopher). See the Exemptions section of this document for details.

(2) As indicated for consideration in our proposed rule, we have excluded 1,281 ac (518 ha) of State and private lands under section 4(b)(2) of the Act, based on existing land management plans and conservation partnerships that the Secretary deemed to provide greater conservation benefit to the four Thurston/Pierce subspecies of the Mazama pocket gopher than would inclusion in designated critical habitat (see the Exclusions section of this document). These exclusions resulted in the elimination of two subunits in their entirety (proposed subunits 1–F and 1–G, West Rocky Prairie and Scatter Creek, respectively). In addition, proposed subunits 1–D and 1–H (now Rocky Prairie Unit for the Tenino pocket gopher and Rock Prairie Subunit for the Yelm pocket gopher, respectively) have both been reduced in size.

(3) We note that the proposed West Rocky Prairie Subunit 1–F has been excluded under section 4(b)(2) based on a beneficial management plan for the Mazama pocket gopher and the ongoing partnership between the Service and our State counterparts at WDFW. The West Rocky Prairie subunit was originally proposed for the Olympia pocket gopher (*Thomomys mazama pugetensis*) because this area provides the PCEs and is presently occupied by the Olympia pocket gopher. However, the Olympia pocket gopher occurs at West Rocky Prairie only because the subspecies was experimentally translocated into the historical range of the Tenino pocket gopher (*T. m. tumuli*), which is restricted to this area and therefore recovery of the Tenino pocket gopher may require its use. While West Rocky Prairie has been excluded from critical habitat, we continue to consider it important to the conservation of the Tenino pocket gopher.

(4) All subunits proposed as critical habitat were occupied by the Mazama pocket gopher at the time of the proposed listing (December 2012). As described in our proposed rule, we identified critical habitat from determinations of occupancy based on recent surveys, within the previous 5 years, and the presence of one or more of the physical or biological features essential to the conservation of the species. For the Mazama pocket gopher, occupancy was thus determined based on the documented presence of the subspecies in association with the soil types, area, and vegetative cover type required, in association with lack of barriers to dispersal. However, in this final designation, due to exclusions in portions of proposed subunits 1–D (Rocky Prairie) and 1–H (Rock Prairie), the specific areas where we had the most definitive documentation of occupancy are no longer included within the final unit and subunit in this designation. We wish to emphasize that we still consider the Rocky Prairie Unit for the Tenino pocket gopher (proposed Subunit 1–D), and Rock Prairie Subunit for the Yelm pocket gopher, to be likely occupied, because we have documented occupancy of the subspecies in the area directly adjacent to the remaining the unit and subunit designated, the physical or biological features essential to the subspecies are present and continuous with the area of documented occupancy, and any potential barriers to dispersal are permeable. Mazama pocket gophers are relatively solitary and highly territorial; therefore, juveniles must disperse to establish their own territories, meaning that individuals are expected to move across the landscape if suitable habitat is present. Considering all of these factors, it is reasonable to conclude that the subspecies is likely present in the Rocky Prairie Unit and Rock Prairie Subunit. However, we also considered the importance of the final Rocky Prairie Unit and Rock Prairie Subunit as if they were unoccupied, and have determined that they are essential to the conservation of the listed subspecies (see the Critical Habitat section of this document for details). Therefore, as designated, both the Rocky Prairie Unit for the Tenino pocket gopher and the Rock Prairie Subunit for the Yelm pocket gopher continue to meet our definition of critical habitat.

(5) Due to the exemption and exclusion of proposed critical habitat subunits in their entirety, and due to the clarification of the range of each subspecies, as described above, the critical habitat that remains has been renamed and renumbered to make it clear that each unit is designated for a single subspecies of the Mazama pocket gopher within that subspecies' respective range (see Table 1). We are designating three critical habitat units, one for each subspecies; two subunits comprise critical habitat for the Yelm pocket gopher, and the Olympia and Tenino pocket gophers each have one single unit of critical habitat.

TABLE 1—SUMMARY OF CHANGES FROM PROPOSED RULE IN CRITICAL HABITAT UNIT IDENTIFICATION AND SUBSPECIES OCCUPANCY OF UNITS

Proposed rule			Final rule			
Subunit	Name	Subspecies identified at time of proposed listing and designation	Critical habitat unit	Location name	Corrected subspecies present at time of final listing and designation	Status of critical habitat
1–A	91st Division Prairie	Roy Prairie, Yelm pocket gophers.	NA	NA	Roy Prairie pocket gopher.	Exempted.
1–B	Marion Prairie	Roy Prairie, Yelm pocket gophers.	NA	NA	Roy Prairie pocket gopher.	Exempted.
1–C	Olympia Airport	Olympia, Yelm pocket gophers.	Olympia Pocket Gopher Critical Habitat.	Olympia Airport Unit	Olympia pocket gopher.	Designated.
1–D	Rocky Prairie	Tenino, Yelm pocket gophers.	Tenino Pocket Gopher Critical Habitat.	Rocky Prairie Unit	Tenino pocket gopher	Designated (some areas excluded).
1–E	Tenalquot Prairie	Yelm pocket gopher	Yelm Pocket Gopher Critical Habitat.	Tenalquot Prairie Subunit.	Yelm pocket gopher	Designated (some areas exempted).
1–F	West Rocky Prairie	Olympia pocket gopher.	NA	NA	Olympia pocket gopher.	Excluded.
1–G	Scatter Creek	Yelm pocket gopher	NA	NA	Yelm pocket gopher	Excluded.
1–H	Rock Prairie	Yelm pocket gopher	Yelm Pocket Gopher Critical Habitat.	Rock Prairie Subunit	Yelm pocket gopher	Designated (some areas excluded).

(6) Based on information received from our Federal and State partners and from the public during our three open comment periods, we have made numerous technical corrections and clarifications throughout the rule. We specifically clarified the language referencing the primary constituent elements (PCEs) in relation to soils, and we specified the application of those PCEs to make it clear that PCEs only exist within the boundaries of the final critical habitat units (Olympia, Tenino) or subunits (Yelm), not within the interstitial, undesignated areas that were encompassed by the larger unit boundary in the proposed rule. We added this clarifying language due to feedback received on our proposed rule, where Unit 1–South Sound broadly encompassed a number of smaller subunits proposed for the Thurston/Pierce subspecies of the Mazama pocket gopher.

(7) We updated the Physical or Biological Features section and PCEs in the preamble of this document to specify the soil series and soil series complexes that define the critical habitat of each subspecies and to accurately reflect the PCEs as described in the Regulation Promulgation section of this rule, including a more thorough description of barriers.

(8) As noted under (1), above, the exemption of critical habitat on JBLM under section 4(a)(3)(B)(i) of the Act resulted in the elimination of all critical habitat that was proposed for the Roy Prairie pocket gopher (*Thomomys mazama glacialis*). We include information about the Roy Prairie pocket gopher in the preamble discussion and define the PCEs used to delineate critical habitat for the subspecies, since we believe this information provides valuable information to the public, but do not include the Roy Prairie pocket gopher in the Regulation Promulgation section of this rule because no critical habitat is designated for this subspecies as a result of this exemption.

In this final rule, we are designating 1,607 ac (650 ha) in Thurston County, Washington, as critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. The Olympia pocket gopher has a single unit of critical habitat (Olympia Airport), the Tenino pocket gopher has a single unit of critical habitat (Rocky Prairie), and two separate subunits (Tenalquot Prairie and Rock Prairie) comprise a single critical habitat unit for the Yelm pocket gopher. Following exclusions and exemptions, this final designation of critical habitat is composed of 796 ac (322 ha) of private land and 811 ac (329 ha) of land owned by municipal corporations or nonprofit conservation organizations.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resource management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement

reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time, and may use only small portions of designated critical habitat at any given time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best scientific data available at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the four Thurston/Pierce subspecies of the Mazama pocket gopher from studies of their habitat, ecology, and life history as described in the Habitat and Life History section of the final listing rule, published elsewhere in today's **Federal Register**, and in the information below. We have determined that the four Thurston/Pierce subspecies of the Mazama pocket gopher require the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

Pocket gophers have low vagility, meaning they have a limited dispersal range (Williams and Baker 1976, p. 303). *Thomomys mazama* pocket gophers are smaller in size than other sympatric (occurring within the same geographic area; overlapping in distribution) or parapatric (immediately adjacent to each other but not significantly overlapping in distribution) *Thomomys* species (Verts and Carraway 2000, p. 1). Both dispersal distances and home range size are therefore likely to be smaller than for other *Thomomys* species. Dispersal distances may vary based on surface or soil conditions and size of the animal. For other, larger, *Thomomys* species, dispersal distances average about 131 ft (40 m) (Barnes 1973, pp. 168–169; Williams and Baker 1976, p. 306; Daly and Patton 1990, pp. 1286, 1288). Initial results from dispersal research being conducted on JBLM indicate that juvenile Mazama

pocket gophers in Washington usually make movements from 13.1–32.8 ft (4–10 m) over a period of 1 to 56 days, though these may not be dispersal movements. One juvenile made a distinct dispersal movement of 525 ft (160m) in 1 day (Olson 2012b, p. 5). Suitable dispersal habitat is free of barriers to gopher movement, and may need to contain foraging habitat if an animal is required to make a long-distance dispersal move. Potential barriers include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom (*Cytisus scoparius*) thickets, (Olson 2012b, p. 3), highly cultivated lawns, inhospitable soil types (Olson 2008, p. 4) or substrates, development and buildings, slopes greater than 35 percent, and open water. Barriers may be permeable, meaning that they may impede movement from place to place without completely blocking it, or they may be impermeable, meaning they cannot be crossed. Permeable barriers, as well as lower-quality dispersal habitats, may present an intensified risk of mortality to animals that use them (e.g., open areas where predation risk is increased during passage or a paved area where vehicular mortality is high).

The home range of a Mazama pocket gopher is composed of suitable breeding and foraging habitat (described below, under ''Food, water, air, light, minerals, or other nutritional or physiological requirements''). Home range size varies based on factors such as soil type, climate, and density and type of vegetative cover (Cox and Hunt 1992, p. 133; Case and Jasch 1994, p. B–21; Hafner *et al.* 1998, p. 279). Little research has been conducted regarding home range size for individual Mazama pocket gophers. Witmer *et al.* (1996, p. 96) reported an average home range size of about 1,076 square feet (ft^2) (100 square meters (m^2)) for Mazama pocket gophers in one location in Thurston County, Washington. Gopher density varies greatly due to local climate, soil suitability, and vegetation types (Case and Jasch 1994, p. B–21; Howard and Childs 1959, pp. 329–336), and densities are likely to be higher when habitat quality is better. Therefore, this one report on the Mazama pocket gopher (Witmer *et al.* 1996) is unlikely to represent the average density across all soil types, vegetation types, and other unique site characteristics across the ranges of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Research on other species of *Thomomys* pocket gophers in other states showed a wide range of home range sizes from approximately 80-14,370 ft^2 (7.4-335 m^2). Some of these are estimates based on density of gophers trapped per acre, and some are based on measurements of individual gopher territory sizes.

Work done by Converse *et al.* (2010, pp. 14–15) estimated that a local population of Mazama pocket gophers could persist for at least 50 years if it occurred on a habitat patch that was equal to or greater than 50 ac (20 ha) in size. We acknowledge the uncertainty with this estimate, but there are currently no studies regarding minimum patch size available for the Mazama pocket gopher, nor are there any obvious means by which a better answer can be obtained. Thus, the best available scientific data in this case is the opinion of an informed expert panel. We also acknowledge that the existence of peripheral, perhaps smaller, habitat patches can provide important stepping-stone opportunities for gene exchange between core areas. These peripheral areas are likely to be intermittently occupied, because of poor or limited resources and overall size of the patch, but they are also likely to be recolonized on a regular basis, particularly if such areas are close (i.e., well within dispersal distance), of an occupied site.

Therefore, based on the information above, we identify patches of breeding and foraging habitat that are equal to or greater than 50 ac (20 ha) in size or within dispersal distance of each other, as well as corridors of suitable dispersal habitat, as physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements and Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

The four Thurston/Pierce subspecies are associated with glacial outwash prairies in western Washington, an ecosystem of conservation concern (Hartway and Steinberg 1997, p. 1). Steinberg and Heller (1997, p. 46) found that Mazama pocket gophers are even more patchily distributed than are the prairie habitats they inhabit. That is, there are some seemingly high quality prairies within the species' range where pocket gophers have not been detected. Prairie habitats have a naturally patchy distribution, and within them, there is a patchy distribution of soil rockiness (Steinberg and Heller 1997, p. 45; WDFW 2009a), which may further restrict the total area that gophers can utilize since they avoid areas of excessive rockiness. Other habitat characteristics gophers required for successful burrowing and foraging may also be patchily distributed (e.g., micro-site locations of impermeable soils and substrates, or seasonal water table depth that affects suitability of soils for burrowing) or ephemerally available (e.g., forage vegetation), causing gophers to avoid or not use some areas.

Of the glacial outwash prairie soils or prairie-like soils present in western Washington, the four Thurston/Pierce subspecies of the Mazama pocket gopher are most often found in deep, well-drained, friable soils capable of supporting the forbs, bulbs, and grasses that are the preferred forage for gophers (Stinson 2005, pp. 22–23).

In order to support typical Mazama pocket gopher forage plants, areas supporting Mazama pocket gophers tend to be largely free of shrubs and trees. Woody plants shade out the forbs, bulbs, and grasses that gophers prefer to eat, and high densities of woody plants make travel both below and above the ground difficult for gophers. The probability of Mazama pocket gopher occupancy is much higher in areas with less than 10 percent woody vegetation cover (Olson 2011, p. 16).

Although some soils used by Mazama pocket gophers are relatively sandy, gravelly, or silty, those most frequently associated with the four Thurston/Pierce subspecies are loamy and deep, have slopes generally less than 15 percent, based on a comparison of gopher occurrence data with soil series slope information. These soils also tend to have good drainage or permeability. These soil types additionally provide the essential physical and biological features of cover or shelter, as well as sites for breeding, reproduction, or rearing of offspring. Soil series or soil series complexes where individuals of the four Thurston/Pierce subspecies of the Mazama pocket gopher may be found include, but are not limited to Alderwood, Cagey, Everett, Everett-Spanaway complex, Everett-Spanaway-Spana complex, Godfrey, Indianola, Kapowsin, McKenna, Nisqually, Norma, Spana, Spana-Spanaway-Nisqually complex, Spanaway, Spanaway-Nisqually complex, and Yelm. These soil series and soil series complex names were derived from a GIS overlay of gopher locations with NRCS soil survey maps. These soil type names are very broad-scale soil series names, and don't include the more specific soil characteristics that come with a full soil map unit name, such as ''Spanaway gravelly sandy loam, 0 to 3 percent slopes.'' We are purposely not using specific map unit names because we know that there are imperfections in soil

mapping. Mapped soil survey information may be imperfect for a variety of reasons. First, maps are based on the technology, standards, and tools that were available at the time soil surveys were conducted, sometimes up to 50 years ago. We recognize that soil survey boundaries may be adjusted in the future, and that soil series names may be added or removed on the NRCS's soil survey maps database. As a result, the overlap of gopher locations with soil series names may be different in the future. The soils information presented here is based on best scientific data available at the time of this rulemaking. We also recognize that some of these soil series are not typically either deep or well-drained. For a variety of reasons, a specific mapped soil type may or may not have all of the characteristics of that soil type as described by NRCS, and the actual soil that occurs on the ground may have characteristics that make it inhabitable by Mazama pocket gophers. These reasons may include map boundary or transcription errors, map projection errors or differences, map identification or typing errors, soil or hydrological manipulations that have occurred since mapping took place, small-scale inclusions in the mapped soil type that are different from the mapped soil, etc. Nevertheless, based on best available data, these are the areas where Mazama pocket gopher locations and mapped soils have been found to overlap when mapped in GIS. All of these soils could potentially be suitable for any of the four Thurston/Pierce subspecies of the Mazama pocket gopher. In addition, the four Thurston/Pierce subspecies of the Mazama pocket gopher may be able to forage or burrow in soil series not on the above list. For these reasons, our list of soils may be incomplete or appear to be overly inclusive. Despite this, we have only designated critical habitat for each subspecies within its known historical range.

Encroachment of woody vegetation into the habitat of the four Thurston/Pierce subspecies of the Mazama pocket gopher continues to further reduce the size of the remaining prairies and prairie-type areas, thus reducing the amount of habitat available for gophers to burrow, forage, and reproduce. Historically these areas would have been maintained by natural or human-caused fires. Fire suppression allows Douglas-fir and other woody plants to encroach on and overwhelm prairie habitat (Stinson 2005, p. 7). Mazama pocket gophers require areas where natural disturbance or management prevents the encroachment of woody vegetation into their preferred prairie or meadow habitats.

Therefore, based on the information above, we identify soil series and soil series complexes that are known to support the Mazama pocket gopher in Washington (listed above), and vegetative habitat with less than 10 percent woody plant cover, that provides for breeding, foraging, and dispersal as physical or biological features essential to the conservation of the Mazama pocket gopher.

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species

Predation, specifically feral and domestic cat and dog predation, is a threat to the four Thurston/Pierce subspecies of the Mazama pocket gopher. Urbanization exacerbates this threat with the addition of feral and domestic cats and dogs into the matrix of pocket gopher habitat. Many pets are not controlled by their owners in the semi-urban and rural environments that the four Thurston/Pierce subspecies of the Mazama pocket gopher currently inhabit, leading to uninhibited predation of native animals. Where local populations of native wild animals are small or declining, predation can drive populations farther toward extinction (Woodworth 1999, pp. 74–75). Due to their solitary and territorial nature, many sites occupied by one of the four Thurston/Pierce subspecies of the Mazama pocket gopher may contain a small number of individuals and occur in a matrix of residential and agricultural development, with feral and domestic pets in the vicinity. Some occupied areas may also occur in places where people recreate with their dogs, bringing these potential predators into environments that may otherwise be relatively free of them. As described in the final listing rule, published elsewhere in today's **Federal Register**, Mazama pocket gophers need areas free of the threat of predation by feral and domestic cats and dogs.

In Washington it is currently illegal to trap or poison Mazama pocket gophers (WAC 232–12–011, RCW 77.15.194), but not all property owners are aware of these laws, nor are most citizens capable of differentiating between mole and pocket gopher soil disturbance. In light of this, it is reasonable to believe that mole trapping and poisoning efforts have the potential to adversely impact pocket gopher populations within the range of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Mazama pocket gophers require areas free of human disturbance from trapping and poisoning.

Therefore, based on the information above, we identify areas where gophers are protected from predation by feral or domestic animals, as well as from human disturbance in the form of trapping and poisoning, as physical or biological features essential to the conservation of the Mazama pocket gopher.

Primary Constituent Elements for the Four Thurston/Pierce Subspecies of the Mazama Pocket Gopher

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the subspecies' life-history processes, we determine that the primary constituent elements specific to the four Thurston/Pierce subspecies of the Mazama pocket gopher are:

(1) Soils that support the burrowing habits of the Mazama pocket gopher, and where the four Thurston/Pierce subspecies of the Mazama pocket gopher may be found. These are usually friable, loamy, and deep soils, some with relatively greater content of sand, gravel, or silt, all generally on slopes less than 15 percent. Most are moderately to well-drained, but some are poorly drained. The range of each subspecies of the Mazama pocket gopher overlaps with a subset of potentially suitable soil series or soil series complexes. Here we describe the suitable soil series or soil series complexes that may occur within the range of each subspecies. As we state above, all of the soil series or soil series complexes listed in the Physical or Biological Features section could potentially be suitable for any of the four Thurston/Pierce subspecies of the Mazama pocket gopher:

a. Olympia pocket gopher (*Thomomys mazama pugetensis*) soils include the following soil series or soil series complex:

i. Alderwood;
ii. Cagey;
iii. Everett;
iv. Godfrey;

v. Indianola;
vi. Kapowsin;
vii. McKenna;
viii. Nisqually;
ix. Norma;
x. Spana;
xi. Spanaway;
xii. Spanaway-Nisqually complex; and
xiii. Yelm.

b. Roy Prairie pocket gopher (*Thomomys mazama glacialis*) soils include the following soil series or soil series complexes:
i. Alderwood;
ii. Everett;
iii. Everett-Spanaway complex;
iv. Everett-Spanaway-Spana complex;
v. Nisqually;
vi. Spana-Spanaway-Nisqually complex; and
vii. Spanaway.

c. Tenino pocket gopher (*Thomomys mazama tumuli*) soils include the following soil series or soil series complex:
i. Alderwood;
ii. Cagey;
iii. Everett;
iv. Indianola;
v. Kapowsin;
vi. Nisqually;
vii. Norma;
viii. Spanaway;
ix. Spanaway-Nisqually complex; and
x. Yelm.

d. Yelm pocket gopher (*Thomomys mazama yelmensis*) soils include the following soil series or soil series complex:
i. Alderwood;
ii. Cagey;
iii. Everett;
iv. Godfrey;
v. Indianola;
vi. Kapowsin;
vii. McKenna;
viii. Nisqually;
ix. Norma;
x. Spanaway;
xi. Spanaway-Nisqually complex; and
xii. Yelm.

(2) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series or soil series complexes listed in (1), above, that have:

a. Less than 10 percent woody vegetation cover;

b. Vegetative cover suitable for foraging by gophers. Pocket gophers' diet includes a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers are known to eat include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris* spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium spp.* (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

c. Few, if any, barriers to dispersal within the unit or subunit. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, (Olson 2012b, p. 3), highly cultivated lawns, inhospitable soil types (Olson 2008, p. 4) or substrates, development and buildings, slopes greater than 35 percent, and open water.

With this designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher through the identification of the primary constituent elements sufficient to support the life-history processes of the subspecies. We have determined that the final unit designated as critical habitat for the Olympia pocket gopher and the Tenalquot Prairie subunit for the Yelm pocket gopher are currently occupied by the listed subspecies and contain one or more of the primary constituent elements essential to the conservation of the species. We have determined that the final critical habitat unit for the Tenino pocket gopher and the Rock Prairie Subunit for the Yelm pocket gopher are likely occupied by the subspecies and contain one or more of the primary constituent elements essential to the conservation of the species; however, due to exclusions from the proposed subunits, we do not at this time have definitive evidence of occupancy at that scale. Therefore, to be conservative, we have also evaluated the Rocky Prairie Unit and Rock Prairie Subunit identified here as critical habitat under the standard of section 3(5)(a)(ii) of the Act, and determined that they are essential to the conservation of the species, as described in Criteria Used to Identify Critical Habitat, below. We have further determined that the physical or biological features essential to the conservation of the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher require special management considerations or protection, as described below.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. Here we describe the type of special management considerations or protections that may be required to protect the physical or biological features identified as essential for Mazama pocket gophers.

All areas designated as critical habitat will require some level of management to address the current and future threats to the four Thurston/Pierce subspecies of the Mazama pocket gopher and to maintain or enhance the PCEs present. A detailed discussion of activities influencing the four Thurston/Pierce subspecies of the Mazama pocket gopher and their habitats can be found in the final listing rule, published elsewhere in the **Federal Register** today. Threats to the physical or biological features that are essential to the conservation of these subspecies and that may warrant special management considerations or protection include, but are not limited to: (1) Loss of habitat from conversion to other uses; (2) use of heavy equipment in suitable habitat that may compact soils in the control of nonnative, invasive species; (3) development; (4) construction and maintenance of roads and utility corridors; (5) predation by feral or domestic animals; and (6) habitat modifications brought on by succession of vegetation due to lack of disturbance, both small- and large-scale; and (7) control as a pest species. These threats also have the potential to affect the PCEs if they occur within or adjacent to designated units.

The physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher may require special management considerations or protection to control or prevent the establishment of invasive woody plants, which create shade and compete for light, food and nutrients otherwise utilized by the forb, bulb, and grass species that the gophers require for forage. Management may be implemented using hand tools or mechanical methods, prescribed fire,

and the judicious use of herbicides. Although several management techniques are being implemented on public lands, we may need to improve our outreach to educate private landowners on controlling their pets and appropriately managing grazing on their properties, as well as to developing incentives for landowners who agree to conserve habitat. Incentives would create protected areas, through agreements or acquisitions. These would include corridors between existing protected habitat areas that may require management, enhancement actions, and long-term maintenance.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—is essential for the conservation of the species.

We plotted the known locations of the four Thurston/Pierce subspecies of the Mazama pocket gopher where they occur in the south Puget Sound lowlands using 2011 NAIP digital imagery in ArcGIS, version 10 (Environmental Systems Research Institute, Inc.), a computer geographic information system program. We additionally examined the USDA NRCS GIS soils data layer to determine the extent of suitable soil formation underlying occupied areas (accessed June 20, 2008 for Thurston County; received from JBLM May 30, 2013 for Pierce County).

To determine if the currently occupied areas contain the primary constituent elements, we assessed the life history components and the distribution of the subspecies through element occurrence records in State Natural Heritage Databases and natural history information on each of the subspecies as they relate to habitat.

Occupied Areas

For all of the Thurston/Pierce subspecies of the Mazama pocket gopher we proposed critical habitat only in areas within the geographical area we consider likely occupied at the time of listing. All units and subunits that were proposed as critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher were currently occupied as determined by recent surveys, within 5 years prior to the publication of the proposed rule (JBLM 2012; Krippner 2011, pp. 25–29; WDFW 2012a), and all provide one or more of the physical or biological features that may require special management considerations or protection, as described in the unit and subunit descriptions that follow. As the result of exclusions under section 4(b)(2) of the Act, the areas that best met our criterion for documented occupancy in two of the proposed subunits (proposed Subunit 1–D and 1–H) are no longer included in this final designation; therefore the occupancy of the remaining critical habitat is more uncertain. Although we conclude the areas in question are likely occupied, as described below in the section *Potentially Unoccupied Areas,* to be conservative we have additionally evaluated these remaining areas as if they are not occupied at the time of listing, and determined that they are nonetheless essential to the conservation of the species. Finally, although critical habitat proposed for the Roy Prairie pocket gopher also met these fundamental criteria for occupancy, as explained below in the section *Application of Section 4(a)(3) of the Act,* critical habitat proposed for the Roy Prairie pocket gopher has been exempted from this final designation.

As described in the *Physical or Biological Features* section, above, although some areas utilized by the Mazama pocket gopher may be used intermittently and therefore may not be detected in every year, we consider such sites to be occupied by the species for the purposes of determining critical habitat. In such cases, if the PCEs are present (e.g., requisite soil and vegetation types, permeable or no barriers to dispersal) and the area is adjacent to a site of known occupancy, we conclude that such sites are likely to be occupied, as this is the probable dynamic state of occupancy for the majority of areas included in critical habitat units and subunits. Since vegetation structure may vary spatially and temporally, yielding a mosaic of suitable habitat patches at any given time, it is likely that any Mazama pocket gophers existing in the context of an expanse of suitable habitat (i.e., the subunit level) may shift their location in response to available resources, thus habitat that is occupied at some times may not be occupied at others. As long as a source population is nearby, the essential physical or biological features are present, and there are no impermeable barriers to dispersal, there is no reason to believe that pocket gophers would not make use of such areas when conditions are favorable, and thus occupancy of such areas is likely. For these reasons, we consider all such habitat to be occupied by the species.

Potentially Unoccupied Areas

If an intermittently occupied site were not considered ''occupied'' in years when Mazama pocket gophers are not detected, development or other irreversible land uses might permanently convert that suitable and intermittently utilized habitat to another form of landscape, within which Mazama pocket gophers will not be able to breed and across which gophers will not be able to disperse, effectively reducing available suitable habitat and limiting dispersal capacity at the same time. However, for the purposes of critical habitat, to be conservative we assessed the importance of all such areas designated as critical habitat as if they were ''unoccupied'' at the time of listing. Because the historical range of each of the Mazama pocket gopher subspecies considered here is already greatly restricted in extent, thereby limiting the scope of the potential area for recovery, and because the destruction or degradation of suitable habitat is one of the primary threats to each of the subspecies, we consider any areas within the historical range of each of the subspecies that provide the essential physical or biological features identified within the critical habitat units and subunits identified here to be essential for the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

In the specific case of the Rocky Prairie Unit for the Tenino pocket gopher, Rocky Prairie is the only location from which the subspecies is known, therefore the conservation of this subspecies within its historical range is entirely dependent on this area. The area of best documented occupancy is limited to the State-owned NAP, which comprises only 35 ac (14 ha) of habitat, and alone does not meet the minimum patch size of 50 ac (20 ha) to ensure recovery of the subspecies, therefore the area definitively known to be occupied by this subspecies is insufficient to provide for its conservation (the NAP was excluded from final critical habitat under section 4(b)(2) of the Act). Finally, the

remaining area on private lands within critical habitat provides the most extensive contiguous areas containing the PCEs for the Tenino pocket gopher and is directly adjacent to an area of known occupancy. If currently unoccupied, this area provides for potential dispersal and expansion of the population, which is essential to the conservation of the subspecies. Therefore, even if the Rocky Prairie Unit were considered unoccupied at the time of listing, because this is the only known location for the Tenino pocket gopher and the area on the NAP is insufficient to provide for the conservation of this subspecies, we consider the Rocky Prairie Unit, which provides the requisite physical or biological features for the Tenino pocket gopher to be essential to the conservation of the species.

We have also determined that the Rock Prairie Subunit of Yelm pocket gopher critical habitat is essential to the conservation of the subspecies. As proposed, this 621 ac (251 ha) subunit contained lands owned by two private residential and commercial landowners. As a result of exclusion under section 4(b)(2) of the Act, the area with the best documented occupancy by the Yelm pocket gopher is no longer included in critical habitat. However, the remaining area of critical habitat within the Rock Prairie Subunit provides the physical or biological features essential to the conservation of the Yelm pocket gopher, is directly adjacent to an area of known occupancy with no impermeable barrier between the two areas, is part of the same soil extent (Spanaway and Spanaway-Nisqually complex) occurring on the known-occupied lands adjacent, and contains similar vegetation to the area of known occupancy. The Service considers the Rock Prairie Subunit as likely to be occupied, but because there have been no recent surveys on the Subunit, this can't be confirmed at this time. However, even if currently unoccupied, this area provides for potential dispersal and expansion of the population, which is essential to the conservation of the subspecies. The historical range of each of the four Thurston/Pierce Mazama pocket gopher subspecies is already greatly restricted in extent, thereby limiting the scope of the potential area for recovery. Of the four Thurston/Pierce subspecies considered in this rulemaking, the Yelm pocket gopher is the most widespread. Because the destruction or degradation of suitable habitat is one of the primary threats to the Yelm pocket gopher, we consider any areas within the historical range that provide the essential physical or biological features to be essential for the conservation of the subspecies. Successful conservation relies on redundancy in populations; therefore maintaining multiple populations of endangered or threatened species across their range is a desirable component of recovery. For this reason, we conclude that limiting critical habitat designation to the Tenalquot Prairie Subunit would not be adequate to ensure the conservation of the Yelm pocket gopher. Based on all of these considerations, even if the Rock Prairie Subunit were considered unoccupied at the time of listing, we consider the Rock Prairie Subunit that is directly adjacent to areas of known occupancy and that provides the requisite physical or biological features for the Yelm pocket gopher to be essential to the conservation of the subspecies.

We further conclude that, for each of the subspecies, if the critical habitat designations were strictly limited to parcels with documented occurrence within the subunits delineated in the proposed rule, they would be inadequate to ensure the subspecies' conservation. Because of the extremely limited geographic range of each of the Mazama pocket gopher subspecies and their restricted requirements for specific soil and vegetation types, as described above, we conclude that each of the areas identified here as critical habitat is essential for the conservation of the species.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement (such as roads and airport runways), and other structures because such lands lack physical or biological features for the Mazama pocket gopher. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2013–0021, at *http://www.fws.gov/wafwo/mpg.html*, and, by appointment, at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Units and subunits are designated based on sufficient elements of physical or biological features being present to support life processes of the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. This applies whether the units are considered occupied or unoccupied by the subspecies at the time of listing. Some units and subunits contained all of the identified elements of physical or biological features and supported multiple life processes. Some units or subunits contain only some elements of the physical or biological features necessary to support the particular use of that habitat by any of these subspecies of the Mazama pocket gopher.

Final Critical Habitat Designation

We are designating three units, totaling 1,607 ac (650 ha) as critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher (critical habitat for the Roy Prairie subspecies is exempted, as described below under Exemptions). Each unit is presently likely occupied by the subspecies for which it is designated, and contains one or more of the PCEs to support essential life-history processes for that subspecies. Some areas designated as final critical habitat may not be considered occupied at the time of listing. In these cases, we have evaluated each of these areas applying the standard under section 3(5)(A)(ii) of the Act, and have determined that all such areas included in this designation are essential to the conservation of the species. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Olympia, Tenino, and Yelm pocket gophers. The three units we designate as critical habitat are: (1) Olympia Pocket Gopher Critical Habitat—Olympia Airport Unit; (2) Tenino Pocket Gopher Critical Habitat—Rocky Prairie Unit; and (3) Yelm Pocket Gopher Critical Habitat—Tenalquot Prairie Subunit and Rock Prairie Subunit. The approximate area and landownership for each critical habitat unit and subunit is shown in Table 2.

TABLE 2—DESIGNATED CRITICAL HABITAT FOR THE OLYMPIA, TENINO, AND YELM SUBSPECIES OF THE MAZAMA POCKET GOPHER

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Location name	Subunit as identified in proposed rule	Federal	State	Private	Other *
			Ac (Ha)	Ac (Ha)	Ac (Ha)	Ac (Ha)
Olympia Pocket Gopher Critical Habitat.	Olympia Airport Unit	1–C	0	0	0	676 (274)
Tenino Pocket Gopher Critical Habitat.	Rocky Prairie Unit	1–D	0	0	399 (162)	0
Yelm Pocket Gopher Critical Habitat.	Tenalquot Prairie Subunit	1–E	0	0	154 (62)	135 (55)
	Rock Prairie Subunit	1–H	0	0	243 (98)	0
Totals			0	0	796 (322)	811 (329)

* Other = Local municipalities and nonprofit conservation organization.
Note: Area sizes may not sum due to rounding.

We present brief descriptions of all critical habitat units and subunits and reasons why they meet the definition of critical habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher below.

All critical habitat units are occupied by the subspecies at the time of listing (see the final listing rule for the four subspecies of the Mazama pocket gopher, published elsewhere in today's **Federal Register**), and all contain the physical or biological features essential to the conservation of these subspecies, which may require special management considerations or protection. All units are subject to some or all of the following threats: Development on or adjacent to the unit; incompatible management practices; predation; and habitat degradation or destruction as the result of the inadequacy of existing regulatory mechanisms. The threats of loss of ecological disturbance processes, invasive species and succession, and control as a pest species are threats to the Tenino pocket gopher in the Rocky Prairie Unit and the Yelm pocket gopher in the Tenalquot Prairie and Rock Prairie Subunits. In all units, the physical or biological features essential to the conservation of each subspecies may require special management considerations or protection to restore, protect, and maintain the essential features found there. Special management considerations or protection may be required to address: Direct or indirect habitat loss due to conversion to other uses; invasion of woody plant species; use of equipment that may compact soils; development; construction and maintenance of roads and utility corridors; habitat modifications; predation by feral or domestic animals; or use of trapping or poisoning techniques by landowners or land managers of the units themselves or adjacent landowners or land managers.

Olympia Pocket Gopher Critical Habitat—Olympia Airport Unit. This unit consists of 676 ac (274 ha) and is made up of land owned by the Port of Olympia, a municipal corporation. The Olympia Airport Unit is located south of the cities of Olympia and Tumwater, in Thurston County, Washington. This unit is occupied by the Olympia pocket gopher and contains the physical or biological features essential to the conservation of the subspecies due to the underlying soil series (Cagey, Everett, Indianola, and Nisqually), suitable forb and grass vegetation present onsite, and its large size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as development; predation; and the habitat degradation or destruction due to the inadequacy of existing regulatory mechanisms.

Tenino Pocket Gopher Critical Habitat—Rocky Prairie Unit. This unit consists of 399 ac (162 ha) and is owned by one commercial land owner and Burlington Northern Santa Fe Railroad. The Rocky Prairie Unit is located north of the city of Tenino, Thurston County, Washington; is likely occupied by the Tenino pocket gopher; and contains the physical or biological features essential to the conservation of the species due to the underlying soil series or soil series complex (Everett, Nisqually, Spanaway, and Spanaway-Nisqually complex), suitable forb and grass vegetation present onsite, and its large size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as pit mining; development on adjacent or surrounding areas; the loss of natural disturbance processes and invasion by woody plants; predation; small or isolated populations as a result of habitat fragmentation; habitat degradation or destruction as the result of the inadequacy of existing regulatory mechanisms; and control as a pest species. We additionally evaluated this area as if it were presently unoccupied by the Tenino pocket gopher, and have determined that it is nonetheless essential to the conservation of the species (see *Potentially Unoccupied Areas* for details).

Yelm Pocket Gopher Critical Habitat—Tenalquot Prairie Subunit. This subunit consists of 289 ac (117 ha) and contains lands owned by one commercial landowner and The Nature Conservancy. This subunit is located northwest of the city of Rainier, Thurston County, Washington. As proposed, subunit 1–E (now the Tenalquot Prairie Subunit) included 1,505 ac (609 ha) of JBLM land, which has been exempted based on a completed ESMP. This 4(a)(3)(B)(i) exemption, based on this species-specific management plan, has been determined to provide a conservation benefit to the Yelm pocket gopher. The Tenalquot Prairie Subunit is occupied by the Yelm pocket gopher and contains the physical or biological features essential to the conservation of the species due to the underlying soil series (Spanaway), suitable forb and grass vegetation present onsite, and its large size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as development; the loss of natural disturbance processes and invasion by woody plants; inadequacy of existing regulatory mechanisms; and control as a pest species.

Yelm Pocket Gopher Critical Habitat—Rock Prairie Subunit. This subunit consists of 243 ac (98 ha) and contains lands owned by one private residential and commercial landowner. As proposed (subunit 1–H), this subunit included 378 ac (153 ha) of private ranch land, which has been excluded under section 4(b)(2) of the Act (see Exclusions for details). The Rock Prairie Subunit is likely occupied by the Yelm pocket gopher and contains the physical or biological features essential to the conservation of the species due to the underlying soil series or soil series complex (Spanaway and Spanaway-Nisqually complex), suitable forb and grass vegetation present onsite, and its size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as development; the loss of natural disturbance processes and invasion by woody plants; predation; inadequacy of existing regulatory mechanisms; and control as a pest species. We additionally evaluated this area as if it were presently unoccupied by the Yelm pocket gopher, and have determined that it is nonetheless essential to the conservation of the species (see *Potentially Unoccupied Areas* for details).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species listed or proposed to be listed under the Act or result in the destruction or adverse modification of proposed or finalized critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. These activities include, but are not limited to:

(1) Actions that restore, alter, or degrade habitat features through development, agricultural activities, burning, mowing, herbicide use or other means in suitable habitat for the

Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher.

(2) Actions that would alter the physical or biological features of critical habitat including modification of soil profiles or the composition and structure of vegetation in suitable habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher. Such activities could include, but are not limited to, construction, grading or other development, mowing, conversion of habitat, recreational use, off-road vehicles on Federal, State, or private lands). These activities may affect the physical or biological features of critical habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher by crushing burrows, removing forage, or impacting habitat essential for completion of life history.

(3) Activities within or adjacent to critical habitat that affect or degrade the conservation value or function of the physical or biological features of critical habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for the Roy Prairie and Yelm subspecies of the Mazama pocket gopher to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the critical habitat designation as proposed: (1) 91st Division Prairie (proposed subunit 1–A), (2) Marion Prairie (proposed subunit 1–B), and (3) Tenalquot Prairie (proposed subunit 1–E). All of these areas are part of JBLM, except for two portions of Tenalquot Prairie known as the Morgan property and Silver Springs Cattle Ranch.

Approved INRMPs

U.S. Army Joint Base Lewis-McChord (JBLM) (formerly known as Fort Lewis Army Base and McChord Air Force Base) is a military complex in western Washington that presently encompasses approximately 91,000 ac (36,825 ha). JBLM is composed of both native and degraded prairies; shrub-dominated vegetation; conifer, conifer-oak, oak-savannah, oak woodland and pine woodland/savannah forests; riverine, lacustrine, and palustrine wetlands; ponds and lakes; as well as other unique habitat, such as Mima mounds. Portions of JBLM are currently occupied by the Roy Prairie and Yelm subspecies of the Mazama pocket gopher. There are 6,345 ac (2,567 ha) of lands within the boundary of JBLM that were proposed as critical habitat for these two subspecies; these lands included the following subunits from the proposed rule (77 FR 73770; December 11, 2012): proposed subunit 1–A, 91st Division Prairie (occupied by the Roy Prairie pocket gopher); proposed subunit 1–B, Marion Prairie (occupied by the Roy Prairie pocket gopher); and a portion of proposed subunit 1–E, Tenalquot Prairie (occupied by the Yelm pocket gopher). This large Federal landholding includes the largest contiguous block of prairie in the State of Washington. Actions on this property include military training, recreation, transportation, utilities (including dedicated corridors), and land use.

The mission of JBLM is to maintain trained and ready forces for Army and Air Force commanders worldwide, by providing them with training support and infrastructure. This includes a land base capable of supporting current and future training needs through good stewardship of the Installation's natural and cultural resources, as directed by Federal statutes, DOD directives, directives and programs such as ACUB (Army Compatible Use Buffer Program), and Army, Air Force, and JBLM regulations.

Mazama pocket gophers exist on prairies on JBLM lands where vehicular traffic is currently restricted to established roads, but prior to their proposed listing, JBLM had not implemented any specific restrictions on military training to protect Mazama pocket gophers. Currently, efforts to maintain and increase Mazama pocket gopher populations on the installation focus on restoring or managing the overall condition of suitable habitat. Although only military actions are covered by the INRMP and its associated Endangered Species Management Plans (ESMPs), several additional actions occurring on JBLM could pose substantial threats to the Roy Prairie and Yelm subspecies of the Mazama pocket gopher (e.g., increased risk of accidental fires; habitat destruction and degradation through construction of training infrastructure; vehicle use, dismounted training, bivouac activities, digging; and predation related to recreational activities such as dog trials), and are restricted to a few prairie properties. Many of the avoidance measures for military training action subgroups are implemented through environmental review and permitting programs related to a specific action. Timing of actions and education of users are important avoidance measures for the other activities.

JBLM actively manages prairie habitat as part of its INRMP (US Army 2006). The purpose of the plan is to ''provide guidance for effective and efficient management of the prairie landscape to meet military training and ecological conservation goals.'' There are three overall goals including: (1) No net loss of open landscapes for military training; (2) no net reduction in the quantity or

quality of moderate- and high-quality grassland; and (3) viable populations of all prairie-dependent and prairie-associated species. These goals are conducted in concert with JBLM's stewardship responsibility that includes five primary requirements for compliance with the Act:

(1) Requirement to conserve listed species;

(2) Requirement not to jeopardize listed species;

(3) Requirement to consult and confer;

(4) Requirement to conduct a biological assessment; and

(5) Requirement to not take listed fish and wildlife species or to remove or destroy listed plant species (DOD 1995, p. 19–20).

Two regional programs managed under the INRMP and its associated ESMPs and funded by the DOD are currently underway on many of the lands where Mazama pocket gophers occur. The JBLM ACUB program is a proactive effort to prevent ''encroachment'' at military installations. Encroachment includes current or potential future restrictions on military training associated with currently listed and candidate species under the Act. The JBLM ACUB program focuses on management of non-Federal conservation lands in the vicinity of JBLM that contain, or can be restored to, native prairie. Some of the ACUB efforts include improving habitats on JBLM property for prairie-dependent species, including the Mazama pocket gopher. It is implemented by means of a cooperative agreement between the Army and Center for Natural Lands Management (formerly The Nature Conservancy), and includes WDFW and WDNR as partners, as well as others. To date, a total of $14.7 million has been allocated to this program (Anderson 2014, pers. comm.). This funds conservation actions such as invasive plant control on occupied sites and the restoration of unoccupied habitat.

The JBLM Legacy program is dedicated to ''protecting, enhancing, and conserving natural and cultural resources on DOD lands through stewardship, leadership, and partnership.'' The Legacy program supports conservation actions that have regional or DOD-wide significance, and that support military training or fulfill legal obligations (DOD 2011, p. 2). In recent years, substantial effort and funding have gone toward projects, both on and off JBLM, related to the Mazama pocket gopher.

JBLM has an INRMP in place that was approved in 2006, which JBLM is in the process of updating. In 2014, JBLM amended their existing INRMP to specifically include the Mazama pocket gopher by completing an ESMP that includes guidelines for protecting, maintaining, and enhancing habitat essential to protect the Roy Prairie and Yelm subspecies on JBLM, as well as participating in recovery efforts for all four Thurston/Pierce subspecies off-base through their ACUB program and other funding programs. The ESMP provides specific prescriptions for protection of occupied Mazama pocket gopher habitat on JBLM, including expansion and enhancement of gopher habitat in ''priority habitat'' areas; required permitting before disturbance of occupied areas; monitoring of and reporting on population status; compliance, implementation, and effectiveness monitoring and reporting; avoidance and minimization measures for specific training activities and areas; and coordination between the Service and JBLM when consultation is required. The Service has found, in writing, that the ESMP under the JBLM INRMP provides a conservation benefit to the Mazama pocket gophers.

In accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the JBLM INRMP and that conservation efforts identified in the ESMP under the INRMP will provide a conservation benefit to the Mazama pocket gopher subspecies that occur on DOD lands in Thurston and Pierce Counties. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. We are not including approximately 6,345 ac (2,567 ha) of habitat in this final critical habitat designation for the Roy Prairie and Yelm pocket gophers because of this exemption. The lands exempted under section 4(a)(3)(B)(i) are identified in Table 3.

TABLE 3—AREAS EXEMPTED FROM THE DESIGNATION OF CRITICAL HABITAT FOR THE ROY PRAIRIE POCKET GOPHER AND YELM POCKET GOPHER UNDER SECTION 4(a)(3)(B)(I) OF THE ACT BY CRITICAL HABITAT UNIT

Subunit as proposed	Area of subunit exempted	Subspecies present	Areas meeting the definition of critical habitat in acres (hectares)	Areas exempted under section 4(a)(3)(B)(i) of the act in acres (hectares)
1–A, 91st Division Prairie	entire	Roy Prairie pocket gopher (*T. m. glacialis*).	4,120 (1,667)	4,120 (1,667)
1–B, Marion Prairie	entire	Roy Prairie pocket gopher (*T. m. glacialis*).	720 (291)	720 (291)
1–E, Tenalquot Prairie	partial	Yelm pocket gopher (*T. m. yelmensis*).	1,793 (726)	1,505 (609)
Total			6,633 (2,684)	6,345 (2,567)

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In

considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Mazama pocket gopher, the benefits of critical habitat include promotion of public awareness of the presence of the Olympia, Tenino, and Yelm pocket gophers and the importance of habitat protection, and in cases where a Federal nexus exists, potentially greater habitat protection for the Olympia, Tenino, and Yelm pocket gophers due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher: Rocky Prairie Natural Area Preserve (NAP); West Rocky Prairie Wildlife Area (WLA); Scatter Creek WLA and adjacent private inholding; and Colvin Ranch. Table 4 below provides approximate areas of lands that meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 4—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION UNDER SECTION 4(b)(2) OF THE ACT

Subunit as proposed	Unit as named in final rule	Specific area	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
1–D, Rocky Prairie	Tenino Pocket Gopher Critical Habitat—Rocky Prairie Unit.	Rocky Prairie NAP	43 (178)	38 (16)
1–F, West Rocky Prairie	NA (occupied by Olympia pocket gopher, but excluded in entirety).	West Rocky Prairie WLA	134 (54)	134 (54)
1–G, Scatter Creek	NA (occupied by Yelm pocket gopher, but excluded in entirety).	Scatter Creek WLA	730 (296)	730 (296)
1–H, Rock Prairie	Yelm Pocket Gopher Critical Habitat—Rock Prairie Subunit.	Colvin Ranch	621 (251)	378 (153)
Total Area Excluded				1,280 (518)

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2013a). The draft analysis, dated March 22, 2013, was made available for public review from April 3, 2013, through May 3, 2013 (78 FR 20074; April 3, 2013). The DEA addressed potential economic impacts of critical habitat designation for multiple prairie species of Western Washington and Oregon, including not only the Mazama pocket gopher, but also Taylor's checkerspot butterfly and streaked horned lark (*Eremophila alpestris strigata*). Following the close of the comment period, a final analysis of the potential economic effects of the designation (FEA) was developed taking into consideration the public comments and any new information; this analysis was dated September 30, 2013 (IEc 2013b). The final rule designating critical habitat for Taylor's checkerspot butterfly and streaked horned lark published on October 3, 2013 (78 FR 61506). On September 3, 2013, we announced a 6-month extension of the final determination on the proposed listing and designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher (78 FR 54218) and reopened the comment period for an additional 45 days, ending

October 18, 2013. Additional information relevant to the potential economic impacts of critical habitat designation for the Mazama pocket gopher is captured in the final memorandum to the economic analysis (IEc 2014), available at *http://www.regulations.gov* and at *http://www.fws.gov/wafwo/mpg.html.*

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the four Thurston/Pierce subspecies of the Mazama pocket gopher; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification'' Standard* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential for economic impacts related to: Military activities; recreation and habitat management; airport operations and agricultural activities; transportation, electricity distribution, and forestry activities; and dredging, gravel mining, and other activities. The analysis is based on the estimated impacts associated with the rulemaking as described in Appendix A of the analysis (IEc 2013b, pp. A–1—A–11). The estimated incremental impacts are primarily attributable to the administrative costs of section 7 consultation. The present value of total incremental cost of critical habitat designation is $793,574 over the next 20 years assuming a 7 percent discount rate, or $70,007 on an annualized basis. Airport and agricultural activities are subject to incremental impacts estimated at $550,000; recreation and habitat management at $110,000; military activities at $55,000; transportation at $34,000; and electricity distribution and forestry activities at $9,300 (present values over 20 years assuming a 7 percent discount rate. Of these total costs, it is estimated that approximately 51 percent will be borne by the Service, 31 percent by Federal action agencies, and 18 percent by third parties. It is important to note that these total costs represent all six prairie taxa addressed in the FEA (Taylor's checkerspot butterfly, streaked horned lark, and four Thurston/Pierce subspecies of the Mazama pocket gopher), therefore the potential economic impacts specific to the Mazama pocket gopher are less than these totals.

In addition, in response to public comments, here we further consider the potential incremental impacts of the designation specifically on the Olympia Airport and gravel mining operations. These potential impacts are described in detail below.

Airport operations (Olympia Airport). As noted above, our economic analysis addressed the potential impacts of critical habitat designation for several different prairie taxa of western Washington and Oregon: the streaked horned lark, the Taylor's checkerspot butterfly, and the four Thurston/Pierce subspecies of the Mazama pocket gopher. Most of the airports considered in our economic analysis were in critical habitat proposed for the streaked horned lark (a separate final critical habitat rule published for the streaked horned lark and the Taylor's checkerspot butterfly on October 3, 2013; 78 FR 61506). Chapter 3 of the FEA (IEc 2013b), Airport Operations and Agriculture, discusses the potential for this critical habitat designation to affect airports and agricultural activities. Overall, 198 consultations are expected in relation to operations at 7 airports over the next 20 years; most of these are related to the streaked horned lark. The cost per airport, per consultation, to participate in forecast consultations is approximately $875 to $8,750 in any given year. The only airport specific to the designation of critical habitat for the Mazama pocket gopher is the Olympia Airport in Thurston County, Washington (the Olympia Airport Unit, which is the only unit of critical habitat designated for the Olympia pocket gopher in this final rule). Here we consider any economic impacts specific to the Olympia Airport in connection with critical habitat designation for the Olympia pocket gopher.

As noted in our FEA (IEc 2013b, p. 3–23), all airports considered in our analysis receive Federal funding through the Federal Aviation Administration (FAA). This creates a Federal nexus for any projects that utilize this funding. Any projects at the Olympia Airport that receive such funding may therefore require a section 7 consultation regarding potential effects to listed species and their critical habitat. Potential project modifications recommended by the Service for the Mazama pocket gopher may include minimizing paving and development within habitat, or mitigating impacts with land set-aside or off-site conservation. These modifications could potentially limit airport development opportunities or require the hiring of additional maintenance staff or biologists to ensure that maintenance

practices do not harm the subspecies or its critical habitat. However, because the Olympia Airport is presently occupied by the Mazama pocket gopher, all such project modifications described above would likely be recommended based on the presence of the species regardless of critical habitat designation. Any such costs associated with such modifications would therefore be attributable to the listed status of the Mazama pocket gopher, which is considered part of the baseline for our economic analysis, since these costs would be incurred just the same with or without critical habitat. The only costs directly attributable to critical habitat would therefore be the additional administrative costs of considering the standard of destruction or adverse modification of critical habitat, above and beyond the consideration of the jeopardy standard.

For the Olympia Airport, we estimated 8 formal consultations over the next 20 years associated with the realignment of Taxiway F, the construction of a helipad and final approach/takeoff area, building/parking construction, and runway and taxiway construction. In addition, one formal consultation a year is anticipated in association with routine maintenance activities (IEc 2013b, Exhibit 3–7, p. 3–26). As noted earlier, since the Olympia Airport is occupied by the listed species, these consultations will be required regardless of the presence of critical habitat. The incremental impact of critical habitat is therefore limited to the additional cost of considering effects to critical habitat in these consultations. For the Olympia Airport, this cost is estimated at a total of $43,000 over the years 2013 through 2032, or an annualized value of $3,800 (IEc 2013b, Exhibit 3–8, p. 3–28). As noted in our FEA (IEc 2013b, p. ES–11), the majority of these administrative costs are borne by the Service (51 percent) or Federal action agencies (31 percent).

Gravel mining. We additionally specifically considered the potential economic impacts of critical habitat on gravel mining activities within the proposed designation. Critical habitat was proposed for the Tenino pocket gopher on a portion of a 685-ac (277-ha) parcel of private lands that support sand and gravel extraction activities on approximately 50 ac (20 ha) of this landholding. Approximately 385 ac (156 ha) surrounding the current extraction area is identified as critical habitat for the Tenino Pocket Gopher (Rocky Prairie Unit, which is the only unit of critical habitat designated for the Tenino pocket gopher in this final rule). As described in this rule, the area in question supports the only known population of the Tenino pocket gopher, and we consider these lands to be occupied by the subspecies. However, to be conservative, we have additionally considered what the incremental impacts of the designation would be if the property in question were not in fact occupied by the listed species.

First, we consider the potential incremental impacts of the designation under the scenario of occupancy by the listed species. The direct regulatory effect of critical habitat impacts only Federal agencies, and only applies when there is a Federal nexus. If a Federal nexus presence triggers consultation under section 7, the presence of a listed species will require implementation of certain conservation efforts to avoid jeopardy concerns. If the action in question may additionally affect designated critical habitat, consultation would consider not only the potential for jeopardy to the continued existence of the species, but also the potential for destruction or adverse modification of critical habitat. Because the ability of the Tenino pocket gopher to exist is very closely tied to the quality of its habitat, significant alterations of their occupied habitat may result in jeopardy as well as adverse modification. Therefore, we anticipate that section 7 consultation analyses will likely result in no difference between recommendations to avoid jeopardy or adverse modification in occupied areas of habitat.

In the case at hand, because we consider the area of mineral extraction to be occupied by the Tenino pocket gopher, potential project modifications would be recommended based on the presence of the species to avoid jeopardy concerns, and would be recommended regardless of critical habitat. Any costs associated with such modifications would therefore be attributable to the listed status of the Tenino pocket gopher, which is considered part of the baseline for our economic analysis, since these costs would be incurred just the same with or without critical habitat. The only costs directly attributable to critical habitat would therefore be the additional administrative costs of considering the standard of destruction or adverse modification of critical habitat, above and beyond the consideration of the jeopardy standard.

We did not have information to suggest a likely Federal nexus in regard to mineral or gravel extraction activities on private lands within the designation. Due to uncertainty regarding the timing of gravel extraction activities and uncertainty surrounding the potential for a Federal nexus, our economic analysis did not quantify a specific number of consultations that may occur or any related administrative burden. As the likelihood of a Federal nexus is small, it is most likely that critical habitat designation will not result in any economic impact to the landowner. However, were there a Federal nexus for the action in question, and if the Tenino pocket gopher is present on the property, no incremental project modifications are expected to occur as a consequence of critical habitat. That is, there are unlikely to be any project modifications above and beyond those that would be required to avoid jeopardy to the continued existence of the species, due to the presence of the listed species on the property. Therefore, any incremental impacts directly attributable to the designation of critical habitat will be limited to the administrative burden of the portion of consultations considering adverse modification. Such an administrative burden would be unlikely to exceed $5,000 (in undiscounted dollars) per consultation, and no more than one consultation per gravel mining action is expected to occur. Furthermore, most of these costs would likely be borne by the Service and the Federal action agency. Therefore, we anticipate that should consultation occur on gravel mining operations in critical habitat occupied by the Tenino pocket gopher, the incremental administrative impacts attributable to critical habitat will be small, and the business owner will not be likely to suffer a significant economic impact as the result of the designation.

We additionally considered the potential incremental impact of the designation on mineral extraction interests if the lands in question were considered to be unoccupied by the Tenino pocket gopher. If there should be an action with a Federal nexus that may affect the designated critical habitat, consultation under section 7 would be required. However, in this case, there would be no requirement to analyze the effects of the action under the jeopardy standard absent the listed species; therefore all costs associated with consultation and any project modifications would be attributable solely to critical habitat. Any such costs would only be incurred should there be a Federal nexus associated with the proposed action, if the action agency concludes that the action may affect the designated critical habitat. We have no evidence of any prior Federal nexus associated with the mineral extraction activities on these lands, nor do we have any evidence to suggest that such a

Federal nexus is likely to occur within the foreseeable future. Therefore, absent such a Federal nexus, the presence of unoccupied critical habitat will not trigger consultation, and there will not be any economic impacts to the landowners as a result of critical habitat designation.

Should there be an unforeseen Federal nexus for a proposed action, however, and if the Federal action agency determines that their proposed action may affect or is likely to adversely affect unoccupied critical habitat, that agency is required to enter into formal consultation with the Service. A formal consultation concludes with the Service's issuance of a biological opinion. In conducting formal consultation, the Service works with the action agency and the applicant to consider project modifications to avoid, minimize, or mitigate adverse effects to critical habitat. To the extent adverse effects are likely to destroy or adversely modify its critical habitat, the Service is required to develop, in coordination with the Federal action agency and any applicant, a reasonable and prudent alternative (RPA) that avoids those outcomes.

In our experience, in most cases we are able to successfully work with the action agency to develop project modifications that avoid jeopardy or adverse modification, and no RPAs are necessary. In those cases, the consultation is concluded with the Service's issuance of a non-jeopardy, non-adverse modification biological opinion. In those cases where the Federal agency is unwilling or unable to make such modifications, the final biological opinion includes RPAs. The implementing regulations for section 7 of the Act define RPAs as alternatives that are economically and technologically feasible, are capable of being implemented in a manner consistent with the intended purpose of the proposed Federal action, and are consistent with the scope of the Federal action agency's legal authority and jurisdiction. Although some project modifications may be required, the designation of critical habitat will not prevent the action agency from proceeding, and although critical habitat may limit mineral extraction activities to some extent, in our experience it is unlikely to entirely preclude such operations on the property in question.

As there is no consultation history available for potential project modifications associated with Mazama pocket gopher habitat in association with mineral extraction activities, it is not possible to quantify the costs that may be incurred as the result of any project modifications that may be recommended. The property owner asserts that designation of critical habitat on this parcel will have an economic impact on the claimed value of $750 million of aggregate deposit; such impacts, they assert, could come from limiting or preventing extraction activities on the site. However, based on the considerations discussed above and in more detail in the final memorandum to the economic analysis (IEc 2014), it appears unlikely that the designation will produce such an impact; most likely activities will continue with some potential project modifications. Further, for the reasons given here, we believe it is highly unlikely for the designation of critical habitat to prohibit mining on the parcel in question in its entirety. We must acknowledge, however, that such an outcome is not beyond the realm of possibility, particularly since the parcel in question provides the largest area of suitable habitat within the range of the only known population of the Tenino pocket gopher. Finally, we considered the potential for indirect effects of critical habitat. Due to considerable uncertainty, we were unable to quantify any such effects.

Exclusions Based on Economic Impacts

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting her discretion to exclude any areas from this designation of critical habitat for the Roy Prairie, Olympia, Tenino, or Yelm pocket gopher based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Washington Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov* or *http://www.fws.gov/wafwo/mpg.html.*

Exclusions Based on National Security Impacts

In preparing this final rule, we have exempted from the designation of critical habitat those Department of Defense lands with completed INRMPs determined to provide a benefit to the Mazama pocket gopher. We have also determined that the remaining lands within the designation of critical habitat for the four Thurston/Pierce subspecies of Mazama pocket gopher are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising her discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Factors

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships or relationships that would be encouraged by designation of, or exclusion from, critical habitat. We also consider any other relevant impacts that might occur because of the designation. Our weighing of the benefits of inclusion versus exclusion considers all relevant factors in making a final determination as to what will result in the greatest conservation benefit to the listed species. Depending on the specifics of each situation, there may be cases where the designation of critical habitat will not necessarily provide enhanced protection, and may actually lead to a net loss of conservation benefit. Here we provide our analysis of areas proposed for the designation of critical habitat that may provide a greater conservation benefit to the Mazama pocket gopher by exclusion from the designation.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands within the geographical area occupied by the species at the time of listing on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species.

The identification of areas that contain the features essential to the conservation of the species, or are otherwise essential for the conservation of the species if outside the geographical area occupied by the species at the time of listing, is a benefit resulting from the designation. The critical habitat designation process includes peer review and public comment on the identified physical and biological features and areas, and provides a mechanism to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This may help focus and promote conservation

efforts by other parties by clearly delineating areas of high conservation value for the species, and can be valuable to land owners and managers in developing conservation management plans by describing the essential physical and biological features and special management actions or protections that are needed for identified areas. Including lands in critical habitat also informs State agencies and local governments about areas that could be conserved under State laws or local ordinances.

The prohibition on destruction or adverse modification under Section 7(a)(2) of the Act constitutes the primary regulatory benefit of critical habitat designation. As discussed above, Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses also represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar because effects on habitat will often result in effects on the species. However, these two regulatory standards are different. The jeopardy analysis evaluates how a proposed action is likely to influence the likelihood of a species' survival and recovery. The adverse modification analysis evaluates how an action affects the capability of the critical habitat to serve its intended conservation role (USFWS, in litt. 2004). Although these standards are different, it has been the Service's experience that in many instances proposed actions that affect both a listed species and its critical habitat and that constitute jeopardy also constitute adverse modification. In some cases, however, application of these different standards results in different section 7(a)(2) determinations, especially in situations where the affected area is mostly or exclusively unoccupied critical habitat. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of non-Federal lands itself does not restrict any actions that destroy or adversely modify critical habitat. Aside from the requirement that Federal agencies ensure that their actions are not likely to result in destruction or adverse modification of critical habitat under section 7, the Act does not provide any additional regulatory protection to lands designated as critical habitat.

Second, designating critical habitat does not create a management plan for the areas, does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat), and does not have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and in section 7 consultation. The designation only limits destruction or adverse modification of critical habitat, not all adverse effects. By its nature, the prohibition on adverse modification ensures that the conservation role and function of those areas designated as critical habitat are not appreciably reduced as a result of a Federal action.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the species or critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may recommend additional conservation measures to minimize adverse effects to primary constituent elements, but such measures would be discretionary on the part of the Federal agency.

The designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act because of effects to critical habitat, the end result of consultation is to avoid adverse modification, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. On the other hand, voluntary conservation efforts by landowners can remove or reduce known threats to a species or its habitat by implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through implementing HCPs under section 10 of the Act, or other voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving project effects to critical habitat. Management plans can commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project; consultation does not require Federal agencies to provide for conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation. The potential benefits of a critical habitat designation are therefore reduced when an effective conservation plan is in place. The Secretary places great value on the maintenance and encouragement of conservation partnerships with non-Federal landowners that enable the development of such voluntary measures for the benefit of listed species and species of conservation concern, for the reasons detailed below.

Considerations Specific to Non-Federal Lands With Conservation Agreements

As noted above, the Secretary may exclude areas from critical habitat if she determines that the benefits of exclusion outweigh the benefits of including those areas as part of the critical habitat (unless exclusion of those areas will result in the extinction of the species). We believe that in some cases designation can negatively impact the working relationships and conservation partnerships we have formed with private landowners, and may serve as a disincentive for the formation of future partnerships or relationships that would have the potential to provide conservation benefits.

The Service recognizes that most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (Lubowski *et al.* 2006, p. 35), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Groves *et al.* (2000, pp. 280–281) reported that about one-third of populations of federally listed species are found on Federal lands; private lands were found to provide for at least one population of more than two-thirds of federally listed species (Groves *et al.* 2000, p. 283).

Given the distribution of listed species with respect to landownership, the successful conservation of listed species in many parts of the United States will clearly depend upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting the willing cooperation of landowners is essential to understanding the status of species on non-Federal lands and necessary to implement recovery actions, such as the reintroduction of listed species, habitat management, and habitat protection.

Many non-Federal landowners derive satisfaction from voluntarily participating in the recovery of endangered or threatened species. Conservation agreements with non-Federal landowners, Habitat Conservations Plans, Safe Harbor Agreements, other conservation agreements, easements, and State and local regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage non-Federal landowners to enter into conservation agreements based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996). The Service realizes this benefit through partnerships not only with private landowners, but with our State partners, Counties, and local municipalities as well.

We acknowledge that private landowners are often wary of the possible consequences of encouraging endangered species conservation on their property, and of regulatory action by the Federal government under the Act. Social science research has demonstrated that, for many private landowners, government regulation under the Act is perceived as a loss of individual freedoms, regardless of whether that regulation may in fact result in any actual impact to the landowner (Brook *et al.* 2003, pp. 1644–1648; Conley *et al.* 2007, p. 141). Furthermore, in a recent study of private landowners who have experience with regulation under the Act, only 2 percent of respondents believed the Federal Government rewards private landowners for good management of their lands and resources (Conley *et al.* 2007, pp. 141, 144). According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.*1999, p. 1263; Bean 2002, p. 412; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, or control of invasive species) are necessary for species conservation (Bean 2002, pp. 412–413).

Since Federal actions such as the designation of critical habitat on private lands may reduce the likelihood that landowners will support and carry out conservation actions for the benefit of listed species, based on the research described above, we believe that in some cases the judicious exclusion of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a greater level of species conservation than critical habitat designation alone. In addition, we believe that States, counties, and communities will be more likely to develop conservation agreements such as HCPs, SHAs, CCAAs, or other plans that benefit listed species if they are relieved of any potential additional regulatory burden that might be imposed as a result of critical habitat designation. A benefit of exclusion from critical habitat is thus the unhindered, continued ability to maintain existing and seek new partnerships with future participants in the development of beneficial conservation plans, including States, Counties, local jurisdictions, conservation organizations, and private landowners. Together these entities can implement conservation actions that we would be unable to accomplish otherwise.

We believe that acknowledging the positive contribution non-Federal landowners are currently making to the conservation of the Mazama pocket gopher, and maintaining good working relationships with these landowners by excluding these areas, may provide a significant benefit to the conservation of the Mazama pocket gopher in areas where non-Federal lands will play an essential role in the recovery of the species. The exclusion of these areas may encourage these landowners to continue their positive management practices without fear of further government regulation. In addition, the exclusion of such lands may lay the foundation for building additional conservation partnerships and relationships with other non-Federal landowners, with conservation benefit not only for the Mazama pocket gopher, but other endangered or threatened species or species of conservation concern as well.

In contrast, we believe there may be relatively little benefit to be gained by the designation of non-Federal lands with adequate conservation agreements in place. A potential benefit of designation would be the regulatory protections afforded to critical habitat under section 7(a)(2) of the Act. However, as described earlier, on non-Federal lands the regulatory protections of critical habitat only apply when there is a Federal nexus (actions funded, permitted, or otherwise carried out by the Federal government). All of the lands in this critical habitat designation are occupied by the Mazama pocket gopher. Thus, even if these lands are excluded from the final critical habitat designation, if the Mazama pocket gopher is present and may be affected, actions with Federal involvement require consultation to review the effects of management activities that might adversely affect listed species under a jeopardy standard; this assessment includes effects to the species from habitat modification. Overall, given the low likelihood of a Federal nexus occurring on these lands, we believe the regulatory benefit of a critical habitat designation on these lands, if any, may be limited. As described above, the presence of a beneficial conservation plan on these lands further reduces this benefit. However, in all cases we carefully weigh and consider the potential benefits of exclusion versus inclusion for each specific area under consideration for exclusion under section 4(b)(2), as detailed below.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation is to trigger regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act. Where there is little likelihood of

a Federal action, the benefits of this protection can be low. On the other hand, the benefits of excluding areas that are covered by voluntary conservation efforts can, in specific circumstances, be high. With the considerations described above in mind, here we describe our weighing of the benefits of exclusion versus inclusion of specific non-Federal lands with existing land and resource management plans, conservation plans, or agreements based on conservation partnerships from the final designation of critical habitat for the Mazama pocket gopher.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We find that the Rocky Prairie Natural Area Preserve (NAP) (which is covered under the WDNR State Trust Lands HCP), the WDFW Scatter Creek Wildlife Area Management Plan (which also covers the adjacent private land), and the NRCS Colvin Ranch Grassland Reserve Program Management Plan all fulfill the above criteria. We are excluding these non-Federal lands covered by these plans because the plans adequately provide for the long-term conservation of the Mazama pocket gopher; such exclusion is likely to result in the continuation, strengthening, or encouragement of important conservation partnerships; and the Secretary has determined that the benefits of excluding such areas outweigh the benefits of including them in critical habitat, as detailed here.

Washington Department of Natural Resources State Trust Lands HCP

The WDNR State Trust Lands HCP covers approximately 1.7 million ac (730,000 ha) of State lands in Washington. The permit associated with this HCP, issued January 30, 1997, was announced in the **Federal Register** on April 5, 1996 (61 FR 15297), has a term of 70 to 100 years, and covers activities primarily associated with commercial forest management, but also includes limited non-timber activities such as some recreational activities. The HCP covers all species, including the Mazama pocket gophers and other listed and unlisted species. We are excluding Washington State lands totaling approximately 38 ac (16 ha) that are covered and managed by the WDNR under its State Trust Lands HCP from critical habitat proposed as Subunit 1–D under section 4(b)(2) of the Act.

The HCP addresses multiple species through a combination of strategies. The HCP includes a series of NAPs and Natural Resource Conservation Areas (NRCAs), including the Rocky Prairie NAP. These preserves are managed consistent with the Natural Areas Preserve Act, and is a land designation used by the State of Washington to protect the best examples of rare and vanishing flora, fauna, plant and animal communities, geological, and natural historical value, consistent with the Washington Natural Areas Preserves Act of 1972 (RCW 79.70). These preserves are used for education, scientific research, and to maintain Washington's native biological diversity. This network of preserves includes nearly 31,000 ac (12,550 ha) throughout the State, which range in size from 8 ac (3.2 ha) to 3,500 ac (1,416 ha). Management plans are developed for each NAP, which guide the actions necessary to protect each area's natural features, including research, monitoring, restoration, and other active management. WDNR actively manages the Rocky Prairie NAP to maintain high-quality prairie habitat. This location contains many of the essential physical or biological features to support the Mazama pocket gopher, and is currently occupied by the Tenino pocket gopher within the only known range of this subspecies.

The NAP property at Rocky Prairie has a species-specific management plan that provides for the conservation of the Tenino pocket gopher, and this site has been managed for the conservation of prairie species, including Mazama pocket gophers specifically. This ongoing practice of habitat management and conservation has fostered a diverse variety of native food plants that complement the friable well-drained soil. The management planning for each of these areas has established a decades-long track record of activity focused on enhancing prairie composition and structure at the Rocky Prairie NAP (WDNR 1989b). The conservation measures applied at the NAP has more recently been refocused through the development of a site-specific restoration plan that will benefit the Tenino pocket gopher. This restoration plan (Wilderman and Davenport 2011c) provides for the needs of the Tenino pocket gopher by protecting and managing the Rocky Prairie NAP and implementing species-specific conservation measures designed to avoid and minimize impacts to pocket gophers.

Benefits of Inclusion—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP—We find there are minimal benefits to including the Rocky Prairie Natural Area Preserve in critical habitat. As discussed above, the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. Rocky Prairie NAP is currently occupied and has been undergoing restoration through a federally-funded program (the Department of Defense's (DOD) Army Compatible Use Buffer program (ACUB)), thus any proposed ACUB actions for habitat restoration would trigger section 7 consultation for both the Tenino pocket gopher and its designated critical habitat. The benefits of inclusion in critical habitat at this site would be minimized since it is occupied by the Tenino pocket gopher. Because the primary threats to the Tenino pocket gopher include habitat loss and degradation, any potential formal consultations under section 7 of the Act will evaluate the effects of the action on the capability of the habitat to support the life history requirements for the species regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the requirements in an analysis for an adverse modification determination on land included in critical habitat. The additional benefit of consultation under the adverse modification standard at this occupied site would therefore be reduced.

The inclusion of Rocky Prairie NAP as critical habitat could potentially provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the

Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on this non-Federal land would not likely result in the destruction or adverse modification of critical habitat. Any Federal nexus on this land would likely result from actions to restore or maintain favorable habitat conditions, carried out under the HCP or granting of Federal funds for beneficial management of prairie-associated species, such as the Mazama pocket gophers. As the action being consulted on is itself intended to benefit prairie-associated species, including the Tenino pocket gopher, the incremental benefit to the Tenino pocket gopher would likely be minimal, as we would not expect additional conservation measures to be recommended as the result of section 7 consultation required by this habitat management funding.

The Service has coordinated with WDNR on conservation actions to be implemented for the Tenino pocket gopher at Rocky Prairie NAP. Management of NAPs in Thurston County, Washington, is guided in large part by the South Puget Sound Prairie Landscape Working Group. The Service is a charter member of this partnership group, which was established in 1994, to promote and improve the management and planning of conservation actions on south Puget Sound prairies and associated habitats. The Working Group includes WDNR, JBLM, NRCS, WDFW, CNLM, the Washington Department of Transportation (WSDOT), as well as other Federal, State, county, city, nongovernmental, and private group entities, each with knowledge and expertise in prairie ecosystem management. The Working Group coordinates regularly, meeting twice-yearly to share information and discuss priorities, and making significant improvements on the ground in prairies and oak woodlands. At one south Puget Sound location, volunteers implement restoration and recovery actions for prairie species every Tuesday throughout the year. This is a well-established group that is expected to continue its coordination efforts into the foreseeable future, regardless of the designation of critical habitat. Management of the Rocky Prairie NAP site receives oversight from the Mazama Pocket Gopher Working Group, a multi-agency working group that has been in existence since 2009. Participants in the working group include JBLM, NRCS, USFS, WDNR, WDFW, WSDOT, University of Washington researchers, CNLM, and other Federal, State, county, city, nongovernmental, private entities and individuals, each with knowledge and expertise on the Mazama pocket gopher, its conservation, habitat, and restoration needs. Designation of the Rocky Prairie NAP as critical habitat would therefore likely yield no additional benefit to the outputs of the working groups, their members, or their ease of coordination. The active, long-term restoration efforts already in place at this site thus reduce the potential benefit of critical habitat.

Another potential benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This can help focus and promote conservation efforts by identifying areas of high conservation value for the Tenino pocket gopher. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Tenino pocket gopher or its habitat that reaches a wider audience can be of benefit to future conservation efforts. During the spring of 2013 alone, the Service hosted two prairie workshops, one public hearing, and two local Thurston County events attended by nearly 1,000 people to publicize and educate local community members of the species' declining distribution, and the threat to the native flora and fauna found on western Washington prairies. An important conservation measure that is gained through these outreach networks is the ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material, and encouraging landowners to conduct prairie restoration activities on their properties. In early 2013 the Service also held two workshops specifically to answer questions about the proposed listing of the Mazama pocket gopher and proposed critical habitat designation; one designed for Federal, State, and County partners and one for private parties. Additional events are expected to occur in the future, and designation of the site as critical habitat is not expected to increase the number of such meetings or improve their outcomes; the additional educational value of critical habitat is therefore minimized.

The incremental benefit of inclusion is reduced because of the long-standing management planning and implementation efforts for the site, which presently benefit the conservation of the Tenino pocket gopher and its habitat, as discussed above. In addition, the NAP restoration plan provides greater protection to Tenino pocket gopher habitat than would the designation of critical habitat, since the planning effort is intended to actively improve the structure and composition of the habitat (critical habitat does not carry any requirement for habitat restoration or improvement, only the avoidance of destruction or adverse modification). Therefore, designation of critical habitat at Rocky Prairie NAP would not provide any additional management focus or benefits for the species or its habitat that is not already occurring at this location under Washington State management authority, through plans developed through our recovery program, or through the DOD ACUB funding authority, which has provided funding support for many of our local protected prairies, including Rocky Prairie NAP.

Benefits of Exclusion—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP—The benefit of excluding Rocky Prairie NAP from critical habitat is relatively greater. The WDNR HCP has served as a model for several completed and ongoing HCP efforts, including the Washington State Forest Practices HCP. The Service accrues a significant benefit from encouraging the development of such HCPs and other voluntary conservation agreements in cooperation with non-Federal partners. Since issuance of the WDNR State Trust Lands HCP, a number of land transactions and land exchanges within the HCP area have occurred. These transactions have included creation of additional NRCAs and NAPs (land designations with a high degree of protection), and have also included large land exchanges and purchases that have changed the footprint of the HCP. These land-based adjustments have facilitated better management on many important parcels and across larger landscapes than would otherwise have been possible.

HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs ensure the long-term protection and management of a covered species and its habitat. In addition, funding for such management is ensured through the Implementation Agreement. Such assurances are typically not provided by section 7 consultations, which, in contrast to

HCPs, often do not commit the project proponent to long-term, special management practices or protections. Thus, a section 7 consultation typically does not afford the lands it covers similar extensive benefits as an HCP. The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while meeting the needs of the applicant. In this case, substantial information has been developed from the research, monitoring, and surveys conducted by WDNR. Therefore, exclusion is a benefit because it maintains and fosters the development of biological information and innovative solutions.

The Washington DNR has requested that the lands covered by this HCP be excluded from critical habitat. This HCP is located in key landscapes across the State, and the NAP at Rocky Prairie—which is covered by the HCP—contributes meaningfully to the recovery of the Tenino pocket gopher. We consider the acknowledgement of the State's positive contributions by relieving them of any additional regulatory burden associated with critical habitat, whether real or perceived, to be a significant benefit of exclusion. Excluding the area covered by the WDNR State Trust Lands HCP provides significant benefit in terms of sustaining and enhancing the partnership between the Service and the State of Washington, with positive consequences for conservation of the Tenino pocket gopher as well as other species that may benefit from such partnerships in the future. Because the majority of occurrences of endangered or threatened species are on non-Federal lands, partnerships with non-Federal landowners and land managers are vital to the conservation of listed species. Therefore, the Service is committed to maintaining and encouraging such partnerships through the recognition of positive conservation contributions.

By excluding these lands, we preserve our current private and local conservation partnerships and encourage additional conservation such partnerships in the future. Exclusion of these areas will additionally help us maintain an important and successful partnership with other Washington State conservation partners (via the South Puget Sound Prairie Landscape Working Group and the Mazama Pocket Gopher Working Group) who collectively organized themselves in 2009 to include the Mazama pocket gopher in their management and restoration plans, as well as encouraging others to join in these and other conservation partnerships. We consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh Benefits of Inclusion—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP—The Secretary has determined that the benefits of excluding the WDNR-managed Rocky Prairie NAP from the designation of critical habitat for the Tenino pocket gopher outweigh the benefits of including these areas in critical habitat. The benefits of including the 38 ac (16 ha) of Washington State lands at the Rocky Prairie NAP and covered under the State Trust Lands HCP in critical habitat are relatively small. Any Federal nexus on this land would likely result from actions to enhance or maintain favorable habitat conditions, undertaken under the HCP or granting of Federal funds for beneficial management of prairie-associated species, such as the Tenino pocket gopher. If a Federal nexus were to occur, it would most likely be with the Service or DOD, and their actions will be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Tenino pocket gopher, or other prairie-associated species. This type of management would benefit the Tenino pocket gopher if focused on the maintenance of open, short-statured vegetative conditions that the pocket gopher typically occupies. As the action being consulted on is itself intended to benefit prairie-associated species, including the Tenino pocket gopher, the incremental benefit to the Tenino pocket gopher would likely be minimal, as we would not expect additional conservation measures to be recommended as the result of section 7 consultation required by this habitat management funding.

The South Puget Sound Prairie Landscape Working Group partnership, which contributes to management planning on the NAP, and the Mazama Pocket Gopher Working Group, which also provides further species management guidance, would not be additionally benefitted due to inclusion of these areas in critical habitat. These working groups are well-established, cohesive, and productive groups that have yielded and will continue to yield positive conservation outcomes for the Mazama pocket gopher on south Puget Sound prairies including Rocky Prairie NAP, regardless of the designation of critical habitat. The conservation strategies of the NAP restoration plan and the ongoing adaptive habitat restoration strategies are designed to protect and enhance habitat for the Mazama pocket gopher and other prairie-associated species. These strategies include species-specific management actions to support the Tenino pocket gopher, avoidance and minimization measures, and monitoring requirements to ensure proper implementation, which further minimizes the benefits of including these areas in a designation of critical habitat.

In contrast, the benefits derived from excluding areas covered the Washington State Trust Lands HCP and Rocky Prairie NAP management plan, thus enhancing our partnership with the State of Washington and other Washington State conservation partners, are substantial. The WDNR State Trust Lands HCP provides for significant conservation and management within geographical areas that contain the physical or biological features essential to the conservation of the Tenino pocket gopher, and helps achieve recovery of this species through the conservation measures of the HCP. Exclusion of these lands from critical habitat will help foster the partnership we have developed with WDNR, through the development and continuing implementation of the HCP and the area management plans. It will also help us maintain and foster important and successful partnerships with our Washington State conservation partners in the South Puget Sound Prairie Landscape Working Group and the species-specific Mazama Pocket Gopher Working Group, which share significant overlap and, by doing so, bridge ecosystem management strategies and species-specific conservation actions. Both WDNR and the working groups have encouraged others to join in conservation partnerships as well, and exclusion of these lands will encourage the future development of such beneficial conservation partnerships. The recognition of the positive contributions made through the Washington State Trust Lands HCP through exclusion from critical habitat will likely encourage the development of future HCPs for the benefit of additional listed species and their habitats, with far-reaching benefits for conservation. The positive conservation benefits that may be realized through the maintenance of these existing partnerships, as well as through the encouragement of future such partnerships, and the importance of developing such partnerships on non-

Federal lands for the benefit of listed species, are such that we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion for Rocky Prairie NAP.

Exclusion Will Not Result in the Extinction of the—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP—We have determined that exclusion of approximately 38 ac (16 ha) of the Rocky Prairie NAP, which is covered under the WDNR State Trust Lands HCP, will not result in the extinction of the Tenino pocket gopher. Actions covered by the HCP will not result in extinction of the Tenino pocket gopher because the NAP is set aside as a conservation site expressly for the purpose of preserving and restoring the native prairie ecosystem. The State Trust Lands HCP provides for the future needs of the Tenino pocket gopher by restoring, maintaining, and creating habitat within these areas, and supporting management of Mazama pocket gopher habitat and that of other rare species through HCP compliance. Additionally, the NAP operates under a specific management plan to guide long-term site management, and a more recently developed restoration plan to direct the habitat enhancement activity. For these reasons, we find that exclusion of the Rocky Prairie NAP covered by the WNDR State Trust Lands HCP will not result in extinction of the Tenino pocket gopher. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation a portion of the proposed critical habitat Subunit 1–D that is covered by the WDNR State Trust Lands HCP as identified above, totaling about 38 ac (16 ha).

Scatter Creek Wildlife Area and Adjacent Private Land, and the West Rocky Prairie Wildlife Area

We are excluding 767 ac (310 ha) of Washington State lands designated as Wildlife Areas, and 98 ac (40 ha) of private land inholding, from this critical habitat designation under section 4(b)(2) of the Act. These Wildlife Areas are known as the Scatter Creek Wildlife Area (633 ac (256 ha)) (proposed subunit 1–G, Scatter Creek, critical habitat for the Yelm pocket gopher) and West Rocky Prairie Wildlife Area (134 ac (54 ha)) (proposed subunit 1–F, West Rocky Prairie, critical habitat for the Olympia pocket gopher), both owned and managed by WDFW. The private inholding is associated with the Scatter Creek Wildlife Area (proposed subunit 1–G, Scatter Creek) and is managed by WDFW identically to the Wildlife Area itself. Wildlife Areas provide a variety of habitat for endangered and threatened species, including the Mazama pocket gopher, and are managed for that purpose, among others. Each Wildlife Area operates under a Wildlife Area Management Plan specific to the unique management needs of that area. Species-specific management plans have been written for a subset of the Wildlife Areas, including Scatter Creek and West Rocky Prairie. Wildlife Areas are purchased to provide the highest benefit to fish, wildlife, and the public. In addition, WDFW is currently developing an HCP for lands in Wildlife Areas with the help of the Service, which will incorporate a landscape-level approach to managing at-risk species, including the Mazama pocket gopher.

WDFW developed a management plan for the Scatter Creek Wildlife Area and the adjacent private land in 2010 that specifically details the habitat needs of the Mazama pocket gopher and continues to refine habitat conservation measures through collaboration with local conservation partners from the Service, WDNR, the University of Washington, and CNLM (Hays 2010). WDFW also has a draft management plan to guide prairie management at the West Rocky Prairie Wildlife Area (WDFW 2011), which will be this area's guiding document until finalized. Prior to the management plan being developed, the site was managed for an array of species and recreational activities, including restoration actions designed to improve the prairie conditions for the Mazama pocket gopher, mardon skipper butterfly (*Polites mardon*), and Taylor's checkerspot butterfly (*Euphydryas editha taylori).* The Scatter Creek Wildlife Area, the adjacent private lands, and the West Rocky Prairie Wildlife Area are currently occupied by Mazama pocket gophers, the Yelm pocket gopher at Scatter Creek and Olympia pocket gopher at West Rocky Prairie. The West Rocky Prairie Wildlife Area was the recipient site for a translocation study conducted using the Olympia pocket gopher, despite being within the historical range of the Tenino pocket gopher.

Benefits of Inclusion—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area—We find there are minimal benefits to including these areas in critical habitat. As discussed above, the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This may, in some instances, lead to different results and different regulatory requirements. Thus, critical habitat designations have the potential to provide greater benefit to the recovery of a species than would listing alone.

The inclusion of these covered lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not result in the destruction or adverse modification of critical habitat. The granting of Federal funds for beneficial management of prairie-associated species such as the Mazama pocket gopher would provide the only foreseeable Federal nexus for these non-Federal lands. WDFW has received funding specifically to improve habitat features at these sites such as vegetation composition, and structure to support native prairie associated species. These improvements to native prairie vegetative structure and composition also benefit the Mazama pocket gopher. This funding will support activities through 2017. Funding is also provided to WDFW from the DOD ACUB program, which is a high priority program for DOD. Leadership at DOD has confirmed that the program will continue into the future (Jeff Foster, pers. comm. 2013). Because the primary threats to the

Mazama pocket gophers include habitat loss and degradation, any potential formal consultations under section 7 of the Act will evaluate the effects of the action on the capability of the habitat to support the life history requirements for the listed pocket gophers regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the requirements in an analysis for an adverse modification determination on land included in critical habitat. The additional consideration of adverse modification of critical habitat is therefore unlikely to result in a different outcome. In addition, for Scatter Creek, the adjoining private land, and West Rocky Prairie, the action most likely to be consulted on is itself intended to benefit prairie-associated species, therefore the outcome of consultation is unlikely to provide a significant additional benefit to the Mazama pocket gopher as a result of critical habitat designation. Thus, for the reasons described above, the potential regulatory benefits of critical habitat in this case are limited.

The Service has coordinated with WDFW on conservation actions to be implemented for the Mazama pocket gopher at the Scatter Creek Wildlife Area, the adjoining private land, and West Rocky Prairie Wildlife Area in south Thurston County, Washington. As with the NAPs in Thurston County, management of the prairie Wildlife Areas in Thurston County is guided in large part by the South Puget Sound Prairie Landscape Working Group, which was established in 1994, to promote and improve the management and planning of conservation actions on south Puget Sound prairies and associated habitats. This is a well-established group that is expected to continue its coordination efforts into the foreseeable future. We conclude that designation of these Wildlife Areas as critical habitat would yield no additional benefit to the outputs of the South Puget Sound Prairie Landscape Working Group, its members, or their ease of coordination, as the active, long-term efforts of this group are expected to continue regardless of the designation of critical habitat. Management of Scatter Creek Wildlife Area and adjacent private land receives oversight from the Mazama Pocket Gopher Working Group, a multi-agency working group that has been in existence since 2009. Participants in the working group include JBLM, NRCS, USFS, WDNR, WDFW, WSDOT, University of Washington researchers, CNLM, and other Federal, State, county, city, nongovernmental, private entities and individuals, each with knowledge and expertise on the Mazama pocket gopher, its conservation, habitat, and restoration needs. The incremental benefit from designating critical habitat for the Mazama pocket gopher in these areas is further minimized because of the long-standing management planning efforts that have been implemented and planned for the two Wildlife Areas and the associated private land inholding, which is managed using the same management methods as the Wildlife Areas. These properties have implemented management for the conservation of prairie habitat and prairie-associated species. Each Wildlife Area focuses their management to promote the improvement of native prairie vegetative composition, which provides ample food resources for the Mazama pocket gopher as well as all of the essential physical or biological features to support the species.

Management planning for each of the Wildlife Areas has established a track record of activity focused on enhancing native prairie composition and structure. The conservation measures regularly implemented at the Wildlife Areas have recently been refocused through the development of site specific restoration plans for each location to benefit the Mazama pocket gopher and other prairie-associated species (Hays 2013). The restoration being implemented and the guidance from the management plan provides greater protection to Mazama pocket gopher habitat than would the designation of critical habitat, since the planning effort is intended to actively improve the composition and structure of the habitat (the designation of critical habitat does not require any active management). Therefore, the existing management at this site will provide greater benefit than the regulatory designation of critical habitat, which only requires the avoidance of destruction or adverse modification, and does not require the creation, improvement, or restoration of habitat.

Another potential benefit of including Wildlife Area lands and the adjacent private inholding in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This can help focus and promote conservation efforts by other parties by identifying areas of high conservation value for the Mazama pocket gopher. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Mazama pocket gopher or its habitat that reaches a wider audience can be of benefit to future conservation efforts. During the spring of 2013 alone, the Service hosted two prairie workshops, one public hearing, and two local Thurston County events attended by nearly 1,000 people to publicize and educate local community members of the species' declining distribution, and the threat to the native flora and fauna found on western Washington prairies. An important conservation measure that is gained through these outreach networks is the ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material, and encouraging landowners to conduct prairie restoration activities on their properties. In early 2013 the Service also held two workshops specifically to answer questions about the proposed listing of the Mazama pocket gopher and proposed critical habitat designation; one designed for Federal, State, and County partners and one for private parties. Additional events are expected to occur in the future, and designation of the Wildlife Areas as critical habitat is not expected to increase the number of such meetings or improve their outcomes. Therefore, in this case the incremental benefit of critical habitat in terms of education value is negligible.

The incremental benefit of inclusion is minimized because of the long-standing management planning efforts for each Wildlife Area, and the associated private inholding, as discussed above. In addition, the restoration plans provide greater protection to Mazama pocket gopher habitat than does the designation of critical habitat, since the planning effort is intended to actively improve the native prairie vegetative component of the habitat. Therefore, designation of critical habitat on these areas would not provide any additional management focus that is not already occurring at these locations under Washington State management authority, through plans developed through the Service's recovery program, or through the DOD ACUB funding authority which has provided financial support for many of our local protected prairies, including these Wildlife Areas. For these reasons, we find that the benefit of including these particular areas in critical habitat is relatively small.

Benefits of Exclusion—Scatter Creek Wildlife Area and Adjacent Private

Land; West Rocky Prairie Wildlife Area—The benefits of excluding these two Wildlife Areas and the associated private inholding from designated critical habitat are relatively greater. We have worked to create and maintain a close partnership with WDFW through regular coordination and the development of the Wildlife Area management plans, not only for Scatter Creek and West Rocky Prairie Wildlife Areas, but other Wildlife Areas as well, and we are currently collaborating with WDFW to develop an HCP that would cover all of their Wildlife Areas. The management plans contain provisions that will improve the conservation status of the Mazama pocket gopher. Measures contained in the management plans are consistent with recommendations from the Service for the conservation of the Mazama pocket gopher, and will afford benefits to these subspecies and their habitat.

Excluding these Wildlife Areas and associated private inholding from critical habitat designation will provide significant benefits in terms of sustaining and enhancing the excellent partnership between the Service, WDFW, and the private landowner, as well as other partners who participate in prairie management decision-making, resulting in positive and ongoing consequences for conservation. The willingness of WDFW and the private landowner to undertake conservation efforts for the benefit of the Mazama pocket gopher and to work with the Service to develop new management plans for the species will continue to reinforce those conservation efforts and our partnership, which will support the recovery process for the Mazama pocket gopher. We consider this voluntary partnership in conservation vital to our understanding of the status of the Mazama pocket gopher on WDFW lands in Thurston County, and necessary for us to implement recovery actions such as habitat protection, restoration, and beneficial management actions for the species. Furthermore, exclusion from critical habitat could have the benefit of encouraging other landowners to engage in similar conservation partnerships and efforts with positive outcomes for the conservation of listed species.

In addition, our understanding of the historical range of each the Mazama pocket gopher subspecies has grown as a result of the collaboration with WDFW biologists, highlighting the potential effects of the translocation study that moved the Olympia pocket gopher into the historical range of the Tenino pocket gopher. Although the West Rocky Prairie Wildlife Area was proposed as critical habitat for the Olympia pocket gopher because the subspecies presently occupies that area, the site is not within the historical range of that subspecies, nor is there currently any intent by the Service to utilize that site as part of the recovery effort for the Olympia pocket gopher. Therefore, we do not consider this area, even though technically occupied by the Olympia pocket gopher, to be essential to the conservation of the subspecies. Exclusion of the West Rocky Prairie Wildlife Area from critical habitat will allow us greater flexibility in exercising future recovery actions at this site. If the West Rocky Prairie Wildlife Area were included as a critical habitat subunit for the Olympia pocket gopher, in an area outside of its historical range but within that of the Tenino pocket gopher, our ability to recover the Tenino pocket gopher at the site would be constrained. Exclusion of the West Rocky Prairie Wildlife Area would allow a wider range of recovery options for the Tenino pocket gopher, a subspecies for which a single isolated population is currently known to exist, and which is therefore highly dependent upon successful recovery efforts at appropriate sites within its historical range.

As described above, the designation of critical habitat could have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of redundant government regulation. If lands within the area managed by WDFW for the benefit of the Mazama pocket gopher are designated as critical habitat, it could have a dampening effect on our continued ability to seek new partnerships with future participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement various conservation actions (such as SHAs, HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants or address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise.

Excluding these areas from critical habitat designation provides significant benefit in terms of sustaining and enhancing the partnership between the Service, the State of Washington, and the private landowner, with positive consequences for conservation for the Mazama pocket gopher as well as other species that may benefit from such partnerships in the future. Because the majority of occurrences of endangered or threatened species are on non-Federal lands, conservation partnerships with non-Federal landowners and land managers are vital to the conservation of listed species. Therefore, the Service is committed to maintaining and encouraging such partnerships through the recognition of positive conservation contributions. Our WDFW conservation partners made a commitment by including the Mazama pocket gopher in their Wildlife Area implementation plan, and they have engaged with and encouraged others to join in conservation partnerships, such as the South Puget Sound Prairie Landscape Working Group and the Mazama Pocket Gopher Working Group. In addition, the private landowner serves as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other private parties in other locations for the benefit of listed species; this is a significant benefit, since the majority of listed species occur on private lands. We consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh Benefits of Inclusion–Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area—The Secretary has determined that the benefits of excluding these prairie Wildlife Areas (Scatter Creek and the adjacent private land, and West Rocky Prairie) from the designation of critical habitat for the Yelm and Olympia pocket gopher outweigh the benefits of including these areas in critical habitat. The regulatory and informational benefits of including these 767 ac (310 ha) of Washington State Wildlife Areas and associated 98 ac (40 ha) of private land inholding are minimal. As noted above, a potential benefit of inclusion would be the requirement that Federal agencies ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this potential benefit is limited because if a Federal nexus were to occur, it would most likely be with the Service or DOD, and the proposed actions would be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Mazama pocket gopher, or other prairie-associated species from which the Mazama pocket gopher would benefit. This type of proactive management, if focused on the maintenance of open, short-statured vegetative conditions that the Mazama pocket gopher typically occupies, will outweigh any benefit from the regulatory designation of critical habitat,

which only requires the avoidance of adverse modification and does not require the creation, improvement, or restoration of habitat. The incremental benefit to the Mazama pocket gopher from the small amount of resultant section 7 consultation required by this habitat management funding is likely minimal, especially considering that the action being consulted on is itself intended to benefit prairie-associated species, including the Mazama pocket gopher.

The South Puget Sound Prairie Landscape Working Group partnership and the Mazama Pocket Gopher Working Group, which assists with guiding management on the Wildlife Areas, would not be additionally benefitted due to inclusion of the Wildlife Areas in critical habitat, as this is a well-established, cohesive, and productive group that has yielded, and will continue to yield, positive conservation outcomes for the Mazama pocket gopher on south Sound prairies, including these Wildlife Areas, regardless of critical habitat. The conservation strategies of each Wildlife Area management plan are crafted to protect and enhance habitat for the Mazama pocket gopher. These plans include species-specific management actions to support the Mazama pocket gopher, avoidance and minimization measures, and monitoring requirements to ensure proper implementation, which further minimizes the benefits of including these areas in a designation of critical habitat.

In contrast, the benefits accrued from excluding areas within the Scatter Creek Wildlife Area, West Rocky Prairie Wildlife Area, and the associated private inholding, are substantial. Excluding the West Rocky Prairie Wildlife Area will improve recovery options for the Tenino pocket gopher by allowing greater flexibility in selecting which subspecies is ultimately best conserved at the West Rocky Prairie Wildlife Area, while inclusion of West Rocky Prairie Wildlife Area would imply that the Service intends to recover the Olympia pocket gopher at that site; an area within the historical range of the Tenino pocket gopher, the subspecies with the most highly restricted range of the four subspecies listed.

A significant benefit of excluding these lands is that it will help us maintain and foster an important and successful partnership with our Washington State conservation partners who have already chosen to include the Mazama pocket gopher in Wildlife Area management plans. They have encouraged others to join in conservation partnerships as well such as the Mazama Pocket Gopher Working Group. Recognizing the important contributions of our conservation partners through exclusion from critical habitat helps to preserve these partnerships, and helps foster future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands; we consider this to be a substantial benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in the Extinction of the Species—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area—We have determined that exclusion of approximately 633 ac (256 ha) of the Scatter Creek Wildlife Area owned by WDFW and 98 ac (40 ha) of private land that is managed by WDFW in the same way as Scatter Creek Wildlife Area, and 134 ac (54 ha) of the West Rocky Prairie Wildlife Area, lands covered by management plans vetted by several conservation partners working in south Puget Sound, will not result in the extinction of the Yelm or Olympia pocket gophers, respectively. Actions covered by the Wildlife Area management plans will not result in extinction of the Yelm or Olympia pocket gophers because the plans provide for the needs of the species by protecting, restoring, and enhancing all the known occupied Mazama pocket gopher habitat under the jurisdiction of the State; committing to the enhancement and recruitment of additional habitat through management on each Wildlife Area to support meta-population structure within the Wildlife Areas; and implementing species-specific conservation measures designed to avoid and minimize impacts to Mazama pocket gophers. Further, for projects having a Federal nexus and potentially affecting the Mazama pocket gopher in occupied areas, the jeopardy standard of section 7 of the Act, coupled with protection provided by the voluntary Mazama pocket gopher conservation plans that are available to landowners if they so choose, would provide a level of assurance that this species will not go extinct as a result of excluding these lands from the critical habitat designation. Additionally, each of the Wildlife Areas has a specific management plan to guide long-term management to direct the habitat enhancement activities at each location. The species is also protected from take under section 9 of the Act on all properties where the species is found. Federal agencies would be required to minimize the effects of incidental take, and would be encouraged to avoid incidental take through the section 7 consultation process. For these reasons, we find that exclusion of these lands covered by these specific Wildlife Area management plans will not result in extinction of the Yelm or Olympia pocket gophers. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation portions of the proposed critical habitat Subunits 1–F and 1–G that are owned or managed by WDFW, totaling about 865 ac (350 ha).

Colvin Ranch Grassland Reserve Program Management Plan

Private lands totaling 378 ac (153 ha) that are covered under an NRCS Grassland Reserve Program Management Plan are excluded from proposed Subunit 1–H in this critical habitat designation under section 4(b)(2) of the Act. The Service has coordinated directly with NRCS regarding conservation actions that are being implemented on the portion of Rock Prairie that lies south of Old Hwy 99 (hereafter known as Colvin Ranch). Colvin Ranch has been managed for approximately 10 years under a long-term Grassland Reserve Program Management Plan (GRP management plan), and 530 ac (215 ha) of the property is conserved in perpetuity by a conservation easement held by NRCS, of which a portion (378 ac (153 ha)) is excluded from critical habitat. Under the GRP management plan, the landowners manage their land using a livestock grazing guideline for western Washington prairies developed in partnership with NRCS. The GRP management plan uses intensive livestock grazing as the primary tool to minimize the invasion of prairies by Douglas fir and other woody native and nonnative shrub species. Additionally, pasture grasses that are often in competition for resources with the native prairie species are consumed by the livestock, which makes room for native prairie species and restores prairie composition, structure and function. All of these practices provide a positive conservation benefit for the Yelm pocket gopher and its habitat. Colvin Ranch is currently occupied by the Yelm pocket gopher.

Benefits of Inclusion—Colvin Ranch Grassland Reserve Program Management Plan—We find there are minimal benefits to including Colvin Ranch in critical habitat. As discussed above, the primary effect of designating any particular area as critical habitat is

the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. Colvin Ranch is currently occupied by the Yelm pocket gopher; therefore a Federal action with potential adverse effects would trigger both a jeopardy analysis and an analysis of adverse modification, should critical habitat be designated. The benefits derived from including critical habitat for this property would most likely be derived from the potential Federal nexus resulting from the granting of Federal funds intended to manage the lands to benefit prairie associated species, such as the Yelm pocket gopher. However, we anticipate that section 7 consultation related to habitat management funding is not likely to provide much added benefit to the species, since the action being consulted on is itself intended to benefit prairie-associated species, including the Yelm pocket gopher.

Another benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This can help focus and promote conservation efforts by other parties by identifying areas of high conservation value for the Yelm pocket gopher. Designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Yelm pocket gopher or its habitat that reaches a wider audience can be of benefit to future conservation efforts.

In this case, however, the potential educational benefit of critical habitat is reduced due to the extensive community outreach that is already taking place. During the spring of 2013 alone, the Service hosted four prairie focused workshops and one public hearing specifically related to the proposed listing and designation of critical habitat. We also participated in two local prairie education events in Thurston County attended by nearly 1,000 people to publicize and educate local community members of the declining distributions and threats to the native flora and fauna found on the west-side prairies. One of these events is an annual event that was again hosted in 2013 at Colvin Ranch, as it is each year. An important conservation measure gained through these outreach networks is our ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material and the benefit derived from encouraging landowners to conduct prairie restoration activities on their own properties. In early 2013 the Service also held two workshops specifically to answer questions about the proposed listing of the Mazama pocket gopher and proposed critical habitat designation; one designed for our Federal, State, and County partners and one for private parties. Additional events are expected to occur in the future, and designation of Colvin Ranch as critical habitat is not expected to increase the number of such meetings or improve their outcomes. As Colvin Ranch is already serving as a center of educational information regarding the conservation of prairie habitats and their associated species, including the Yelm pocket gopher, any potential additional benefit stemming from the designation of critical habitat on this property is negligible.

The incremental benefit from designating critical habitat for the Yelm pocket gopher is further minimized due to the long-standing management planning efforts implemented on Colvin Ranch. The property owner has implemented management for the conservation of prairie habitat that provides a diversity of native prairie vegetation for the Yelm pocket gopher, and the land itself contains all of the essential physical or biological features to support the Yelm pocket gopher. The implementation of the GRP management plan for Colvin Ranch has established a track record of activity focused on enhancing prairie plant composition and structure. The implementation of Colvin Ranch GRP management plan provides greater protection to Yelm pocket gopher habitat than the designation of critical habitat since the management is intended to improve the habitat structure and composition of the several native prairie-dominated paddocks on Colvin Ranch (critical habitat designation does not require active management, only avoidance of destruction or adverse modification). In many cases, this work is accomplished without Federal funding, which highlights the landowner's willingness to continue the partnership.

Colvin Ranch has been an active working ranch in southern Thurston County since 1865. Originally over 3,000 ac (1,214 ha) in size, it is now approximately 1,000 ac (405 ha). Grazing systems have been modified dramatically during this time period. Colvin Ranch required an improvement to the infrastructure in order to accomplish the goal of improving native prairie composition on the ranch through intensive grazing, a practice of grazing greater numbers of cows on specific pastures (paddocks) for shorter time periods. Miles of fencing were erected to partition the fields into intensively managed paddocks, and in each paddock a water source was made available. The intensive management regime requires that livestock be moved often according to vegetation height or soil condition changes specified in the GRP management plan. The Colvin Ranch has been partitioned into 35 paddocks, with nearly 300 ac (120 ha) managed for the production of native prairie plant composition. Colvin Ranch is presently being managed for the benefit of prairie species, including the Yelm pocket gopher and its habitat; we have no information to suggest that the designation of critical habitat on this property would generate any appreciable added benefit to the already positive management efforts being implemented.

Benefits of Exclusion—Colvin Ranch Grassland Reserve Program Management Plan—The benefits of excluding this private property from designated critical habitat are relatively greater. We have developed a close partnership with the landowner and NRCS through regular coordination and outreach activities, using Colvin Ranch as an example of land uses that are compatible with prairie conservation. The GRP management plan provisions that will improve the conservation status of the Yelm pocket gopher include novel grazing practices which have resulted in the dramatic increase and maintenance of native prairie vegetation. Measures contained in the GRP management plan are consistent with recommendations from the Service for the conservation of the Yelm pocket gopher, and will afford benefits to the species and its habitat. The Service accrues a significant benefit from encouraging the development of such voluntary conservation agreements in cooperation with non-Federal partners. Because the majority of occurrences of endangered or threatened species are on non-Federal lands, partnerships with non-Federal landowners and land managers are vital to the conservation of listed species. Therefore, the Service is committed to maintaining and encouraging such partnerships through

the recognition of positive conservation contributions.

Excluding this private property from critical habitat designation will provide a significant benefit in terms of sustaining and enhancing the excellent partnership between the Service, NRCS, and the private landowner, as well as other partners who participate in prairie management decision-making, with positive consequences for conservation. The willingness of the private landowner to undertake conservation efforts for the benefit of the Yelm pocket gopher, and work with NRCS and the Service to develop and employ conservation actions, will continue to reinforce those conservation efforts and our partnership, which contribute toward achieving recovery of the Yelm pocket gopher. We consider this voluntary partnership in conservation vital to the development of our understanding of the status of the Yelm pocket gopher on agricultural lands in western Washington, and necessary for us to implement recovery actions such as habitat protection, restoration, and beneficial management actions for this species. In addition, exclusion will provide the landowner with relief from any potential additional regulatory burden associated with the designation of critical habitat, whether real or perceived, which we consider to be a significant benefit of exclusion in acknowledging the positive contributions of our proven conservation partners.

The designation of critical habitat could have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of redundant regulation. Designation of critical habitat on private lands that are managed for the benefit of prairie species, including the Yelm pocket gopher, could have a dampening effect on our continued ability to seek new partnerships with future participants including States, counties, local jurisdictions, conservation organizations, and private landowners. Together, these parties can implement various cooperative conservation actions (such as SHAs, HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants and/or address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise. This private landowner made a commitment almost a decade ago to develop and implement this GRP management plan, which has restored much of Rock Prairie to habitat favorable to the Yelm pocket gopher, and they have engaged with and encouraged other parties, both public and private, to join in conservation partnerships. We believe Colvin Ranch would be less likely to encourage others to participate in similar grazing intensive ranching practices that restore habitat for Mazama pocket gophers if critical habitat were to be designated on this property. This private landowner serves as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other parties in other locations for the benefit of listed species. Most endangered or threatened species do not occur on Federal lands. As the recovery of these species will therefore depend on the willingness of non-Federal landowners to partner with us to engage in conservation efforts, we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

Benefits of Exclusion Outweigh Benefits of Inclusion—Colvin Ranch Grassland Reserve Program Management Plan—The Secretary has determined that the benefits of excluding the NRCS GRP managed prairies at Colvin Ranch from the designation of critical habitat for the Yelm pocket gopher outweigh the benefits of including these areas in critical habitat. The regulatory and informational benefits of including Colvin Ranch in critical habitat are minimal. Furthermore, any potential limited benefits of inclusion on the section 7 process are relatively unlikely to be realized, because a Federal nexus on these lands would rarely occur. If one were to occur, it would most likely be with the Service or NRCS, and their actions will be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Yelm pocket gopher and other prairie-associated species. This type of management is focused on the maintenance of open, short statured vegetative conditions that the Yelm pocket gopher requires to persist. Since any action likely to be the subject of consultation under the adverse modification standard on this area would be focused on providing positive habitat benefits for the Yelm pocket gopher, we find it unlikely that critical habitat would result in any significant additional benefit to the species. Furthermore, the benefits of including this area in critical habitat are reduced since significant management actions are already underway to restore the prairie habitat in this area for the benefit of rare prairie-associated species, including the Yelm pocket gopher. In this instance, the GRP management plan for Colvin Ranch contains provisions for protecting and restoring prairie habitat on Rock Prairie on which the Yelm pocket gopher relies and those provisions exceed the conservation benefits that would be afforded through section 7 consultation.

In contrast, the benefits derived from excluding Colvin Ranch are substantial. Excluding these lands will help us maintain and foster an important and successful partnership with this private landowner partner and NRCS. They have consistently supported stewardship of prairie habitat beneficial to the conservation of the Yelm pocket gopher and have consistently encouraged others to join in conservation partnerships as well. The exclusion of Colvin Ranch will serve as a positive conservation model, and provides encouragement for other private landowners to partner with the Service for the purpose of conserving listed species. The positive conservation benefits that may be realized through the maintenance of this existing partnership, as well as through the encouragement of future such partnerships, and the importance of developing such partnerships on non-Federal lands for the benefit of listed species, are such that we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

Exclusion Will Not Result in the Extinction of the Species—Colvin Ranch Grassland Reserve Program Management Plan—We have determined that exclusion of approximately 378 ac (153 ha) for the portion of the Rock Prairie critical habitat subunit managed under the GRP management plan implemented at Colvin Ranch will not result in extinction of the Yelm pocket gopher. Actions covered by the GRP management plan will not result in the extinction of the Yelm pocket gopher because the management implemented on Colvin Ranch has continually improved Yelm pocket gopher habitat during the time it has been practiced and management of the prairie paddocks will continue and be modified over time as new information is gained through systematically monitoring the results of their intensive grazing system. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat the 378 ac (153 ha) that are covered

under an NRCS Grassland Reserve Program Management Plan at Colvin Ranch identified in proposed Subunit 1–H.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal Agencies are not small entities and to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Mazama pocket gopher conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or

otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Therefore, this rule does not place an enforceable duty upon State, local, or Tribal governments, or on the private sector.

Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher in a takings implications assessment. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher does not pose significant takings implications.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Washington State. We received comments from WDFW and WDNR and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Olympia, Roy Prairie, Tenino, and Yelm subspecies of the Mazama pocket gopher, although final critical habitat is not designated for the Roy Prairie pocket gopher as a consequence of the exemption of DOD lands. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental

Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by any of the four Thurston/Pierce subspecies of the Mazama pocket gopher at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the four Thurston/Pierce subspecies of the Mazama pocket gopher that are essential for the conservation of the species. Therefore, we are not designating critical habitat for any subspecies of the Mazama pocket gopher on tribal lands.

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rulemaking are the staff members of the Washington Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.95, amend paragraph (a) by adding entries for the Olympia pocket gopher (*Thomomys mazama pugetensis*), Tenino pocket gopher (*Thomomys mazama tumuli*), and Yelm pocket gopher (*Thomomys mazama yelmensis*), in the same order that the species appear in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Olympia pocket gopher (*Thomomys mazama pugetensis*)

(1) Critical habitat for the Olympia pocket gopher in Thurston County, Washington, is depicted on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of the Olympia pocket gopher consist of two components:

(i) Friable, loamy, and deep soils, some with relatively greater content of sand, gravel, or silt, all generally on slopes less than 15 percent in the following soil series or soil series complex:

(A) Alderwood;
(B) Cagey;
(C) Everett;
(D) Godfrey;
(E) Indianola;
(F) Kapowsin;
(G) McKenna;
(H) Nisqually;
(I) Norma;
(J) Spana;
(K) Spanaway;
(L) Spanaway-Nisqually complex; and
(M) Yelm.

(ii) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series listed in paragraph (2)(i) of this entry that have:

(A) Less than 10 percent woody vegetation cover;

(B) Vegetative cover suitable for foraging by gophers. Pocket gophers' diets include a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers eat are known to include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris* spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium spp.* (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

(C) Few, if any, barriers to dispersal. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, highly cultivated lawns, inhospitable soil types or substrates, development and buildings, slopes greater than 35 percent, and open water.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, railroad tracks, and other paved areas) and the land on which they are located existing within the legal boundaries on May 9, 2014.

(4) *Critical habitat map unit.* Data layers defining map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's Internet site at *http://www.fws.gov/wafwo/mpg.html,* at *http://www.regulations.gov* (Docket No. FWS–R1–ES–2013–0021), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Olympia Airport Unit, Thurston County, Washington. Map follows:

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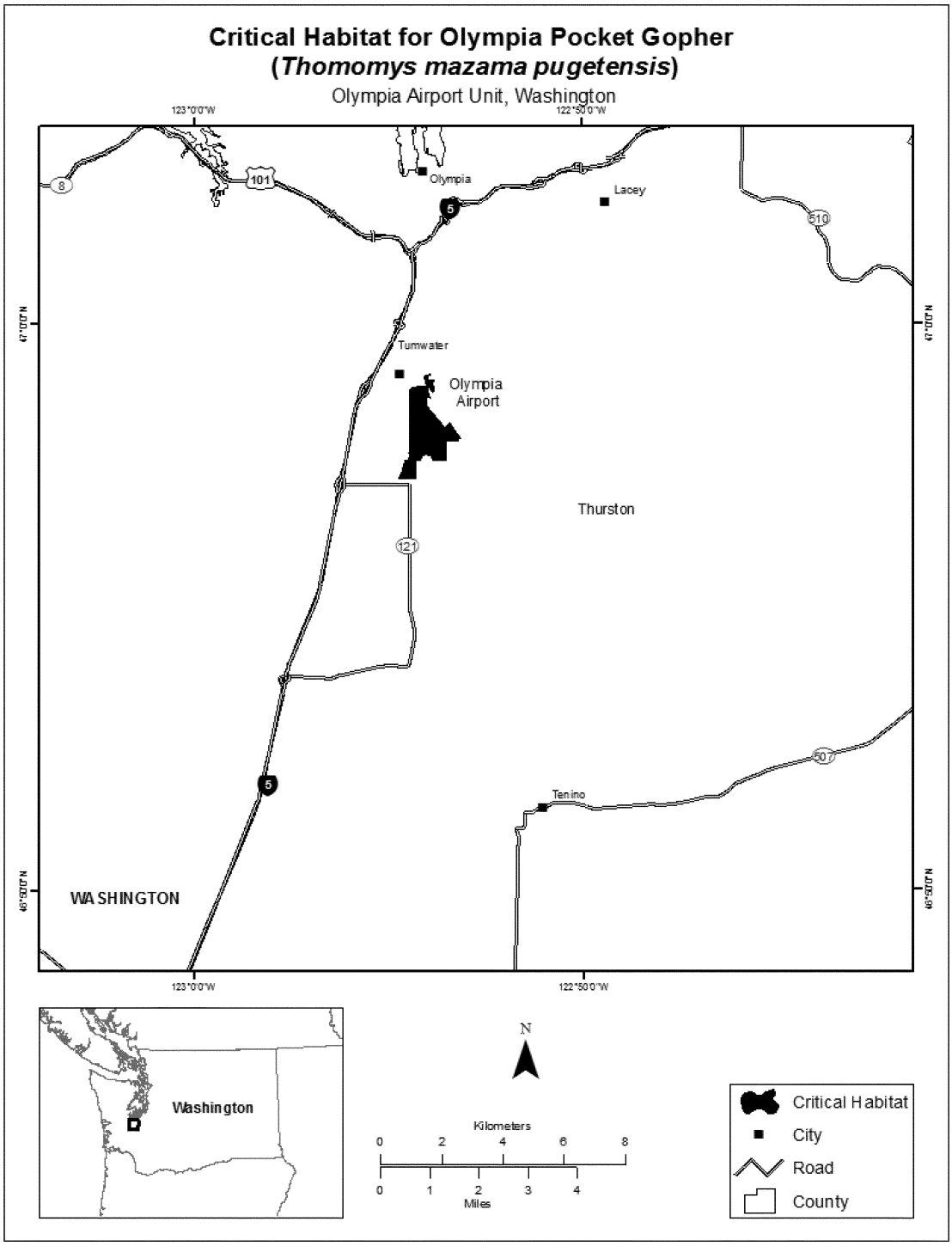

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Tenino Pocket Gopher (*Thomomys mazama tumuli*)

(1) Critical habitat for the Tenino pocket gopher in Thurston County, Washington, is depicted on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of Tenino pocket gopher consist of two components:

(i) Friable, loamy, and deep soils, some with relatively greater content of sand, gravel, or silt, all generally on slopes less than 15 percent in the following soil series or soil series complex:

(A) Alderwood;

(B) Cagey;

(C) Everett;

(D) Indianola;
(E) Kapowsin;
(F) Nisqually;
(G) Norma;
(H) Spanaway;
(I) Spanaway-Nisqually complex; and
(J) Yelm.

(ii) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series listed in paragraph (2)(i) of this entry that have:

(A) Less than 10 percent woody vegetation cover;

(B) Vegetative cover suitable for foraging by gophers. Pocket gophers' diets include a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers are known to eat include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris* spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium spp.* (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

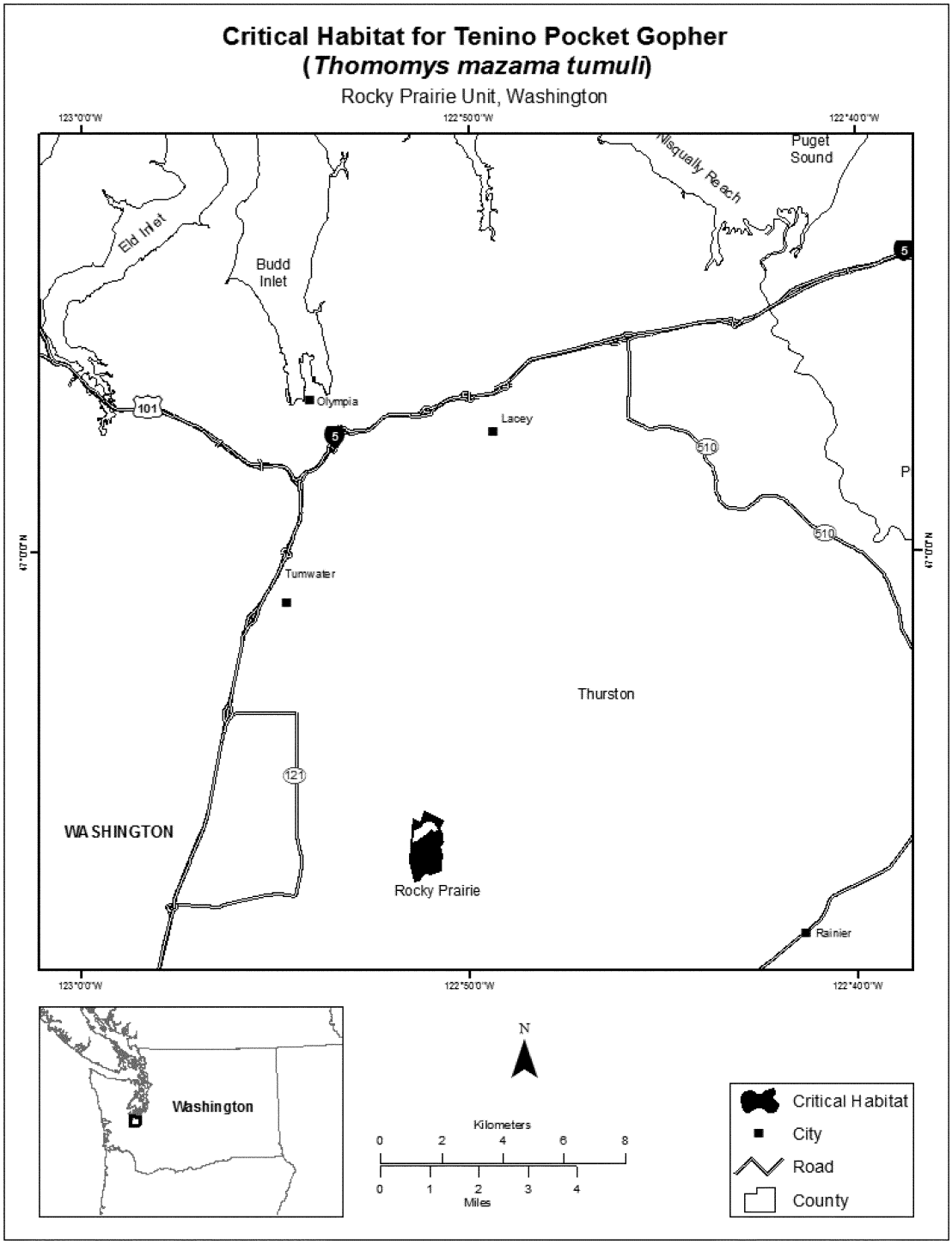
(C) Few, if any, barriers to dispersal. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, highly cultivated lawns, inhospitable soil types or substrates, development and buildings, slopes greater than 35 percent, and open water.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 9, 2014.

(4) *Critical habitat map unit.* Data layers defining the map unit were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The map in this entry establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's Internet site at *http://www.fws.gov/wafwo/,* at *http://www.regulations.gov* (Docket No. FWS–R1–ES–2013–0021), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Rocky Prairie Unit, Thurston County, Washington. Map follows:

BILLING CODE 4310–55–P



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Yelm Pocket Gopher (*Thomomys mazama yelmensis*)

(1) Critical habitat for the Yelm pocket gopher in Thurston County, Washington, is depicted on the map below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Yelm pocket gopher consist of two components:

(i) Friable, loamy, and deep soils, some with relatively greater content of sand, gravel, or silt, all generally on slopes less than 15 percent in the following soil series or soils series complex:

(A) Alderwood;
(B) Cagey;
(C) Everett;
(D) Godfrey;
(E) Indianola;
(F) Kapowsin;
(G) McKenna;
(H) Nisqually;
(I) Norma;
(J) Spanaway;
(K) Spanaway-Nisqually complex; and
(L) Yelm.

(ii) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series listed in paragraph (2)(i) of this entry that have:

(A) Less than 10 percent woody vegetation cover;

(B) Vegetative cover suitable for foraging by gophers. Pocket gophers' diets include a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers are known to eat include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris* spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium spp.* (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

(C) Few, if any, barriers to dispersal. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, highly cultivated lawns, inhospitable soil types or substrates, development and buildings, slopes greater than 35 percent, and open water.

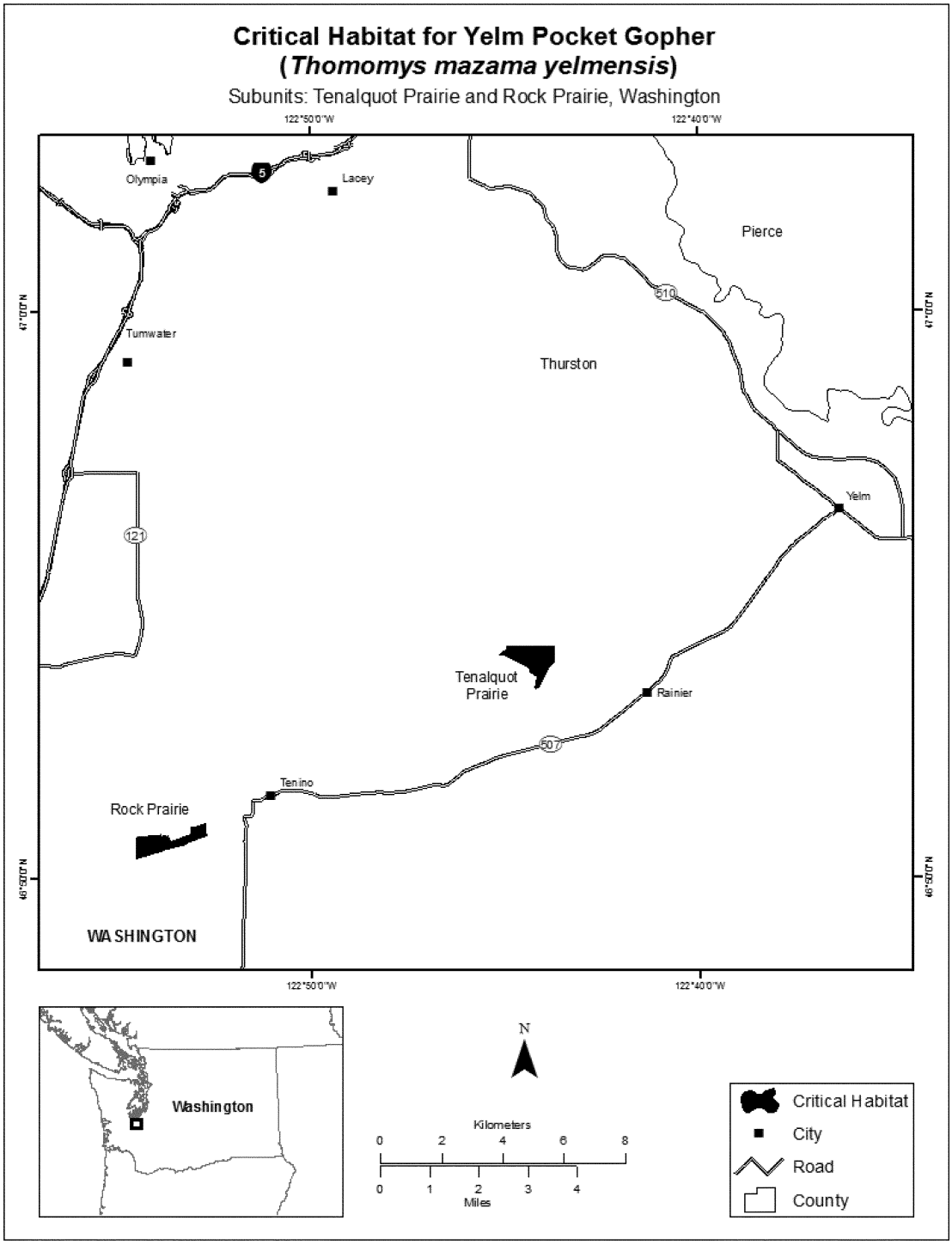
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 9, 2014.

(4) *Critical habitat map units.* Data layers defining the map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The map in this entry establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's Internet site at *http://www.fws.gov/wafwo/,* at *http://www.regulations.gov* (Docket No. FWS–R1–ES–2013–0021), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Tenalquot Prairie and Rock Prairie Subunits, Thurston County, Washington.

Map follows:

BILLING CODE 4310–55–P



* * * * *

Dated: March 27, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2014–07415 Filed 4–8–14; 8:45 am]

BILLING CODE 4310–55–C

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Olympia Pocket Gopher, Roy Prairie Pocket Gopher, Tenino Pocket Gopher, and Yelm Pocket Gopher, With Special Rule; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2012–0088; 4500030113]

RIN 1018–AZ17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Olympia Pocket Gopher, Roy Prairie Pocket Gopher, Tenino Pocket Gopher, and Yelm Pocket Gopher, With Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act or ESA), as amended, for four subspecies of the Mazama pocket gopher found in Thurston and Pierce Counties of Washington State: The Olympia pocket gopher (*Thomomys mazama pugetensis*), Roy Prairie pocket gopher (*T. m. glacialis*), Tenino pocket gopher (*T. m. tumuli*), and Yelm pocket gopher (*T. m. yelmensis*). We are also promulgating a special rule under authority of section 4(d) of the Act that provides measures that are necessary and advisable for the conservation of the Mazama pocket gopher. The effect of this regulation is to add these subspecies to the list of Endangered and Threatened Wildlife, extend the Act's protections to these subspecies, and establish a 4(d) special rule for the conservation of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers.

DATES: This rule becomes effective May 9, 2014.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/wafwo/mpg.html*. Comments and materials we received, as well as some of the supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov*. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Lacey, WA 98503; telephone 360–753–9440, facsimile 360–534–9331.

FOR FURTHER INFORMATION CONTACT: Ken S. Berg, Manager, Washington Fish and Wildlife Office, 510 Desmond Drive, Lacey, WA 98503, by telephone 360–753–9440, or by facsimile 360–534–9331. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species may warrant protection through listing if it is endangered or threatened throughout all or a significant portion of its range. Listing a species as an endangered species or threatened species can only be completed by issuing a rule

This rule will finalize the listing of the Olympia pocket gopher (*Thomomys mazama pugetensis*), Roy Prairie pocket gopher (*T. m. glacialis*), Tenino pocket gopher (*T. m. tumuli*), and Yelm pocket gopher (*T. m. yelmensis*) as threatened species under the Act. This rule also establishes a special rule under section 4(d) of the Act to provide for the conservation of the Mazama pocket gopher. Critical habitat for these four subspecies of the Mazama pocket gopher is published elsewhere in today's **Federal Register**.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the four Thurston/Pierce subspecies of the Mazama pocket gopher are negatively impacted by one or more of the following factors to the extent that each of these subspecies meets the definition of a threatened species under the Act:

- Habitat loss through conversion and degradation of habitat, particularly from development, successional changes to grassland habitat, military training, and the spread of woody plants;
- Predation;
- Inadequate existing regulatory mechanisms that allow the impacts of significant threats such as habitat loss; and
- Other natural or manmade factors, including small or isolated populations, declining population or subpopulation sizes, and control as a pest species.

We are promulgating a special rule. We are exempting from the Act's take prohibitions (at section 9) certain activities that promote the maintenance or restoration of habitat conditions required by the Mazama pocket gopher consistent with regulations necessary and advisable for the continued conservation of the four subspecies (Olympia, Roy Prairie, Tenino, and Yelm pocket gophers). Specifically, the Service is promulgating a special rule under section 4(d) of the Act to exempt take of these listed species for general activities conducted on agricultural and ranching lands, regular maintenance activities on civilian airports, control of noxious weeds and invasive plants, maintenance of roadside rights-of-way, and limited activities on private landowner parcels. If an activity resulting in take of the Mazama pocket gopher is not exempted under this 4(d) special rule, then the general prohibitions at 50 CFR 17.31 for threatened wildlife would apply, and we would require a permit pursuant to section 10 of the Act for such an activity, as specified in our regulations. Nothing in this 4(d) special rule would affect the consultation requirements under section 7 of the Act. The intent of this special rule is to increase support for the conservation of the Mazama pocket gopher and provide an incentive for continued management activities that benefit the Olympia, Roy Prairie, Tenino, and Yelm subspecies and their habitat.

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We invited these peer reviewers to comment on our listing proposal. We obtained opinions from two knowledgeable individuals with scientific expertise regarding the Mazama pocket gopher. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this document. We also considered all comments and information received from the public during our three open comment periods, which were open a total of 135 days. We held two public information workshops and a public hearing on the proposed rule in April 2013.

Previous Federal Actions

The full candidate history and previous Federal actions for the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers (hereafter referred to as ''the four Thurston/Pierce subspecies of the Mazama pocket gopher'') are

described in the proposed rule to list, establish a 4(d) special rule, and designate critical habitat for these four subspecies, published December 11, 2012 (77 FR 73770). In that same proposed rule, we identified five subspecies of Mazama pocket gopher in the State of Washington for removal from the candidate list: The Olympic, Shelton, and Cathlamet pocket gophers (*Thomomys mazama melanops, T.m. louiei,* and *T.m. couchi,* respectively) because we determined that they are not warranted for listing; the Tacoma pocket gopher (*T.m. tacomensis*) because it is extinct; and the Brush Prairie pocket gopher (*T. talpoides douglasii*) because it was added to the list due to taxonomic error. We published a notice of availability of the draft economic analysis (DEA) of the critical habitat designation and announcement of public information meetings and a public hearing on our proposed rulemaking on April 3, 2013 (78 FR 20074), and a 6-month extension of the final determination for the proposed listing and designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher on September 3, 2013 (78 FR 54218). We extended our final determination under section 4(b)(6)(B)(i) of the Act in response to substantial scientific disagreement surrounding the accuracy or sufficiency of available data regarding the degree of threat to the Mazama pocket gopher from various agricultural and ranching activities. We worked collaboratively with the Washington State Department of Agriculture (WSDA) during this extension to address these uncertainties to the extent possible.

Details regarding the comment periods on the proposed rulemaking to list the four Thurston/Pierce subspecies, promulgate a 4(d) special rule, and designate critical habitat are provided below. On September 3, 2013, we published a notice in the **Federal Register** affirming the removal of the Olympic, Shelton, Cathlamet, Tacoma, and Brush Prairie pocket gophers from the candidate list (78 FR 54214). Critical habitat for the Olympia, Roy Prairie, Tenino, and Yelm subspecies of the Mazama pocket gopher is published separately elsewhere in today's issue of the **Federal Register**.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing, the associated 4(d) special rule, and the designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher during three comment periods. The first comment period, associated with the publication of the proposed rule (77 FR 73770; December 11, 2012), was open for 60 days, from December 11, 2012, through February 11, 2013. We then made available the DEA of the proposed critical habitat designation and reopened the comment period on the proposed rule for an additional 30 days, from April 3, 2013, to May 3, 2013 (78 FR 20074; April 3, 2013). We also contacted appropriate Federal, State, tribal, county, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the DEA. We held two public information workshops and a public hearing in April 2013 on the proposed rule to list the subspecies, the associated 4(d) special rule, and the proposed critical habitat designations. On September 3, 2013, we announced a 6-month extension of the final determination on the listing and critical habitat designation for the four Thurston/Pierce subspecies of the Mazama pocket gopher (78 FR 54218) and reopened a third comment period on the proposed rule to list, establish a 4(d) special rule, and designate critical habitat for the four Thurston/Pierce subspecies for an additional 45 days. The total time available for public comment on the proposed rulemakings for the four Thurston/Pierce subspecies of the Mazama pocket gopher was 135 days.

During the 3 public comment periods, we received close to 220 comment letters and emails from individuals and organizations, as well as speaker testimony at the public hearing held on April 18, 2013. These comments addressed the proposed listing and associated special rule, or the proposed critical habitat (or both) for Mazama pocket gopher. We received comment letters from two peer reviewers, one State agency, and two Federal agencies on these four subspecies of the Mazama pocket gopher. The final rule designating critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher is published separately elsewhere in today's volume of the **Federal Register**, and comments specific to the critical habitat are addressed in that rulemaking. Here we address only those comments relevant to the proposed listing and the associated special rule under section 4(d) of the Act.

All substantive information provided during comment periods has either been incorporated directly into this final rule or is addressed below. Comments we received are grouped into general issues specifically relating to the listing or 4(d) special rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher, and are addressed in the following summary and incorporated into the final rule as appropriate.

Comments From Peer Reviewers

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the Mazama pocket gopher and its habitats, biological needs, and threats. Two peer reviewers responded, and both were supportive of the Service's evaluation of the best scientific and commercial data available in proposing to list the four Thurston/Pierce subspecies of the Mazama pocket gopher. Our requests for peer review are limited to a request for review of the merits of the scientific information in our documents; if peer reviewers have volunteered their personal opinions on matters not directly relevant to the science of our proposed listing, we do not respond to those comments here.

(1) *Comment:* Both peer reviewers provided corrections and suggestions for clarifying and improving the accuracy of the Background, Habitat and Life History, Historical and Current Range and Distribution, Summary of Factors Affecting the Species, and Conservation Measures sections of the preamble of the proposed rule.

Our Response: We appreciate these corrections and suggestions, and have made changes to this final rule to reflect the peer reviewers' input.

(2) *Comment:* One peer reviewer recommended that an education and incentives program be implemented for private landowners to help conserve the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Our Response: The Service supports a variety of programs that conserve species, including Habitat Conservation Planning and Safe Harbor Agreements. The Service is working with the Natural Resources Conservation Service (NRCS), Thurston County, Washington Department of Fish and Wildlife (WDFW), and various nongovernmental entities to develop and implement education and incentive programs for the four Thurston/Pierce subspecies of the Mazama pocket gopher. We appreciate the suggestion, and will keep this in mind as we move forward with recovery planning for these species. However, such a consideration is not directly relevant to our evaluation of the status of the species.

(3) *Comment:* One peer reviewer found the section on unauthorized collecting, handling, possessing, etc., to

be confusing where it referenced possession of specimens not more than 100 years old but collected prior to 2012.

Our Response: We have deleted this section because it did not accurately describe the Act's prohibitions. However, we can clarify for the reviewer that possession of specimens collected prior to listing is not prohibited.

Comments From State

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his [her] failure to adopt regulations consistent with the agency's comments or petition.'' Comments we received from State agencies regarding the proposal to list four Thurston/Pierce subspecies of the Mazama pocket gopher subspecies as threatened under the Act are addressed below. We received comments from WDFW, Washington Department of Natural Resources (WDNR), and Washington State Department of Transportation (WSDOT) related to biological information, threats, and the 4(d) special rule.

WDFW and WDNR provided a number of recommended technical corrections or edits to the proposed listing determination for the four Thurston/Pierce subspecies of the Mazama pocket gopher. We have evaluated and incorporated this information into this final rule where appropriate to clarify the final listing determination. In instances where the Service may have disagreed with an interpretation of the technical information that was provided, we have responded in separate communication with either WDFW or WDNR.

Washington Department of Fish and Wildlife

(4) *Comment:* WDFW noted that no citation was given for the list of soils we described as being occupied by the Mazama pocket gopher in Washington.

Our Response: The list of soil types described in the proposed rule were compiled by using the WDFW Heritage Database to document where occurrence records of the Mazama pocket gopher overlapped mapped soil type. While not all USDA soil type descriptions include slope, the majority of soil types where slope was included were described as being below 15 percent.

(5) *Comment:* WDFW stated that it is important to consider that pocket gopher populations are known to fluctuate and that those fluctuations may be fairly large.

Our Response: The Service agrees that some species of pocket gophers that live multiple years and undergo multiple reproductive cycles per year are likely to exhibit fairly large fluctuations in population number, but we point out the following: All of the data we currently have indicates that Mazama pocket gophers are short lived (1–2 years), have a single reproductive event per year, and average five young. If predation and disease pressures are low and reproductive success is high, this could result in a fairly large population increase, but without the means to monitor population numbers, it is a difficult assertion to either support or disprove. Since there is only a weak correlation between the number of pocket gopher mounds and the number of resident pocket gophers (Olson 2011a, p. 37), and since there are many different scenarios under which an individual pocket gopher may increase the number of mounds it makes (optimal foraging, re-excavation, new excavation, etc.), the Service believes it is currently impossible to document fluctuations in population size. In arriving at our determination that the four Thurston/Pierce subspecies of the Mazama pocket gopher meet the definition of ''threatened'' under the Act, we note our conclusion is not based on estimates of population size, but on the reduction in range and numbers of populations due to past threats, and the negative impact of ongoing threats to those few populations that remain. We discuss this further in our response to Comment 15, below.

(6) *Comment:* WDFW suggested clarifications to the list of allowed activities on airports and on single-family residential properties under the proposed 4(d) special rule. WDFW expressed the concern that any special rules pertaining to airports be carefully crafted, and that there should be a mechanism in place to monitor Mazama pocket gophers on all occupied airports as they will face increasing pressure from surrounding development over time.

Our Response: We have amended the 4(d) special rule to clarify the list of allowed activities that are covered. The Mazama pocket gopher special rule that pertains to civilian airports has been reworded based on input from a variety of commenters, including the Port of Olympia and informal comments submitted by the Federal Aviation Administration (FAA). We believe our final 4(d) special rule addresses concerns and incorporates recommendations we received on our proposal, and exempts from the prohibitions of section 9 certain ongoing activities on civilian airports and residential properties consistent with regulations necessary and advisable for the continued conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher. However, we note 4(d) rules can be revoked or amended through rulemaking at any time should the Service determine that they are no longer consistent with the conservation of the species.

While the Service did not list the Shelton pocket gopher (*Thomomys mazama couchi;* September 3, 2013, 78 FR 54214), which largely resides on the Port of Shelton's Sanderson Field (also known as Shelton Airport), it remains a State-listed species and as such, the Port of Shelton will be required to continue to conserve the species on their property. If the status of the Shelton pocket gopher changes such that Federal listing may be warranted, the Service retains discretion to propose listing this subspecies.

Washington Department of Natural Resources

(7) *Comment:* WDNR, as well as the Natural Resources Conservation Service (NRCS), suggested additions and changes to the list of allowed agricultural activities and a revision to the calendar dates that some of those activities may take place under the proposed 4(d) special rule. They suggested these changes in order to avoid possible unintended consequences of some of the proposed requirements, which they believe might compromise the goal of encouraging continued agricultural use of these areas. WDFW raised concern about the lack of restrictions on conversion from one agricultural use to another, since Mazama pocket gophers do not respond positively to all agricultural practices.

Our Response: The Service worked closely with our State and Federal partners to understand which agricultural practices and related activities could be covered under the 4(d) special rule. Not all suggested changes were incorporated because not all activities that were suggested met our criteria for what is appropriate for inclusion under a 4(d) special rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher (under section 4(d) of the Act, such a special rule must be ''necessary and advisable for the conservation of the species''). We have amended the rule to clarify the terms used, revised the dates that covered activities are allowed, and revised the list of agricultural activities that are covered, where appropriate. We believe our final 4(d) special rule addresses concerns and incorporates recommendations we received on our proposal and exempts from the

prohibitions of section 9 certain ongoing agricultural practices consistent with regulations necessary and advisable for the continued conservation of the four subspecies of Mazama pocket gopher. With the help of our Federal and State partners, we will continue to work with agricultural landowners as necessary to more fully cover their activities while conserving the Mazama pocket gopher using a range of available conservation tools, such as permits and other authorizations (see also our response to Comment 38).

Washington State Department of Transportation

(8) *Comment:* WSDOT asked that we consider expanding the exemptions listed under our 4(d) special rule to include vegetation management of roadside rights-of-way, including mechanical mowing, weed control, and woody vegetation control (mechanical or herbicide control measures), as well as fencing operations. They pointed out that these activities maintain suitable habitat conditions for the pocket gophers by reducing the woody vegetation that they avoid, and maintaining the low vegetation cover that they favor. The agency additionally pointed out that suitable habitat for the Mazama pocket gopher is found along highways and roadways that traverse prairie habitats throughout Thurston and Pierce Counties.

Our Response: We agree that the roadside management activities described by WSDOT benefit the Mazama pocket gopher by restoring or maintaining habitat in a condition suitable for the subspecies. As we do not wish to discourage the continuation of proactive management activities that benefit the conservation of the Mazama pocket gopher, as described in the Special Rule section of this document, we conclude that it is necessary and advisable for the conservation of the four Thurston/Pierce subspecies to add roadside vegetation management and fencing activities to the list of exemptions from section 9 in our 4(d) special rule. This exemption applies to all Federal. State, county, private, or Tribal vegetation management activities on highways or roadside rights-of-way. Under the 4(d) special rule, although exemptions from the prohibitions of section 9 are provided, any activities subject to a Federal nexus and that may affect the species or its critical habitat still require consultation under section 7 of the Act.

Comments From Federal Agencies

Natural Resources Conservation Service

Comments from the NRCS have been incorporated into Comment 7, above.

Comments From the Public

(9) *Comment:* Several commenters questioned the use of the current taxonomy for the Mazama pocket gopher for the purposes of listing.

Our Response: The Service acknowledges that the original taxonomy of the Mazama pocket gopher was based on morphotype (the difference between the appearances of separate subspecies) and that the examination of genetic material would provide greater insight into the degree of relatedness between subspecies. However, under the Act we are to make a listing determination based on the best scientific and commercial data available at the time of our rulemaking; we cannot speculate as to what future research may or may not reveal. The currently accepted subspecific designations of *Thomomys mazama* (the Mazama pocket gopher) stand according to the accepted rules of the International Commission on Zoological Nomenclature. No compelling information is available nor has been submitted through the appropriate scientific channels necessary to effect a revision in the established taxonomy. Some genetic work conducted on the Mazama pocket gopher created confusion regarding their taxonomy, but that work was never published in a peer-reviewed journal.

It is possible that ongoing genetic work will clarify the relationship between the subspecies in the future, and if the International Commission on Zoological Nomenclature receives and accepts a revised taxonomy for the Mazama pocket gopher that is at odds with the taxonomy used here, we can revisit the listing at that time. To date, however, there has been no publication of any data that could lead to a formal submission for a revision of the taxonomy of the Mazama pocket gopher to the International Commission on Zoological Nomenclature, nor is there any record indicating that they have received any petition to consider a revision. Therefore, consistent with the direction from the Act (i.e., based on the best scientific and commercial data available at the time of our finding), we are using the established taxonomy for the Mazama pocket gopher, which recognizes the Olympia, Roy Prairie, Tenino, and Yelm pocket gopher as separate subspecies. See the ''Taxonomy'' section of this document for further information.

(10) *Comment:* Several commenters believed that an ongoing collaboration between the U.S. Geological Survey (USGS) and the Service is designed to definitively determine whether or not the present subspecies distinctions upon which the proposed listing relies are in fact scientifically accurate, and believed the Service should delay its listing determination until these results are completed.

Our Response: Scientific knowledge is an ever-growing body of work to which many researchers and studies contribute. There is no one point in time at which ''science'' is complete, however, the Service is required to use ''the best scientific and commercial data available'' at the time a listing determination is made. The ongoing collaboration between USGS and the Service that was referenced by the commenters was designed to assist in the ongoing conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher, and was not intended to support a determination of whether or not listing them as threatened under the Act is warranted. The results of this study would allow the Service to establish: (a) The functional unit of management for the species (e.g., the subspecies level, the metapopulation level, or the population level); and (b) where the physical boundaries for those units exist on the landscape. This assessment will be made based on whether or not the results indicate genetic differentiation has resulted in evolutionarily divergent paths for different populations. Evidence of evolutionary divergence will dictate the future management strategies for the Mazama pocket gopher. This is not the same question as whether the evidence suggests a possible redefinition of subspecies, though that could be a logical outgrowth of the research conducted if the results support that outcome. See also our response to Comment 9, above.

(11) *Comment:* One commenter stated that the presumption of earlier expansive occupancy for the Mazama pocket gopher across undeveloped prairies is without merit.

Our Response: It is impossible to know for certain the full extent of the historical occupancy for the Mazama pocket gopher in Washington State for the entirety of the species' evolutionary history. Extrapolating from the geologic record, we can reasonably assert that pocket gophers were more widespread and likely occupied a much wider range of habitats across a much broader area prior to the descent of the Vashon lobe of the Cordilleran ice sheet during the last glaciation period. This is

demonstrable through the isolated and genetically distinct population of Mazama pocket gopher in the Olympic Mountains and other isolated populations, such as the Cathlamet pocket gopher in western Washington. Pocket gophers simply cannot disperse quickly across great distances where habitat is discontiguous, indicating that the ability of populations to extend across the state over a short period of time would have been extremely improbable. In order for prehistoric pocket gopher populations to reach the Olympic Mountains, they would have had to have had a much wider distribution across a greater variety of habitats than they currently inhabit. Mazama pocket gophers, as we know them, have evolved to require friable, well-drained soils in relatively open areas. The prairies of the south Puget Sound landscape are exactly that.

Considering the potential for evolutionary adaptation on the geologic time scale, it is completely reasonable to expect that pocket gopher populations were historically far more widespread in western Washington. That said, all species are somewhat patchily distributed based on habitat availability and each species' ability to disperse to, compete for, and exploit resources, so it is possible some historical prairies or areas of prairies may never have been occupied. We further acknowledge here and elsewhere in this document that the Mazama pocket gopher exhibits patchily distributed use of available habitat, meaning that not all suitable areas are likely to be occupied at all times. The current fragmented and discontiguous state of apparently suitable habitat, such as the remaining undeveloped prairies, has rendered it impossible for the Mazama pocket gopher to sustain widespread occupancy, as the Service asserts was likely the case. It is reasonable to state, based on knowledge of dispersal capability, current distribution, and the distribution of similar *Thomomys* species, that the Mazama pocket gopher likely had a much broader historical distribution that included a greater portion of the prairie habitat in the south Puget Sound than they currently occupy, as did Dalquest and Scheffer (1942, p. 95; 1944a, p. 311).

(12) *Comment:* One commenter stated that the only distribution studies being conducted on the Mazama pocket gopher involved lands within the Thurston County Urban Growth Areas (UGAs), and believed Mazama pocket gophers exist in many other areas of the County.

Our Response: We draw the commenter's attention to the WDFW (2013a) Mazama Pocket Gopher Distribution and Habitat study, which used a randomized design to sample approximately 800 locations in Grays Harbor, Lewis, Mason, Pierce, and Thurston Counties on public and private lands, the vast majority of which were outside of any UGA. We also note that this study reinforced the current known distribution of the Mazama pocket gopher in western Washington by providing insight into where Mazama pocket gopher sign was detected (positive survey data) and where it was not detected (negative survey data). The strength of this effort and its results support our current understanding of the distribution of the Mazama pocket gopher in Thurston County.

(13) *Comment:* Two commenters referenced the reports from contract biologists who claim to have found Mazama pocket gopher mounds outside of the currently known range.

Our Response: The Service took these reports into consideration, but subsequent trapping conducted by WDFW at the sites in question have resulted in the capture of only moles (*Scapanus* spp.), whose mounds are often confused with those of Mazama pocket gophers. Neither Service nor WDFW biologists have been able to locate any other Mazama pocket gopher sign in the area despite broad survey efforts.

(14) *Comment:* Several commenters expressed the opinion that the distribution and population sizes currently known for the Mazama pocket gopher have been underestimated, while another commenter stated that populations are either stable or increasing. Several other commenters stated that the Mazama pocket gopher should not be given Federal protection under the Act when it appears as if they occur in great numbers.

Our Response: The extensive distribution study recently conducted by WDFW (2013a) reinforced the known distribution of the Mazama pocket gopher in Washington State and provided valuable ''negative'' survey data by documenting areas where Mazama pocket gophers were not detected. It is important to note that the Service did not use population size while conducting the threats analysis because there is no established way to accurately estimate and monitor population size for the Mazama pocket gopher. No data were collected that would provide information about population trends, nor would it have been possible to obtain this data in a single survey season.

Very few people actually see Mazama pocket gophers because they are primarily fossorial, living almost entirely underground. What most people see when they become aware of pocket gophers are mounds of dirt excavated from the tunnel systems where the pocket gophers live, and they may extrapolate from the number of mounds to the number of gophers, assuming that many mounds equates to many gophers. Research has demonstrated that the correlation between the number of mounds and the number of pocket gophers is weak (Olson 2011a, p. 37), and there are many different circumstances that can lead to an increase in the number of mounds when there are not many gophers. Such circumstances include instances of soil compaction (a response to tunnels being crushed or damaged), in cases of sparse vegetation (which forces the animals to dig farther for forage material), or when gophers disperse into a new area and have to excavate a completely new tunnel system.

Since Mazama pocket gophers are extremely territorial, their density is low except when young are present. Another complicating factor is that Mazama pocket gophers and moles can coexist at the same site, creating the impression that there are many more gophers than actually occur. There is currently no effective and accurate way to count live pocket gophers. However, the Service did determine larger-scale changes in population status such as local extirpations and range contractions, and evaluated potential future status in the threats analysis section of this rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher by focusing on factors such as habitat destruction and fragmentation, predation, and lack of gene flow between extant populations. Based on our evaluation of these considerations, we have concluded that each of the four Thurston/Pierce subspecies of the Mazama pocket gopher meets the definition of a threatened species under the Act.

(15) *Comment:* One commenter questioned whether or not there was a reduction in population numbers of the Mazama pocket gopher in Washington and asserted that if a decrease in population numbers does exist, it should be attributed to past pest control efforts, of which Mazama pocket gophers were a target as recently as 1992. The same commenter stated that Mazama pocket gophers are ''rodents,'' implied that rodents are immune to the efforts of humans to eradicate them, and provided a list of documents reporting on efforts to control or eradicate many different species of *Thomomys* and many subspecies of *T. mazama.* Most of

these studies were conducted in Oregon and where gophers were considered pests at tree farms.

Our Response: Because there is currently no practical way to count individual Mazama pocket gophers within a population, the status evaluation of each subspecies was conducted using other metrics. The Service determined that the suitable habitat available has been reduced to the point that many historical populations have been permanently extirpated (such as in heavily developed areas) and gene flow between surviving populations has been restricted to the point of preventing the natural recovery of the subspecies. Past pest control efforts directed at Mazama pocket gophers may have contributed to fragmentation and decline in some populations.

While it is true that Mazama pocket gophers are rodents, it is important to note that the documented reproductive strategy of Mazama pocket gophers is unlike that of most rodents. Mazama pocket gophers only reproduce once a year and have an average lifespan of just a year or two in the wild. Even though they generally have a litter of around five pups, they are still a prey species, so it is reasonable to expect that only one or two of their offspring will survive each year, depending on contemporaneous predation pressure. This life history is in contrast to most other rodents, many of which have flexible reproductive cycles and the ability to produce multiple large litters of offspring each year.

Even within the same species of pocket gopher, evolutionary adaptation plays a role in the ability of individual subspecies to utilize particular habitats. The majority of the subspecies of *Thomomys mazama* in Washington inhabit soils associated with prairies and glacial outwash, not forests. Douglas-fir trees (*Pseudotsuga menziesii*) will encroach into the soil types and prairies that the four Thurston/Pierce subspecies of the Mazama pocket gopher prefer, but Mazama pocket gopher habitat in Washington historically consisted of open areas. To extrapolate from the literature regarding other species of *Thomomys* and even from other subspecies of *T. mazama* that live in different habitat types could lead to erroneous conclusions about the ability of the four Thurston/Pierce subspecies of the Mazama pocket gopher to persist without protection.

(16) *Comment:* Many commenters with concerns about the listing of the Mazama pocket gopher conflated the U.S. Fish and Wildlife Service (the Service) with the Washington Department of Fish and Wildlife (WDFW), which is the State of Washington's fish and wildlife management agency.

Our Response: While the Service, as a Federal agency, works collaboratively with the State of Washington and maintains close working relationships with their expert biologists, we cannot speak to the agreements negotiated between WDFW and other parties, except where we explicitly rely upon information in those agreements, nor are we able to account for any perceived inconsistencies in information produced by the State. It is especially important to recognize that a conservation agreement negotiated between State agencies, such as WDFW, and independent parties is not automatically extended to include the Service or accepted by the Service, regardless of the conservation benefit to the species.

(17) *Comment:* Several commenters observed that WDFW clarified their position on the necessity of a Federal listing for the Mazama pocket gopher between the first comment period and the second comment period.

Our Response: The Service received two comment letters from WDFW during the public comment periods. WDFW initially stated, ''While WDFW supports the objective of ensuring appropriate conservation measures are in place for the species, federal listing and critical habitat designation is not necessary at this time due to ongoing county, state, and federal conservation efforts.''

During the second comment period, the Director of WDFW submitted a second comment letter that stated, in part ''The GMA [Washington State's Growth Management Act] provides landscape-scale planning and conservation policies and tools, while the ESA focuses on protection for species and the ecosystems upon which they depend. Each authority plays an important role in achieving our shared goals for prairie habitat and species conservation; however, in this case implementation to date of GMA alone has not provided enough certainty of future conservation for the species to fully address the threats identified in the proposed federal ESA listing. More work is needed to identify specific protection standards at the landscape and site scale in order to achieve those goals. Policy makers and planners continue to work together to identify these standards so that we can work together jointly to help other entities prepare for these potential listings, and perhaps eliminate the need for additional listings in the future due to the presence of sufficient state-led conservation actions.''

(18) *Comment:* Several commenters mistakenly used the term ''endangered'' instead of ''threatened'' to refer to the Service's proposed listing status of the four subspecies of the Mazama pocket gopher found in Pierce and Thurston Counties.

Our Response: An ''endangered'' species is any species that is in danger of extinction throughout all or a significant portion of its range; a ''threatened'' species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Endangered species are at the brink of extinction today, while threatened species are likely to be at the brink in the near future if their status does not improve or at least stabilize. We have made the determination that the four Thurston/Pierce subspecies of the Mazama pocket gopher found in Pierce and Thurston Counties are likely to become an endangered species in the foreseeable future, therefore each will be listed as a ''threatened'' species under the Act.

(19) *Comment:* Many commenters questioned the data and the science used to determine the threatened status of the four Thurston/Pierce subspecies of the Mazama pocket gopher, averring that the state of our collective knowledge about the Mazama pocket gopher and its known threats is incomplete and that more studies are required to make a determination.

Our Response: We are required to make our determination based on the best scientific and commercial data available at the time of our rulemaking, except in cases where the Secretary finds that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination. In such a case, under section 4(b)(6)(B)(i) of the Act, the Secretary may extend the 1-year period to make a final determination by up to 6 months for the purposes of soliciting additional data. In this case, we did extend our final determination on the listing status of the four Thurston/Pierce subspecies of the Mazama pocket gopher by 6 months due to substantial disagreement regarding the sufficiency or accuracy of some of the available threats information, which is the maximum extent allowable under the statute. We considered the best scientific and commercial data available regarding the subspecies of Mazama pocket gophers and their habitats in Washington State to evaluate their potential status under the Act.

In the case of the Olympic pocket gopher (*Thomomys mazama melanops*), the Shelton pocket gopher (*T. m. couchi*), and the Cathlamet pocket gopher (*T. m. louiei*), we determined that the best available data did not support listing under the Act (September 3, 2013; 78 FR 54214). For the Olympia pocket gopher, Roy Prairie pocket gopher, Tenino pocket gopher, and Yelm pocket gopher, as detailed in the Summary of Factors Affecting the Species section of this document, our evaluation of the best available scientific data leads us to determine that these subspecies each meet the definition of a threatened species under the Act. We solicited peer review of our evaluation of the available data, and our peer reviewers supported our analysis. Science is a cumulative process, and the body of knowledge is ever-growing. In light of this, the Service will always take new research into consideration. If plausible new research supports amendment or revision of this rule in the future, the Service will modify the rule consistent with the Act and our established work priorities at that time.

(20) *Comment:* Several commenters suggested that the Service did not take into account WDFW's ongoing research that had not been formally completed when the proposed rule was published.

Our Response: The Service was fully informed by the researchers who were conducting this work and cited data provided by those individuals directly where their current state of knowledge differed from their previously published reports. WDFW's January 2013 summary report of the extensive Mazama pocket gopher distribution and habitat survey that was conducted in 2012 reinforced the known distribution of Mazama pocket gophers in Washington State. The report stated that only one potentially new location had been identified, but subsequent investigation did not result in confirmation of pocket gopher presence at that site. The WDFW survey was a valuable contribution to our current state of knowledge about Mazama pocket gopher distribution and habitat use in that it provided both positive and negative survey data that reinforced the previously established pattern of distribution.

(21) *Comment:* One commenter requested substantiated data demonstrating a positive benefit of listing the Mazama pocket gopher, and asked whether there had been an evaluation of the economic impact of the pending action.

Our Response: In making a determination as to whether a species meets the Act's definition of an endangered or threatened species, under section 4(a)(1)(A) of the Act the Secretary is to make that determination based *solely* on the basis of the best scientific and commercial data available (emphasis added). The question of whether or not there may be some positive benefit to the listing cannot by law enter into the determination. The evaluation of economic impacts comes into play only in association with the designation of critical habitat under section 4(b)(2) of the Act, as described in detail in our final designation of critical habitat for Mazama pocket gopher, published elsewhere in the **Federal Register** today. Therefore, although we did not consider the economic impacts of the proposed listing, as such a consideration is not allowable under the Act, we did consider the potential economic impacts of the critical habitat designation, including the potential benefits of such designation.

(22) *Comment:* Numerous commenters expressed concerns that the listing of the four Thurston/Pierce subspecies of the Mazama pocket gopher would result in sweeping adverse economic impacts. Among these concerns was that much of the privately owned land and housing would be rendered worthless, and that businesses would be ruined. One commenter expressed concerns that their property would be sold to developers, or that there would be no compensation for property that would be rendered unusable. Several commenters expressed concerns that restrictions associated with the listing would hinder economic development, and implied that the uncertainty associated with the listing could hinder the ability to pass bonds for school construction.

Our Response: We understand that there is a lot of confusion and concern about the effect of a listing and critical habitat designation for the four Thurston/Pierce subspecies of the Mazama pocket gopher. We encourage any landowners with a listed species present on their property and who thinks they carry out activities that may negatively impact that listed species to work with the Service. We can help those landowners determine whether a habitat conservation plan (HCP) or safe harbor agreement (SHA) may be appropriate for their needs. These plans or agreements provide for the conservation of the listed species while providing the landowner with a permit for incidental take of the species during the course of otherwise lawful activities. We are working with Thurston County to develop a county-wide HCP for grassland and prairie associated species, including the Mazama pocket gopher. If completed, this HCP would provide long-term regulatory assurances under the Act for people who live, work, or conduct business in Thurston County.

In addition, we have attempted to recognize the conservation contribution of non-Federal landowners through the issuance of a 4(d) special rule, which exempts individuals from the take prohibitions of the Act for certain activities, such as the construction of dog kennels or installation of fences or play equipment on their property. The 4(d) special rule additionally identifies specific agricultural practices, noxious weed and invasive plant control, and roadside maintenance activities that are consistent with regulations necessary and advisable for the continued conservation of the Mazama pocket gopher.

We also note that any restrictions or regulations already in place for the Mazama pocket gopher and its habitat and any costs associated with those restrictions or regulations under the GMA and associated critical areas ordinances were not the result of listing under the Act, but are a consequence of State laws and regulations that were already in place. We acknowledge that some economic impacts are a possible consequence of listing a species under the Act; for example, there may be costs to the landowner associated with the development of an HCP. In other cases, if the landowner does not acquire a permit for incidental take, the landowner may choose to forego certain activities on their property to avoid violating the Act, resulting in potential lost income. However, as noted in our response to Comment 21, above, the statute does not provide for the consideration of such impacts when making a listing decision. Section 4(b)(1)(A) of the Act specifies that listing determinations be made ''solely on the basis of the best scientific and commercial data available.'' Such costs are therefore precluded from consideration in association with a listing determination.

The Act does provide for the consideration of potential economic impacts in the course of designating critical habitat. However, the regulatory consequence of critical habitat designation is limited to actions with a Federal nexus (activities that are funded, authorized, or carried out by a Federal agency). The designation of critical habitat has no regulatory effect on private lands lacking a Federal connection. Critical habitat designation itself does not prevent development or alteration of the land, create a wildlife preserve, or require any sort of response or management from a private

landowner. Therefore, the designation of critical habitat would not directly result in any specific requirements by the Federal Government on the part of private landowners. Even in the case of a Federal nexus, such as in a case where a private landowner should require a Federal permit for an activity, the only requirement is that the Federal agency involved in permitting the activity avoids the destruction or adverse modification of critical habitat. Infrequently there are some costs to private landowners in such cases as third-party applicants.

The Service believes that restrictions alone are neither an effective nor a desirable means for achieving the conservation of listed species. We prefer to work collaboratively with private landowners, and strongly encourage individuals with listed species on their property to work with us to develop incentive-based measures such as SHAs or HCPs, which have the potential to provide conservation measures that effect positive results for the species and its habitat while providing regulatory relief for landowners. The conservation and recovery of endangered and threatened species, and the ecosystems upon which they depend, is the ultimate objective of the Act, and the Service recognizes the vital importance of voluntary, nonregulatory conservation measures that provide incentives for landowners in achieving that objective.

(23) *Comment:* One commenter argued that, while the Service determined road construction associated with development causes fragmentation of habitat in the south Puget Sound region, the Service previously concluded that road construction can have a positive effect on pocket gopher species, referencing a rule issued for another species of pocket gopher in Wyoming.

Our Response: The Service referenced the rule cited by the commenter, which states ''We conclude the effects of roads on the Wyoming pocket gopher may be both positive and negative. Although we remain concerned about roads, the best available information does not indicate that road construction and use pose a threat to the Wyoming pocket gopher now, or in the foreseeable future.'' (75 FR 19600; April 15, 2010). We draw the commenter's attention to the Wyoming counties discussed in the finding and highlight the following: The human population density of Sweetwater and Carbon Counties in 2010 when the determination was made for the Wyoming pocket gopher was 4 and 5 people per square mile, respectively. Thurston County has a population density of 334 people per square mile (47 square miles of which are water and thus uninhabitable by gophers). Clearly, there is a significant difference in the human population between these areas, which extends to a high degree of difference in the density of roads; for this reason, the Service determined that road construction may not have a large effect in the case of the Wyoming pocket gopher but could have a negative effect on the Mazama pocket gopher subspecies in Thurston County. With the population of Thurston County projected to increase by approximately 141,000 people by the year 2040 (Thurston Regional Planning Council 2012, pp. 30, 32), raising the density to greater than 550 people per square mile, the corresponding increase in infrastructure will only further disrupt and fragment the remaining remnants of habitat.

(24) *Comment:* One commenter asserted that the listing determination incorrectly assumes that development in Thurston County poses the same risk to the four Thurston/Pierce subspecies of Mazama pocket gopher as earlier development did in Pierce County for the Tacoma pocket gopher, which is now presumed extinct.

Our Response: While we do not disagree that the threat of development in Pierce County is likely unequal to the threat of development in Thurston County, the threat analyses conducted for the four Thurston/Pierce subspecies of Mazama pocket gopher took many factors into account when making the determination of threatened species status. The tremendous loss of Mazama pocket gopher habitat to development in Thurston County is indisputable. Combined with fragmentation and isolation of habitat; the subsequent loss of connectivity between populations and, therefore, gene flow, increased predation pressures associated with proximity to development, habitat degradation due to the spread of invasive plants, and successional changes in grasslands attributable to development-associated fire suppression, we made the determination that the four Thurston/Pierce subspecies of Mazama pocket gopher are indeed threatened. This determination stands despite the likely differential in development pressures of historical Pierce and present-day Thurston Counties.

(25) *Comment:* One commenter suggested that increased burrowing activity after soil disturbance and other manmade environmental modifications such as installation of underground utility services or land clearing was evidence of the Mazama pocket gopher's ability to adapt to changing conditions. Several commenters observed that some environmental consultants are recommending against protection for the four Thurston/Pierce subspecies of the Mazama pocket gopher and that they are reporting observations of pocket gophers in clear cuts, on Christmas tree farms, and in areas where soils have been highly disturbed through anthropogenic processes, such as in the Artillery Impact Area (AIA) at Joint Base Lewis-McChord (JBLM).

Our Response: While it may look as if there are a lot of new mounds in areas where soil disturbance has recently occurred, this may be the activity of as few as one or two pocket gophers that are excavating new tunnel systems, attempting to reconstruct compacted or destroyed burrows, or, if much of the herbaceous vegetation has been removed from the surface of the soil, they may be expanding their tunnel system in order to increase their forage area. The presence of numerous gopher mounds does not necessarily mean that there are a lot of gophers or that the gophers present are thriving and able to persist long term (Olson 2011a, p. 37).

Due to fire suppression, much of the historical prairie landscape has been converted to timber through the succession of the plant community. If the underlying soils were formerly suitable Mazama pocket gopher habitat, removal of timber re-exposes this temporarily inaccessible habitat and any nearby population could potentially disperse into or otherwise make use of the opening. Similarly, Christmas tree farms that are situated on suitable or occupied habitat may not exclude Mazama pocket gophers, especially if the associated agricultural practices do not include heavy herbicide use or extensive mechanical soil manipulation. It is true that the AIA of JBLM appears to have been continuously occupied, at least patchily, for a very long time. The Service believes the ability of Mazama pocket gophers to use this habitat is due in part to, not in spite of, the year-round bombardment of the central impact area: Ignition of dry standing vegetation attributable to bombardment leads to low-intensity burns across the 91st Division Prairie where the AIA is located. The effect of these burns, aside from mimicking the historical burning regime, is that they prevent woody encroachment and encourage a vegetative community similar to the kind the Mazama pocket gopher evolved with; in essence, their ideal forage community. Due to the sporadic nature of artillery training, it is not unexpected that individual Mazama pocket gophers would disperse and create tunnels into

the high-intensity impact area at the center of the prairie, especially if the outer edges of the prairie have a high density of Mazama pocket gophers.

(26) *Comment:* One commenter suggested that a translocation study previously conducted on Mazama pocket gophers supports the relocation of pocket gophers from urban areas to unoccupied prairies as a viable management tool to sustain the species over the long term.

Our Response: The study referenced was discussed at length in the proposed rule (77 FR 73770; December 11, 2012). It was the first of its kind and initially resulted in extremely high mortality rates for the translocated gophers. While deaths attributable to translocation declined as techniques improved, long-term monitoring will be required before it is possible to determine whether or not a ''new'' population has been established without continual addition of new individuals. Further it is difficult to determine whether or not a site (e.g., Mima Mounds Natural Area Preserve or Mima Prairie Glacial Heritage Preserve) provides appropriate habitat if there is no historical record of occupancy. Some of these sites superficially appear to have characteristics of suitable habitat, but are not currently documented as occupied and have no historical record of occupancy. Overall, we do not believe translocation of gophers from one area to another is a sustainable approach to conserving the species in the long term. We are collaborating with land owners, local governments, and the business community to develop a range-wide habitat conservation strategy that may include translocation as an appropriate tool in certain circumstances.

(27) *Comment:* One commenter suggested that there is not enough information about pet predation on Mazama pocket gophers to conclude that the threat is significant and cited a comment submitted by the WDFW stating the same.

Our Response: While the Service is unaware of any pet predation studies that apply specifically to the Mazama pocket gopher, we have received numerous firsthand reports of pet predation on pocket gophers in general and Mazama pocket gophers specifically from both WDFW and Service biologists. Supplementing these observations with citizen reports received from non-biologists and incidents documented by video, we have concluded that pet predation is likely a common occurrence and we consider it a threat to the four Thurston/Pierce subspecies of Mazama pocket gopher in the south Puget Sound region. In most cases, biologists do not consider predation on individual animals as a threat to their respective populations as a whole; when considering endangered or threatened species, though, populations may be depressed to the point that the loss of individual animals becomes disproportionally important. Mazama pocket gophers are somewhat solitary in nature, and due to the known loss of occupied habitat through conversion to incompatible uses (e.g., development, mineral extraction, etc.) and the increasingly fragmented habitat that remains, we contend that loss of individual animals may have greater than normal impacts to the overall health of their populations. In WDFW's second comment letter they agreed that predation was appropriate to include as a threat, so it could be further examined and compared to the other well-documented threats to determine actions that may be needed during the recovery process for the four Thurston/Pierce subspecies Mazama pocket gophers.

(28) *Comment:* Many commenters believe that Washington State's Growth Management Act (GMA) provides enough regulatory certainty to protect Mazama pocket gophers in Washington into the foreseeable future, therefore, precluding the need to list them as a threatened species under the Act.

Our Response: We disagree. Washington State's GMA was crafted to provide land use guidance that would result in conservation of State resources and wise land use practices. The GMA outlines 13 goals to guide the development of regulations at the county and municipality levels, but it does not mandate the establishment of performance measures or the requirement of monitoring, thus there is no standardized metric or means by which to quantify the success or failure of the resulting regulation. The Service recognizes that the GMA has produced some tangible conservation benefits, but variability in the formulation, implementation, and enforcement of the ensuing regulations has allowed for divergent planning practices across the State as well as a broad range of results at individual sites where required mitigation has taken place. Further, current implementation of the GMA fails to sufficiently curb the continued fragmentation and loss of Mazama pocket gopher populations and habitat. (Also see response to Comment 17). For these reasons and others, as detailed in our Summary of Factors Affecting the Species, we have determined that existing regulatory mechanisms, including the GMA, are inadequate to ensure the conservation of the Mazama pocket gopher.

(29) *Comment:* One commenter concluded that the final rule determining threatened status for the four Thurston/Pierce subspecies of Mazama pocket gopher would reverse the benefits of Washington State's GMA by reducing human population density in the Urban Growth Areas (UGAs) and increasing sprawl in rural areas.

Our Response: The Service is actively engaged with county and municipal governments (e.g., Thurston County, City of Tumwater, and Port of Olympia) to support the results of Washington's GMA and land-use planning under the Act.

(30) *Comment:* One commenter posited that the development threats and pressures that may have led to the extirpation of the Tacoma pocket gopher took place prior to the passage of Washington State's GMA and that, due to the differences between past and current regulations, conclusions about current and future threats to the Mazama pocket gopher in Washington should not be considered to be equivalent. In other words, the commenter felt the more recent State regulations are sufficient to prevent the four Thurston/Pierce subspecies from going the way of the Tacoma pocket gopher.

Our Response: We generally agree that the GMA has helped to reduce threats to the four Thurston/Pierce subspecies, although loss of Mazama pocket gopher habitat to development pressures still remains a threat. Additionally, although the GMA and associated critical areas protections have certainly provided greater protection to priority habitats and species than existed prior to their passage, it does not necessarily follow that they are sufficient to conserve the four Thurston/Pierce subspecies of the Mazama pocket gopher given the subspecies' current status and fragmented distribution. Overall the effectiveness or timeliness of regulations to conserve a species is partially dependent upon when the actual conservation concern for the species of interest was recognized or identified as a need. Regulations implemented after significant habitat has been lost will not have the same conservation impact as those implemented when significant portions of habitat still remain intact.

(31) *Comment:* One commenter asserted that the Service dismisses the WDFW Priority Habitat and Species (PHS) program as a legal nullity for listing under the Act. Another commenter said that the WDFW PHS recommendations requires the use of standardized performance measures in

the development of Habitat Management Plans (HMPs) and that the recommendation is enough of a safeguard against variability in the implementation of the HMPs to preclude the listing of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Our Response: The Service does not dismiss the contribution that the PHS program provides in the form of consultation and guidance on land use issues affecting priority habitats and species. However, we note the limitations of their PHS Management Recommendations, and reflect WDFW's own characterization of the PHS: ''These recommendations are not regulatory, but are based on best available science for avoiding, minimizing, and mitigating impacts to gophers and their habitat, which is primarily located in South Puget Sound. WDFW recommends the following mitigation sequence for reviewing and conditioning proposed development projects with potential impacts to Mazama pocket gophers'' (WDFW 2011, p. 1). Because these are recommendations and are explicitly not regulatory in nature, we do not weight them equally to existing law when evaluating the adequacy of existing regulatory mechanisms.

While the PHS allows for WDFW recommendations to become mandatory performance measures in HMPs when required and adopted by local governments, this has not occurred consistently. Performance measures must be capable of assessing the quality and efficacy of the executed plan. In order to do so, performance measures must mandate objective and measurable metrics that are used to delineate performance thresholds for success and are standardized across all plans.

Further, the PHS specifies that the recommendations for HMP development are not regulatory in nature, leaving individual planning authorities to determine implementation practices, including management and enforcement. While the PHS recommendations do specify that HMPs should be submitted to WDFW for review, the review process only occurs as WDFW resources allow, which leads to inconsistent results. Further, should WDFW staff make specific recommendations, these recommendations may or may not be implemented by the County, especially where a land use variance has been approved. The Service does not agree that these recommendations provide enough regulatory certainty to ameliorate threats to the Mazama pocket gopher to the extent that listing would not be warranted.

(32) *Comment:* Several commenters either asked how effective mitigations resulting from the current GMA critical areas regulations have been or stated that the mitigations had been successful or unsuccessful. Some commenters averred that successful mitigation should preclude the listing of the four Thurston/Pierce subspecies of the Mazama pocket gopher while others highlighted the weaknesses in the implementation of the recommendations and regulations.

Our Response: Due to the lack of performance measures, there is no standard metric of success or failure of the GMA critical areas regulations. Furthermore, due to lack of monitoring, there is not a comprehensive list of sites where mitigation measures have been implemented and where Mazama pocket gopher populations are being tracked. Of the sites where Habitat Management Plans (HMPs) have been developed as required under the critical areas regulations and shared with the Service, many of the plans do not appear to have adequately provided for the habitat needs of the Mazama pocket gopher, in some cases overlaying water retention ponds with habitat set-asides. Due to the lack of consistency between regulations, variability in implementation of approved HMPs, the lack of requirement of performance measures or monitoring, and a lack of enforcement, the Service does not find the existing regulations to be effective at protecting and sustaining Mazama pocket gopher populations or habitat at a level consistent with the persistence of the species into the foreseeable future.

(33) *Comment:* Several commenters concluded that the Service found the existing State and local regulatory scheme adequate to protect gophers in areas outside of Thurston County, despite the fact that those jurisdictions have even lesser critical area protections.

Our Response: This statement is not correct. The Service actually concluded that although the existing State and local regulatory schemes provided some conservation measures, they are inadequate to reduce the threats within both Thurston and Pierce Counties (See threats discussion in our proposed rule; 77 FR 73770, pp. 73782–73786). In other counties where the Olympic, Shelton, or Cathlamet subspecies of Mazama pocket gophers are located, we currently have no evidence to suggest existing regulatory mechanisms are inadequate to such a degree that they pose a threat given the current status of these subspecies and their habitats.

(34) *Comment:* A comment submitted by a representative of the petroleum industry asserted that the impacts of impending climate change are not foreseeable.

Our Response: The vast majority of the body of literature contributed by adherents to the scientific method projects an increasing trend toward higher-than-average temperatures worldwide accompanied by an increased frequency in stochastic weather events, many of which present real and foreseeable threats. The Service does not consider climate change as a threat for the four Thurston/Pierce subspecies of the Mazama pocket gopher because the threat is not imminent given the organism's fossorial lifestyle and propensity to use exceedingly well-drained soils, which may provide a buffer from the most predictable aspects of a changing climate. This should not be misconstrued as an indicator that the Service believes that climate change is not a threat in the long term.

(35) *Comment:* One commenter stated that, despite following State recommendations for infrastructure development that complies with the Clean Water Act while simultaneously accommodating projected population growth in Thurston County, the listing determination and designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher communicates to the public that participation in such processes is a useless exercise.

Our Response: The Service encourages all parties involved in the development of infrastructure to comply with all Federal and State recommendations and laws. We additionally wish to draw attention to the annually updated list of species that are candidates for listing under the Act, which has included the Mazama pocket gopher since 2001. The Service works closely with Federal, State, county, and municipal planners to publicize the status of these candidate species so that the public, and specifically developers, will be able to make informed decisions when planning for future development at all scales.

(36) *Comment:* Several commenters suggested that, faced with the prospect of Federal regulations attributable to the listing of the Mazama pocket gopher, land owners will be more inclined to maintain their land in a way that would discourage pocket gopher presence on their property.

Our Response: Although some landowners may choose to maintain their land in such a way, we do not anticipate this to universally be the case. Many Thurston and Pierce County landowners have communicated a

desire to manage their lands in such a way that enhances prairie habitat. The Service recognizes these landowners and encourages positive stewardship that preserves biodiversity and local ecosystems. In this final rule, we have expanded the protections provided to residential and agricultural landowners under the 4(d) special rule for activities that support the maintenance of the open, early-seral conditions the Mazama pocket gopher prefers. We also encourage property owners who believe they have Mazama pocket gophers on their property to investigate the potential for a conservation agreement with the Service, some of which allow increased flexibility in land use in exchange for the maintenance of suitable habitat. For more information, please visit: *http://fws.gov/endangered/* and see the ''For Landowners'' tab.

(37) *Comment:* One commenter urged the Service to take into consideration lands that have been recently protected as conservation areas before publishing a final rule.

Our Response: We have carefully considered the contribution of all protected lands to the conservation and recovery of the four Thurston/Pierce subspecies of the Mazama pocket gopher before making a final listing decision for each subspecies. We concluded there are currently an insufficient number and distribution of permanently protected areas for the four Thurston/Pierce subspecies of the Mazama pocket gopher to preclude the need to list them under the Act.

(38) *Comment:* Several commenters wanting the Service to make the proposed 4(d) special rule more inclusive provided anecdotal accounts of Mazama pocket gophers persisting in landscapes where certain agricultural practices have been taking place for many years (e.g., ranching, raising of nursery trees, row cropping, etc.), but failed to provide the Service with any means by which to verify their statements.

Our Response: The Service is aware of some sites where Mazama pocket gophers appear to persist concordantly with certain agricultural practices. We have limited information on how different kinds of agricultural practices affect individual Mazama pocket gophers or their populations. Some practices such as subsoil or moldboard ploughing may conceivably have a greater impact on Mazama pocket gophers in the path of the plough than would most grazing and ranching practices. Similarly, shallow tillage may have a very different effect on animals present than deep tillage. Without being able to examine the short- and long-term effects of these practices, it is difficult to know if they are detrimental to Mazama pocket gopher populations where tilling and Mazama pocket gophers may co-occur.

During the 6-month extension for making our final determination, the Service worked collaboratively with the Washington State Department of Agriculture (WSDA) to address uncertainties surrounding the accuracy or sufficiency of the data we used to assess the threat of various agricultural and ranching activities to the Mazama pocket gopher. As part of this effort, WSDA conducted an assessment with cooperating agricultural landowners to evaluate the co-occurrence of the Mazama pocket gopher with certain representative agricultural practices.

The results of the assessment suggest that the Mazama pocket gopher is able to persist in at least some areas where these practices occur. While some of the practices recorded in the assessment may kill individual pocket gophers or negatively impact specific pocket gopher populations, we have expanded the list of permitted activities under our 4(d) special rule to include a broader range of agricultural practices, or address the specific timing of certain practices. We note that some agricultural practices are likely detrimental to the Mazama pocket gopher, but may be perceived as relatively harmless due to the continued presence of gophers on agricultural sites. Among all agricultural activities, deep tillage appears to have the highest likelihood of inadvertently killing the greatest number of individual gophers. The potential scope of impact this activity may cause is limited by virtue of its application to only a subset of agricultural lands and its intermittent use (recommended at a frequency of no more than once every 10 years, by NRCS). Continued presence of gophers on any tilled site may be the result of reoccupancy by remnant individuals from undisturbed field edges, and are not necessarily representative of established and enduring populations within these sites.

The value of maintaining actively working agricultural lands as open and undeveloped areas provides a substantial conservation benefit to the four Thurston/Pierce subspecies of the Mazama pocket gopher. Furthermore, we now have some additional information available to us regarding the compatibility of certain practices with Mazama pocket gopher conservation, as the result of the 6-month extension on this final listing rule and an assessment conducted during that time by WSDA. As a result, we have exempted some additional agricultural practices under the 4(d) special rule (See Special Rule, below.)

(39) *Comment:* Many commenters provided suggestions for revising the 4(d) special rule.

Our Response: The 4(d) special rule is a provision of the Act that allows for some ''take'' of a protected species when the overall outcome of the allowed actions are ''necessary and advisable to provide for the conservation of the species.'' The special rule is not intended to cover activities that do not provide some clear conservation benefit to the species. Many parties requested coverage for their actions under the 4(d) special rule without identifying the conservation benefit those actions would provide for the Mazama pocket gopher. The Service carefully considered all requests and amended the rule where appropriate, but was unable to cover many of the proposed actions. See the section entitled ''Special Rule'' for details on the revised 4(d) special rule.

Summary of Changes From the Proposed Rule

In making our final determination, we fully considered comments from the public and the peer reviewers on our proposed rule to list the four Thurston/Pierce subspecies of the Mazama pocket gopher as threatened species, and to promulgate a 4(d) special rule for the conservation of these subspecies. This final rule incorporates changes to our proposed listing and 4(d) special rule based on the comments and new information that we received, as summarized above. Changes from the proposed rule that we have incorporated here are as follows:

- We have expanded our discussion of occupied habitat and peripheral (or ''stepping stone'') populations in the Habitat and Life History section of this document, as well as our discussion of minimum habitat patch size.
- We received additional distribution data for the Mazama pocket gopher in western Washington, which we have incorporated here. However, this information did not alter the conclusion of our analysis.
- We included a more thorough discussion of the use of soil types and soil type complexes by the four Thurston/Pierce subspecies of the Mazama pocket gopher, which can also be found under the Habitat and Life History section.
- We made some technical corrections and reevaluated the threats to all four subspecies of the Thurston/Pierce subspecies of the Mazama pocket gopher based on comments received

from our State partners, as well as other comments received. Although our analysis of these potential threats is different from that in our proposed rule, none of the information changed our determination that listing each of the four subspecies of the Mazama pocket gopher as threatened species is warranted.

• We have revised the 4(d) special rule based on Federal and State agency comments and public comments. The 4(d) special rule included in our final determination has been broadened from the proposed special rule and has increased the scope of activities and allowable timing of those activities occurring on airport and agricultural and ranching lands; increased the scope of activities occurring on single-family residential properties; more broadly allowed the control of invasive plants and noxious weeds; and included the addition of routine vegetation management activities and fencing along roadside rights-of-way. We have found that such measures are necessary and advisable for the conservation of the species, and, as such, are appropriate for inclusion in our 4(d) special rule. As with all other activities covered by the 4(d) special rule, although exempted from the prohibitions of section 9 of the Act, consultation under section 7 of the Act is still required for those activities that may affect the listed species or their critical habitat in cases where there is a Federal nexus.

Background

Below, in this section of the rule, we discuss only those topics directly relevant to the listing of the Olympia, Roy Prairie, Tenino, and Yelm subspecies of the Mazama pocket gopher found in Thurston and Pierce Counties of Washington State.

Species Information

Although the species *Thomomys mazama,* or the Mazama pocket gopher, includes numerous subspecies that are found in the States of Washington, Oregon, and California (as described below in Taxonomy), only the four Thurston/Pierce subspecies of the Mazama pocket gopher are the subject of this rulemaking. In this document, when we use the general term ''Mazama pocket gopher,'' we are referring collectively to only those subspecies of *Thomomys mazama* that occur in the State of Washington; as used here, ''Mazama pocket gopher'' is not intended to include any subspecies of *T. mazama* that occur in the States of Oregon or California.

Adult Mazama pocket gophers are reddish brown to black above, and the underparts are lead-colored with buff-colored tips. The lips, nose, and patches behind the ears are black; the wrists are white. Adults range from 7 to 9 inches (in) (189 to 220 millimeters (mm)) in total length, with tails that range from 2 to 3 in (45 to 85 mm) (Verts and Carraway 2000, p. 2). In Washington, Mazama pocket gophers are found west of the Cascade Mountain Range in the Olympic Mountains and in the Puget Sound trough, with an additional single locality known from Wahkiakum County (Verts and Carraway 2000, p. 3). Their populations are concentrated in well-drained friable soils often associated with glacial outwash. Mazama pocket gophers reach reproductive age in the spring of the year after their birth and produce litters between spring and early summer. Litter size ranges from one to nine (Wight 1918, p. 14), with an average of five (Scheffer 1938, p. 222).

Taxonomy

The Mazama pocket gopher complex consists of 15 subspecies, 8 of which occur only in Washington, 5 of which occur only in Oregon, 1 that occurs only in California, and 1 subspecies with a distribution that spans the boundary between Oregon and California (Hall 1981, p. 467). The first pocket gophers collected in western Washington were considered to be subspecies of the northern pocket gopher (*Thomomys talpoides*) (Goldman 1939), until 1960 when the complex of pocket gophers found in western Washington was determined to be more similar to the western pocket gopher (*T. mazama*) based on characteristics of the baculum (penis bone) (Johnson and Benson 1960, p. 20). Eight western Washington subspecies of the Mazama pocket gopher (*T. mazama,* ssp. *couchi, glacialis, louiei, melanops, pugetensis, tacomensis, tumuli,* and *yelmensis*) have been identified (Hall 1981, p. 467). *Thomomys mazama* is recognized as a valid species by the Integrated Taxonomic Information System (ITIS), as are each of the subspecies (ITIS 2014).

Although there have been some suggestions that potential changes to the classification of some of these subspecies may be considered, as discussed below, we have no information to suggest that any of the presently recognized subspecies are the subject of serious dispute. We consulted with Alfred Gardner, Curator of North American mammals, Smithsonian Institution, National Museum of Natural History, who identified the Mammalian Species Account 641 of the American Society of Mammalogists, authored by Verts and Carraway (2000), as the definitive text for this taxon (Gardner 2012, pers. comm.). Thus we follow the subspecies designations of Verts and Carraway (2000) in this finding, as this text represents the currently accepted taxonomy for the species *Thomomys mazama.*

While past descriptions of Mazama pocket gophers have focused on morphological differences in characteristics such as pelage color, skull features, and body size (Bailey 1915; Taylor 1919; Goldman 1939; Dalquest and Scheffer 1942; Dalquest and Scheffer 1944a, b; Gardner 1950; Hall 1981, pp. 465–466), recent genetic evaluations have been conducted on the Mazama pocket gopher complex using mitochondrial deoxyribonucleic acid (mtDNA) sequencing of the cytochrome b gene (Welch 2008). From these and subsequent data, Welch and Kenagy (2008, pp. 6–7) determined that the Mazama pocket gopher complex in Washington is geographically structured into three haplotype clades (genetic groups) representing the following three localities: (1) Olympic Peninsula (Clade A, which includes the Olympic pocket gopher); (2) Mason County (Clade B, which includes the Shelton pocket gopher), and (3) Thurston and Pierce Counties (Clade C, which includes the Roy Prairie, Olympia, and Yelm pocket gophers).

Specimens from the subspecies *Thomomys mazama louiei* (Wahkiakum County) were unobtainable and as such were omitted from Welch and Kenagy's (2008, pp. 1–3) analysis, so what clade the Cathlamet pocket gopher belongs to or if it occupies its own clade is unknown. In addition, no specimens from either the subspecies *T. m. tumuli* (the Tenino pocket gopher) or the presumed extinct subspecies *T. m. tacomensis* (the Tacoma pocket gopher) were readily available and were also not included in the analysis. None of the haplotypes in the analyzed specimens were shared between the three clades, which supports the differentiation of the clades. The mtDNA analysis was not able to distinguish between subspecies in Clade C; more genetic work needs to be done to determine how closely related these subspecies are. Verts and Carraway (2000, p. 1) and the ITIS (2014) recognize *T. m. pugetensis, glacialis, tumuli,* and *yelmensis* (the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers, respectively) as separate subspecies based on differences in morphological characteristics (for example, pelage coloration; skull shape, size, and weight; shape and form of zygomatic arch; jugal bone; foot and tail length) and distribution. For the reasons

described above, we accept this classification of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers as separate subspecies of the Mazama pocket gopher.

Habitat and Life History

The four Thurston/Pierce subspecies of the Mazama pocket gopher are associated with glacial outwash prairies in western Washington, an ecosystem of conservation concern (Hartway and Steinberg 1997, p. 1) Steinberg and Heller (1997, p. 46) found that Mazama pocket gophers are even more restricted in distribution than are prairies, as there are some remnant high-quality prairies seemingly within the species' range that lack pocket gophers (e.g., Mima Mounds Natural Area Preserve (NAP), and 13th Division Prairie on JBLM). Pocket gopher distribution is affected by the rock content of soils (gophers avoid the rockiest soils), drainage, forage availability, and climate (Case and Jasch 1994, p. B–21; Steinberg and Heller 1997, p. 45; Hafner *et al.* 1998, p. 279; Reichman 2007, pp. 273–274; WDFW 2009; also see Stinson 2005, p. 31), thus further restricting the total area of a prairie that may be occupied by gophers. Prairie and meadow habitats used by pocket gophers have a naturally patchy distribution. In their prairie habitats, there is an even patchier distribution of soil rockiness, which may further restrict the total area that pocket gophers can utilize (Steinberg and Heller 1997, p. 45; WDFW 2009). We assume that meadow soils have a similarly patchy distribution of rockiness, though the soil surveys to support this are, at this time, incomplete.

In Washington, Mazama pocket gophers currently occupy the following soil series and soil series complexes: Alderwood, Cagey, Carstairs, Everett, Everett-Spanaway complex, Everett-Spanaway-Spana complex, Godfrey, Grove, Indianola, Kapowsin, McKenna, Murnen, Nisqually, Norma, Shelton, Spana, Spana-Spanaway-Nisqually complex, Spanaway, Spanaway-Nisqually complex, and Yelm. No soil survey information is currently available for the Olympic National Park, so soils series occupied by gophers there are unknown. These soil series and soil series complex names were derived from a GIS overlay of gopher locations with USDA NRCS GIS soil survey data layer (accessed June 20, 2008 for Thurston County; received from JBLM May 30, 2013 for Pierce County). These soil type names are very broad-scale soil series names, and don't include the more specific soil characteristics that come with a full soil map unit name, such as ''Spanaway gravelly sandy loam, 0 to 3 percent slopes.''

We are purposely not using specific map unit names because we know that there are imperfections in soil mapping. Mapped soil survey information may be imperfect for a variety of reasons. First, maps are based on the technology, standards, and tools that were available at the time soil surveys were conducted, sometimes up to 50 years ago. We recognize that soil survey boundaries may be adjusted in the future, and that soil series names may be added or removed on the NRCS's soil survey maps database. As a result, the overlap of gopher locations with soil series names may be different in the future. The soils information presented here is based on best scientific data available at the time of listing.

We also recognize that some of these soil series or soil series complexes are not typically either deep or well-drained. For a variety of reasons, a specific mapped soil type may or may not have all of the characteristics of that soil type as described by NRCS, and the actual soil that occurs on the ground may have characteristics that make it inhabitable by Mazama pocket gophers. These reasons may include map boundary or transcription errors, map projection errors or differences, map identification or typing errors, soil or hydrological manipulations that have occurred since mapping took place, small-scale inclusions in the mapped soil type that are different from the mapped soil and which may be used by Mazama pocket gophers, etc. Nevertheless, based on best available data, these are the areas where Mazama pocket gopher locations and mapped soils have been found to overlap when mapped in GIS. All of these soils could potentially be suitable for any of the four Thurston/Pierce subspecies of the Mazama pocket gopher. In addition, the four Thurston/Pierce subspecies of the Mazama pocket gopher may be able to forage or burrow in soil series not on the above list. For these reasons, our list of soils may be incomplete or appear to be overly inclusive. Although some soils are sandier, more gravelly, or may have more or less silt than described, most all soils used by Mazama pocket gophers are friable (easily pulverized or crumbled), loamy, and deep, and generally have slopes less than 15 percent.

In 2011, there were reports of Mazama pocket gophers (subspecies unknown) occurring on new types of soils and on managed forest lands in Capitol State Forest (owned by Washington Department of Natural Resources (WDNR)) and Vail Forest (owned by Weyerhaeuser) in Thurston County. These were subsequently determined not to be Mazama pocket gophers but instead moles (*Scapanus* spp.), based on followup surveying and/or trapping conducted in these areas by Washington Department of Fish and Wildlife (WDFW) during the 2012 gopher survey season (Thompson 2012b, pers. comm.). Please see the discussion in Historical and Current Range and Distribution for more information about the current state of knowledge on this matter for the Mazama pocket gopher.

Mazama pocket gophers are morphologically similar to other species of pocket gophers, all of which exploit a subterranean existence. They are stocky and tubular in shape, with short necks, powerful limbs, long claws, and tiny ears and eyes. Their short, nearly hairless tails are highly sensitive and probably assist in navigation in tunnels. Burrows consist of a series of main runways, off which lateral tunnels lead to the surface of the ground (Wight 1918, p. 7). Pocket gophers dig their burrows using their sharp teeth and claws and then push the soil out through the lateral tunnels (Wight 1918, p. 8; Case and Jasch 1994, p. B–20). Nests containing dried vegetation are generally located near the center of each pocket gopher's home tunnel system (Wight 1918, p. 10). Food caches and store piles are usually placed near the nest, and excrement is piled into blind tunnels or loop tunnels, and then covered with dirt, leaving the nest and main runways clean (Wight 1918, p. 11).

The ''pockets'' of pocket gophers are external, fur-lined cheek pouches on either side of the mouth that are used to transport nesting material and carry plant cuttings to storage compartments. As with all rodents and lagomorphs (rabbits and hares), their incisors grow continuously (Case and Jasch 1994, p. B–20), though the rate of growth of pocket gopher incisors is higher than most rodents, perhaps to compensate for increased wear resulting from tooth-digging. Pocket gophers also have ever-growing cheek teeth (aradicular hypsodont teeth), presumably an adaptation to compensate for the high rate of wear due to an abrasive diet. Pocket gophers don't hibernate in winter; they remain active throughout the year (Case and Jasch 1994, p. B–20). Many different vertebrates and invertebrates take refuge in gopher burrows, especially during inclement weather, including beetles, amphibians (such as toads and frogs), lizards, snakes, ground squirrels, and smaller rodents (Blume and Aga 1979, p. 131; Case and Jasch 1994, p. B–21; also see Stinson 2005, pp. 29–30).

A variety of natural predators eat pocket gophers, including weasels, snakes, badgers, foxes, skunks, bobcats, coyotes, great horned owls, barn owls, and several hawks (Hisaw and Gloyd 1926, entire; Fichter *et al.* 1955, p. 13; Huntly and Inouye 1988, p. 792; Case and Jasch 1994, p. B–21; Stinson 2005, pp. 29–30).

In addition to natural predators, predation by feral and domestic dogs (*Canis lupus familiaris*) and cats (*Felis catus*) is an increasing problem for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Many local populations of the four Thurston/Pierce subspecies of the Mazama pocket gopher are presumed to be small, based on the extent of mounding activity and the solitary and territorial nature of Mazama pocket gophers. Due to their solitary and territorial nature, many sites occupied by one of the four Thurston/Pierce subspecies of the Mazama pocket gopher may contain a small number of individuals and occur in a matrix of residential and agricultural development. With feral or uncontrolled domestic animals in the vicinity, Mazama pocket gophers are exposed to increased levels of predation in these semi-urban and rural environments. In addition, some local populations of the Mazama pocket gopher occur in areas where people recreate with their dogs, bringing these potential predators into environments that may otherwise be relatively free of them, such as wildlife areas or expanses of prairie controlled by DOD, consequently increasing the risks to the pocket gopher.

Pocket gophers are generalist herbivores and their diet includes a wide variety of plant material, including leafy vegetation, succulent roots, shoots, and tubers. In natural settings pocket gophers play a key ecological role by aerating soils, enriching soils with nutrients, activating the seed bank, and stimulating plant growth, though they can be considered pests in agricultural systems. In prairie and meadow ecosystems, pocket gopher activity is important in maintaining species richness and diversity.

The home range of a Mazama pocket gopher is composed of suitable breeding and foraging habitat. Home range size varies based on factors such as soil type, climate, and density and type of vegetative cover (Cox and Hunt 1992, p. 133; Case and Jasch 1994, p. B–21; Hafner *et al.* 1998, p. 279). Little research has been conducted regarding home range size for individual Mazama pocket gophers. Witmer *et al.* (1996, p. 96) reported an average home range size of about 1,076 square feet (ft^2) (100 square meters (m^2)) for Mazama pocket gophers in one location in Thurston County, Washington. Gopher density varies greatly due to local climate, soil suitability, and vegetation types (Case and Jasch 1994, p. B–21; Howard and Childs 1959, pp. 329–336), and densities are likely to be higher when habitat quality is better. Therefore, this one report on the Mazama pocket gopher (Witmer *et al.* 1996) is unlikely to represent the average density across all soil types, vegetation types, and other unique site characteristics across the ranges of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Research on other species of *Thomomys* pocket gophers in other states showed a wide range of home range sizes from approximately 80 to 14,370 ft^2 (7.4 to 1,335 m^2). Some of these are estimates based on density of gophers trapped per acre, and some are based on measurements of individual gopher territory sizes.

In the absence of studies demonstrating the minimum possible patch size for persistence of the Mazama pocket gopher, we used 50 ac (20 ha) as the smallest area necessary for recovery of Mazama pocket gopher populations, which was the agreed upon estimate of an expert panel (Converse *et al.* 2010, pp. 14–15) assembled to assist with the construction of a prairie habitat modeling exercise. We acknowledge the uncertainty with this estimate, but there are currently no studies regarding minimum patch size available for the Mazama pocket gopher, nor are there any obvious means by which a better answer can be obtained. Thus, the best available scientific data in this case is the opinion of an informed expert panel.

Foraging primarily takes place below the surface of the soil, where pocket gophers snip off roots of plants before occasionally pulling the whole plant below ground to eat or store in caches. If above-ground foraging occurs, it's usually within a few feet of a tunnel opening and forage plants are quickly cut into small pieces, and carried in their fur-lined cheek pouches back to the nest or cache (Wight 1918, p. 12). Any water they need is obtained from their food (Wight 1918, p. 13; Gettinger 1984, pp. 749–750). The probability of Mazama pocket gopher occupancy is much higher in areas with less than 10 percent woody vegetation cover (Olson 2011a, p. 16). It is reasonable to conclude that increasing amounts of woody vegetation will shade out the forbs, bulbs, and grasses that gophers prefer to eat, and high densities of woody plants make travel both below and above the ground difficult for gophers. Encroachment of woody vegetation is cited by WDNR as a threat to habitat occupied by the Mazama pocket gopher in Olympic National Park (the Olympic pocket gopher), causing fragmentation and reducing the possibility that individual Mazama pocket gophers will emigrate or immigrate, (thus reducing gene flow) and eventually lead to complete exclusion (Fleckenstein 2013, p. 3). Mazama pocket gophers are not known to occupy areas where woody vegetation is dense and no suitable forage is available (Marsh and Steel 1992, p. 210), which includes areas invaded by the native Douglas fir tree and the invasive shrub, Scot's broom (*Cytisus scoparius*). The Service considers encroachment by woody vegetation to have the potential to have substantial negative impacts on occupied Mazama pocket gopher habitat and thus their populations.

Pocket gophers have been documented to reach sexual maturity during the spring of the year following their birth, and generally produce one litter per year (Case and Jasch 1994, p. B–20), though timing of sexual maturity has been shown to vary with habitat quality (Patton and Brylski 1987, p. 502; Patton and Smith 1990, p. 76). Gestation lasts approximately 18 days (Schramm 1961, p. 169; Anderson 1978, p. 421). Young are born in the spring to early summer (Wight 1918, p. 13), and are reared by the female. Aside from the breeding season, males and females remain segregated in their own tunnel systems. There are 1–9 pups per litter (averaging 5), born without hair, pockets, or teeth, and they must be kept warm by the mother or ''packed'' in dried vegetation (Wight 1918, p. 14; Scheffer 1938, p. 222; Case and Jasch 1994, p. B–20). Juvenile pelage starts growing in at just over a week (Anderson 1978, p. 420). The young eat vegetation in the nest within 3 weeks of birth, with eyes and ears opening and pockets developing at about a month (Wight 1918, p. 14; Anderson 1978, p. 420). At 6 weeks they are weaned, fighting with siblings, and nearly ready to disperse (Wight 1918, p. 15; Anderson 1978, p. 420), which usually occurs at about 2 months of age (Stinson 2005, p. 26). They attain their adult weight around 4–5 months of age (Anderson 1978, pp. 419, 421). Most pocket gophers live only a year or two, with few living to 3 or 4 years of age (Hansen 1962, pp. 152–153; Livezey and Verts 1979, p. 39).

Pocket gophers rarely surface completely from their burrow except as juveniles, when they disperse above ground from spring through early fall (Ingles 1952, p. 89; Howard and Childs 1959, p. 312). They are highly asocial

and intolerant of other gophers. Each gopher maintains its own burrow system, and occupancy of a burrow system by multiple individuals occurs only for brief periods during mating seasons and prior to weaning young (Ingles 1952, pp. 88–89; Witmer and Engeman 2007, p. 288; Marsh and Steele 1992, p. 209). The mating system is probably polygynous (a single male mates with multiple females) and most likely based on female choice. The adult sex ratio has been reported as biased toward females in most species of pocket gophers that have been studied, often as much as 4:1 (Howard and Childs 1959, p. 296; Patton and Feder 1981, p. 917), though Witmer *et al.* (1996, p. 95) reported a sex ratio of close to 1:1 in Mazama pocket gophers.

Sex ratio may vary with population density, which is often a measure of forage density and soil suitability for burrowing (Patton and Smith 1990, p. 6). One researcher concluded that a site having a deep soil layer that was much less rocky had a pocket gopher population density five times that of another site having rocky soil (Steinberg 1996, p. 26). A study of the relationship between soil rockiness and pocket gopher distribution revealed a strong negative correlation between the proportion of medium-sized rocks in the soil and presence of pocket gophers in eight of nine prairies sampled (medium sized rocks were considered greater than 0.5 in (12.7 mm) but less than 2 in (50.8 mm) in diameter; Steinberg 1996, p. 32). In observations of pocket gopher distribution on JBLM, pocket gophers did not occur in areas with a high percentage of Scot's broom cover in the vegetation, or where mole populations were particularly dense (Steinberg 1995, p. 26). A more recent and methodical study conducted throughout Thurston and Pierce Counties also found that pocket gopher presence was negatively associated with Scot's broom; however, the researcher found no relationship between pocket gopher presence and mole density (Olson 2011a, pp. 12–13).

Pocket gophers have low vagility, meaning they have a poor dispersal capability (Williams and Baker 1976, p. 303). *Thomomys mazama* pocket gophers are smaller in size than other sympatric (occurring within the same geographic area; overlapping in distribution) or peripatric (immediately adjacent to each other but not significantly overlapping in distribution) *Thomomys* species (Verts and Carraway 2000, p. 1). Both dispersal distances and home range size are therefore likely to be smaller than for other *Thomomys* species. Dispersal distances may vary based on surface or soil conditions and size of the animal. For other, larger, *Thomomys* species, dispersal distances average about 131 ft (40 m) (Barnes 1973, pp. 168–169; Williams and Baker 1976, p. 306; Daly and Patton 1990, pp. 1286, 1288). Initial results from dispersal research being conducted on JBLM indicate that juvenile Mazama pocket gophers in Washington usually make movements from 13.1–32.8 ft (4–10 m), though these may not be dispersal movements. One juvenile made a distinct dispersal movement of 525 ft (160 m) in 1 day (Olson 2012b, p. 5). Suitable dispersal habitat is free of barriers to gopher movement, and may need to contain foraging habitat if an animal is required to make a long-distance dispersal move. Potential barriers include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, (Olson 2012b, p. 3), highly cultivated lawns, inhospitable soil types (Olson 2008, p. 4) or substrates, development and buildings, slopes greater than 35 percent, and open water. Barriers may be permeable, meaning that they may impede movement from place to place without completely blocking it, or they may be impermeable, meaning they cannot be crossed. Permeable barriers, as well as lower quality dispersal habitats, may present an intensified risk of mortality to animals that use them (e.g., open areas where predation risk is increased during passage or a paved area where vehicular mortality is high).

Historical and Current Range and Distribution

The following general description of the distribution of the Olympia, Roy Prairie, Tenino, and Yelm subspecies of the Mazama pocket gopher is based on our current knowledge. Steinberg (1996, p. 9) surveyed all historical and many currently known gopher sites. This included all current and formerly known occupied sites listed by the WDNR as having Carstairs, Nisqually, or Spanaway gravelly or sandy loam soil, and that WDNR determined to have vegetation that was intact prairie or restorable to prairie. WDFW and a suite of consultants have surveyed areas of potential gopher habitat in both counties, usually associated with proposed development (WDFW 2012). WDFW has also surveyed areas in relation to various research studies, as well as conducting distribution surveys across five counties in 2012 (Thompson 2012a and b, entire).

Based on current and historical survey information, in Pierce County, Roy Prairie pocket gophers occur generally south and east of I–5, south of Highway 512, and west of State Highway 7. There are prairie-type areas within this described area that have been surveyed multiple times with no detections of pocket gophers, so this description is likely to be an overestimate of the subspecies' range, and likely includes areas surveyed within the historical range of the Tacoma pocket gopher, which is presumed extinct. We acknowledge that few surveys have been conducted off JBLM lands in this area, and our specific knowledge of the range of this subspecies could change in the future.

In Thurston County, the Olympia, Tenino, and Yelm pocket gophers are known to occur east of Black River and south of Interstate 5 and State Highway 101. There are no historical records of Mazama pocket gophers occurring outside of these areas within Thurston County. Soil series and soil series complexes that are known to support pocket gophers do occur outside of these areas. Multiple surveys conducted west of the Black River have consistently yielded negative results (WDFW 2013a). For that reason, there is some confidence that the Black River is a range-restrictive landscape feature. Fewer surveys have been conducted north of Interstate 5 and State Highway 101 (WDFW 2013a), but those also yielded negative results. It is possible that the Mazama pocket gopher may occur north of these highways in Thurston County, but we presently have no gopher occurrence data to support that potential.

The present outermost boundaries of the ranges of each of the four Thurston/Pierce subspecies of the Mazama pocket gopher are likely approximately the same as they were historically. However, entire prairie areas or portions thereof within those outer perimeters have been lost to development and woody plant encroachment (see Summary of Factors Affecting the Species). Therefore, at present Mazama pocket gophers likely occupy fewer total acres than they did historically, and also occupy fewer total areas (that is, there are fewer populations within the area of their diminished range). These four subspecies are known to still occur in their type locality locations (described below), and the areas immediately around those locations are considered to still be part of each subspecies' range. Beyond these areas, uncertainty remains as to the entire areal extent of each subspecies' range, and where or if populations of subspecies coexist or abut one another; each subspecies' range is presumed to extend beyond their type localities. For this reason, the list of soils given for each subspecies below is

shorter than the list given in our final designation of critical habitat for Mazama pocket gopher, published elsewhere in the **Federal Register** today.

The type locality for the Olympia pocket gopher (*Thomomys mazama pugetensis*) was the prairie on and around the Olympia Airport, known as Bush Prairie (Dalquest and Scheffer 1944b, p. 445). Gophers continue to occupy this area. Soil series and soil series complexes in and around this area that may support Mazama pocket gophers include Alderwood, Cagey, Everett, Indianola, McKenna, Nisqually, Norma, Spana, Spanaway-Nisqually complex, and Yelm.

The Roy Prairie pocket gopher (*Thomomys mazama glacialis*) is found in the vicinity of the Roy Prairie and on JBLM in Pierce County. The subspecies was described as plentiful in 1983 but by 1993 the extent of activity at the type locality was described as a ''small population'' (Steinberg 1996, p. 24). Due to proximity to the subspecies' type locality, it is likely that gophers occurring on 91st Division Prairie and Marion Prairie in Pierce County contain this subspecies. Soil series and soil series complexes in and around this area that may support Mazama pocket gophers include Alderwood, Everett, Everett-Spanaway complex, Everett-Spanaway-Spana complex, Nisqually, Spana-Spanaway-Nisqually complex, and Spanaway.

Tenino pocket gophers (*Thomomys mazama tumuli*) were originally found in the vicinity of the Rocky Prairie NAP, near Tenino (Dalquest and Scheffer 1942, p. 96), a relatively small-extent prairie area. Gophers still reside there, but WDFW researchers have not seen consistent occupancy of the area by gophers in recent years (Olson 2010, *in litt.*), suggesting that the activity intermittently detected in the NAP may be attributable to individuals dispersing in from a currently unidentified nearby source. Soil series and soil series complexes in this area that may support Mazama pocket gophers include Everett, Nisqually, Norma, Spanaway, and Spanaway-Nisqually complex.

Yelm pocket gophers (*Thomomys mazama yelmensis*) were originally found on prairies in the area of Grand Mound, Vail, and Rochester (Dalquest and Scheffer 1944b, p. 446). Surveys conducted in 1993–1994 found no gophers near the towns of Vail or Rochester (Steinberg 1995, p. 28). More recent surveys have reported gophers near Grand Mound, Littlerock, Rainier, Rochester, and Vail (Krippner 2011, p. 31), though WDFW biologists question the validity of the reports near Littlerock and Vail (WDFW 2013b, enclosure 1, p. 3). Soil series and soil series complexes in and around these areas that may support Mazama pocket gophers include Alderwood, Everett, Godfrey, Kapowsin, McKenna, Nisqually, Norma, Spana, Spanaway, Spanaway-Nisqually complex, and Yelm.

Population Estimates/Status

There are few data on historical or current population sizes of Mazama pocket gopher populations in Washington, although several local populations and one subspecies are believed to be extinct. Knowledge of the past status of the Mazama pocket gopher is limited to distributional information. Recent surveys have focused on determining current distribution, primarily in response to development applications. In addition, in 2012, WDFW initiated a 5-county-wide distribution survey. Because the object of all of these surveys has mainly been to determine presence/absence only, total population numbers for each subspecies are unknown. As discussed under Current and Historical Range and Distribution, the precise boundaries of each subspecies' range are not currently known. Local population estimates have been reported but are based on using apparent gopher mounds to delineate the number of territories, a method that has not been validated (Stinson 2005, pp. 40–41). Olson (2011a, p. 2) evaluated this methodology on pocket gopher populations at the Olympia Airport and Wolf Haven International. Although there was a positive relationship between the number of mounds and number of pocket gophers, the relationship varies spatially, temporally, and demographically (Olson 2011a, pp. 2, 39). Based on the results of Olson's 2011 study we believe past population estimates (Stinson 2005) may have been too high. As there is no generally accepted standard survey protocol to determine population size for pocket gophers, it is not currently possible to obtain an estimate of subspecies population sizes or trends. Overall habitat availability has declined, however, and habitat has a finite ability to support pocket gophers, though the number of gophers any one patch can support may vary due to a variety of factors related to habitat quality and population dynamics. For these reasons, the Service concludes the overall population trend of each of the four Thurston/Pierce subspecies of the Mazama pocket gopher is negative.

Increased survey effort since 2007 resulted in the identification of numerous additional occupied sites located on private lands, especially in Thurston County (WDFW 2013a). Some of these new detections are adjacent to other known occupied sites, such as the population at the Olympia Airport. The full extent of these smaller discontiguous sites is currently unknown, and no research has been done to determine whether or not these aggregations are ''stepping stone'' sites that may facilitate dispersal into nearby unoccupied suitable habitat or if they are population sinks (sites that do not add to the overall population through recruitment). Others of these additional occupied sites are separate locations, seemingly unassociated (physically) with known populations (Tirhi 2008, *in litt.*). The largest known expanse of areas occupied by any subspecies of the Mazama pocket gopher in Washington occur on JBLM (Roy Prairie and Yelm pocket gophers), and at the Olympia and Shelton airports (Olympia and Shelton pocket gophers, respectively).

A translocated population of Mazama pocket gophers occurs on Wolf Haven International's land near Tenino, Washington. Between 2005 and 2008, over 200 gophers from a variety of areas in Thurston County (some from around Olympia Airport (Olympia pocket gopher, *Thomomys mazama pugetensis*)) and some from near the intersection of Rich Road and Yelm Highway (assumed to be Olympia pocket gophers) were released into the 38-ac (15-ha) mounded prairie site. Based on the best available information, we do not believe the property contained Mazama pocket gophers previously. Today pocket gophers continue to occupy the site (Tirhi 2011, *in litt.*); however, current population estimates are not available. Another site, West Rocky Prairie Wildlife Area, has received a total number of 560 translocated pocket gophers (*T. m. pugetensis*) from the Olympia Airport between 2009 and 2011. Initial translocation efforts in 2009 were only marginally successful; a majority of the pocket gophers died within 3 days due to predation (Olson 2009, unnumbered p. 3). Modified release techniques used in 2010 and 2011 resulted in improved survival rates of gophers translocated to West Rocky Prairie Wildlife Area (Olson 2011c, unnumbered p. 4). It is too soon to know if the population will become self-sustaining in the absence of additional translocations. Here we note that this experimental population was inadvertently placed within what appears to have been the historical range of the Tenino pocket gopher (*T. m. tumuli*).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal List of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

In making this finding, information pertaining to each of the subspecies in question in relation to the five factors provided in section 4(a)(1) of the Act is discussed below. In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual negative 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 a threat it 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 an endangered or threatened species 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 an endangered species or threatened species under the Act.

We considered and evaluated the best available scientific and commercial information in evaluating the factors affecting each of the Mazama pocket gopher subspecies under consideration in this rule.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Under this factor, the primary long-term threats to the Mazama pocket gopher are the loss, degradation, and conversion of habitat, particularly to urban development, successional changes to grassland habitat, and the spread of invasive plants. The threats also include increased predation pressure, which is closely linked to habitat degradation and discussed more fully under Factor C.

The prairies of south Puget Sound are part of one of the rarest ecosystems in the United States (Noss *et al.* 1995, p. I–2; Dunn and Ewing 1997, p. v). Dramatic changes have occurred on the landscape over the last 150 years, including a 90 to 95 percent reduction in the prairie ecosystem. In the south Puget Sound region, where most of western Washington's prairies historically occurred, less than 10 percent of the original prairie persists, and only 3 percent remains dominated by native vegetation (Crawford and Hall 1997, pp. 13–14).

Development

Native prairies and grasslands have been severely reduced throughout the range of the four Thurston/Pierce subspecies of the Mazama pocket gopher as a result of human activity due to conversion of habitat to residential and commercial development and agriculture. Prairie habitat continues to be lost, particularly to residential development (Stinson 2005, p. 70), by removal and fragmentation of native vegetation and the excavation, grading, and/or heavy equipment-caused compaction of surfaces and conversion to non-habitat (buildings, pavement, other infrastructure), rendering soils unsuitable for burrowing. Residential development is associated with increased infrastructure such as new road construction, which is one of the primary causes of landscape fragmentation (Watts *et al.* 2007, p. 736). Activities that accompany low-density development are correlated with decreased levels of biodiversity, mortality to wildlife, and facilitated introduction of invasive species (Trombulak and Frissell 2000, entire; Watts *et al.* 2007, p. 736). In the south Puget Sound lowlands, the glacial outwash soils and gravels underlying the prairies used by Mazama pocket gophers are deep and valuable for use in construction and road building, which also leads to their degradation and destruction.

In the south Puget Sound, Nisqually loamy soils appear to support high densities of Mazama pocket gophers (Stinson 2010a, *in litt.;* Olson 2008, p. 6), the vast majority of which occur in developed areas of Thurston County, or within the Urban Growth Areas (UGAs) for the cities of Olympia, Tumwater, and Lacey (Thurston County 2004; WDFW 2009), where future development is most likely to occur. Where pocket gopher populations presumably historically extended across an undeveloped expanse of open prairie (Dalquest and Scheffer 1942, pp. 95–96), areas currently occupied by the four Thurston/Pierce subspecies of the Mazama pocket gopher are now isolated to small fragmented patches due to development and conversion of suitable habitat to incompatible uses.

As an example, the presumed extinction of the related Tacoma pocket gopher is likely linked directly to residential and commercial development, which has replaced nearly all gopher habitat in the historical range of the subspecies (Stinson 2005, pp. 18, 34, 46). One of the historical Tacoma pocket gopher sites was converted to a large gravel pit and golf course (Stinson 2005, pp. 47, 120; Steinberg 1996, pp. 24, 27). In addition, two gravel pits are now operating on part of the site recognized as the type locality for the Roy Prairie pocket gopher (Stinson 2005, p. 42), and another is in operation near Tenino (Stinson 2010b, *in litt.*) in the vicinity of the type locality for, and the only known population of, the Tenino pocket gopher.

Multiple pocket gopher sites in Pierce and Thurston Counties may be, or have been, lost to or degraded by gravel pit development, golf course development, residential and commercial development (Stinson 2005, p. 42; Stinson 2007, *in litt.,* and 2010b, *in litt.*) or military base development. Multiple prairies that used to contain uninterrupted expanses of prairie habitat suitable for pocket gophers within the range of the four Thurston/Pierce subspecies have been developed to cities, neighborhoods, agricultural lands, or military bases, and/or negatively impacted by such development, including Baker Prairie, Bush Prairie, Chambers Prairie, Frost Prairie, Grand Mound Prairie, Little Chambers Prairie, Marion Prairie, Roy Prairie, Ruth Prairie, Woods Prairie, Violet Prairie, and Yelm Prairie. Some of these prairie areas still contain smaller areas that support pocket gophers, and some appear to no longer support pocket gophers at all (WDFW 2012).

Where their properties coincide with gopher occupancy, many private land developers and landowners in Thurston County have been required to create gopher set-asides or agree to other mitigation activities in order to obtain development permits from the County (Tirhi 2008, *in litt.*). However, it is unknown if any gophers will remain on these sites due to the small size of the set-asides, extensive grading in some areas adjacent to set-asides, lack of dedicated funding for enforcement or monitoring of set-aside maintenance (Thurston County Long Range Planning and Resource Stewardship 2011, *in litt.,* p. 2), and lack of control of predation by domestic or feral cats and dogs. In addition, some landowners have received variances from Thurston County that allowed development to occur without a requirement to set aside areas for gophers.

A population of Olympia pocket gophers is located at and around the Port of Olympia's Olympia Airport, which is sited on the historical Bush Prairie. Gophers on Bush Prairie are currently vulnerable to negative impacts from proposed future development by the Port of Olympia and ongoing development by adjacent landowners. The Port of Olympia has plans to develop large portions of the existing grassland that likely supports the largest population of the Olympia pocket gopher in Washington (Stinson 2007, *in litt.;* Port of Olympia and WDFW 2008, p.1; Port of Olympia 2012). The Olympia Airport is realigning the airport runway, which is in known occupied habitat. They continue to work with the Service and WDFW on mitigating airport expansion activities that may negatively impact gophers (Tirhi 2010, *in litt.*).

Olympia, Roy Prairie, Tenino, and Yelm Pocket Gophers. The Olympia pocket gopher has a population at the Olympia Airport that spans several hundred acres, and there are two translocated populations: One at West Rocky Prairie Wildlife Area (some individuals from the Olympia Airport) and one at Wolf Haven (individuals from the Olympia Airport and some from near the intersection of Rich Road and Yelm Highway). The population centered on the Olympia Airport could be negatively impacted by plans for development both on and off the airport, while the two translocated populations are currently secure from intense commercial and residential development pressures as they occur on conserved lands. The Roy Prairie pocket gopher is known to occur across a large expanse of prairie on JBLM, which is currently secure from the threat of development. The Tenino pocket gopher has a single known population, which has been detected during surveys on the Rocky Prairie NAP, although the intermittent nature of these detections suggests it must be part of a larger metapopulation that occurs across nearby areas that have not been accessible for surveys. No known development poses a threat to the NAP, but any future conversion of the surrounding area to incompatible land use would likely hinder the recovery of this subspecies. The Yelm pocket gophers on Tenalquot prairie (which is owned in large part by JBLM) and Scatter Creek Wildlife Area are also secure from such residential and commercial development, but the Yelm pocket gopher habitat on Rock Prairie north of Old Highway 99 is in an area that is likely to be developed soon, which may negatively affect any local populations in the vicinity.

Loss of Ecological Disturbance Processes, Invasive Species, and Succession

The suppression and loss of ecological disturbance regimes across vast portions of the landscape, such as fire, has resulted in altered vegetation structure in prairies and meadows and has facilitated invasion by native and nonnative woody vegetation, rendering habitat unusable for the four Thurston/Pierce subspecies of the Mazama pocket gopher. The basic ecological processes that maintain prairies and meadows have disappeared from, or have been altered on, all but a few protected and managed sites.

Historically, the prairies and meadows of the south Puget Sound region of Washington are thought to have been actively maintained by the native peoples of the region, who lived here for at least 10,000 years before the arrival of Euro-American settlers (Boyd 1986, entire; Christy and Alverson 2011, p. 93). Frequent burning reduced the encroachment and spread of shrubs and trees (Boyd 1986, entire; Chappell and Kagan 2001, p. 42), favoring open grasslands with a rich variety of native plants and animals. Following Euro-American settlement of the region in the mid-19th century, fire was actively suppressed on grasslands, allowing encroachment by woody vegetation into the remaining prairie habitat and oak woodlands (Franklin and Dyrness 1973 p. 122; Boyd 1986, entire; Kruckeberg 1991, p. 287; Agee 1993, p. 360; Altman *et al.* 2001, p. 262).

Fires on the prairie create a mosaic of vegetation conditions, which serve to maintain native prairie plant communities. In some prairie patches fires will kill encroaching woody vegetation and reset succession back to bare ground, creating early successional vegetation conditions suitable for many native prairie species. Early successional forbs and grasses are favored by Mazama pocket gophers. The historical fire frequency on prairies has been estimated to be 3 to 5 years (Foster 2005, p. 8). On sites where regular fires occur, there is a high complement of native plants and fewer invasive species. These types of fires promote the maintenance of the native short-statured plant communities favored by pocket gophers.

The result of fire suppression has been the invasion of the prairies and oak woodlands by native and nonnative plant species (Dunn and Ewing 1997, p. v; Tveten and Fonda 1999, p. 146), notably woody plants such as the native Douglas-fir and the nonnative Scot's broom. On tallgrass prairies in midwestern North America, fire suppression has led to degradation and the loss of native grasslands (Curtis 1959, pp. 296, 298; Panzer 2002, p. 1297). On northwestern prairies, fire suppression has allowed Douglas-fir to encroach on and outcompete native prairie vegetation for light, water, and nutrients (Stinson 2005, p. 7). This increase in woody vegetation and nonnative plant species has resulted in less available prairie habitat overall and habitat that is unsuitable for and avoided by many native prairie species, including the Mazama pocket gopher (Tveten and Fonda 1999, p. 155; Pearson and Hopey 2005, pp. 2, 27; Olson 2011a, pp. 12, 16). Pocket gophers prefer early successional vegetation as forage. Woody plants shade out the forbs and grasses that gophers prefer to eat, and high densities of woody plants make travel both below and above the ground difficult for gophers. In locations with poor forage, pocket gophers tend to have larger territories, which may be difficult or impossible to establish in densely forested areas. The probability of Mazama pocket gopher occupancy is much higher in areas with less than 10 percent woody vegetation cover (Olson 2011a, p. 16).

On JBLM alone, over 16,000 acres (6,477 ha) of prairie has converted to Douglas-fir forest since the mid-19th century (Foster and Shaff 2003, p. 284). Where controlled burns or direct tree removal are not used as a management tool, this encroachment will continue to cause the loss of open grassland habitats for Mazama pocket gophers and is an ongoing threat for the species.

Restoration in some of the south Puget Sound grasslands has resulted in temporary control of Scot's broom and

other invasive plants through the careful and judicious use of herbicides, mowing, grazing, and fire. Fire has been used as a management tool to maintain native prairie composition and structure and is generally acknowledged to improve the health and composition of grassland habitat by providing a short-term nitrogen addition, which results in a fertilizer effect to vegetation, thus aiding grasses and forbs as they resprout.

Unintentional fires ignited by military training burn patches of prairie grasses and forbs on JBLM on an annual basis. These light ground fires create a mosaic of conditions within the grassland, maintaining a low vegetative structure of native and nonnative plant composition, and patches of bare soil. Because of the topography of the landscape, fires create a patchy mosaic of areas that burn completely, some areas that do not burn, and areas where consumption of the vegetation is mixed in its effects to the habitat. One of the benefits of fire in grasslands is that it tends to kill regenerating conifers, and reduces the cover of nonnative shrubs such as Scot's broom, although Scot's broom seed stored in the soil can be stimulated by fire (Agee 1993, p. 367). Fire also improves conditions for many native bulb-forming plants, such as *Camassia* sp. (camas) (Agee and Dunwiddie 1984, p. 367). On sites where regular fires occur, such as on JBLM, there is a high complement of native plants and fewer invasive species. These types of fires promote the maintenance of the native short-statured plant communities favored by pocket gophers.

Management practices such as intentional burning and mowing require expertise in timing and technique (i.e., best management practices) to achieve desired results. If applied at the wrong season, frequency, or scale, fire and mowing can be detrimental to the restoration of native prairie species. Excessive and high-intensity burning can result in a lack of vegetation or encourage regrowth to nonnative grasses. Where such burning has occurred over a period of more than 50 years on the artillery ranges of the JBLM, prairies are covered by nonnative forbs and grasses instead of native perennial bunchgrasses (Tveten and Fonda 1999, pp. 154–155).

Mazama pocket gophers are not commonly found in areas colonized by Douglas-fir trees because gophers require forbs and grasses of an early successional stage for food (Witmer *et al.* 1996, p. 96). Mazama pocket gophers observed on JBLM did not occur in areas with high cover of Scot's broom (Steinberg 1995, p. 26). A more recent study on JBLM also found that pocket gopher presence was negatively associated with Scot's broom (Olson 2011a, pp. 12–13, 16). Some subspecies of the Mazama pocket gopher may disperse through forested areas or may temporarily establish territories on forest edges, but there is currently not enough data available to determine how common this behavior may be or which subspecies employ it. The four Thurston/Pierce subspecies occur on prairie-type habitats, many of which, if not actively managed to maintain vegetation in an early-successional state, have been invaded by shrubs and trees that either preclude the gophers or limit their ability to fully occupy the landscape. Certain typical airport management actions at civilian airports prevent woody vegetation from encroaching onto the areas surrounding the runways and taxiways for flight safety reasons. Woody vegetation encroachment is therefore not a threat at civilian airports.

Military Training

Populations of Mazama pocket gophers occurring on JBLM are exposed to differing levels of training activities on the base. The DOD's proposed actions under their ''Grow the Army'' initiative include stationing 5,700 new soldiers, new combat service support units, a combat aviation brigade, facility demolition and construction to support the increased troop levels, and additional aviation, maneuver, and live fire training (75 FR 55313; September 10, 2010). The increased training activities will affect nearly all training areas at JBLM, resulting in an increased risk of accidental fires, and habitat destruction and degradation attributable to vehicle use in occupied areas, mounted and dismounted training, bivouac activities, and digging. While training areas on the base have degraded habitat for the Mazama pocket gophers, with implementation of conservation measures, these areas still provide habitat for the Roy Prairie and Yelm subspecies that are found there. JBLM's recently signed Mazama pocket gopher Endangered Species Management Plan (ESMP) will serve to minimize such threats across the base by redirecting some training activities to areas outside of occupied habitat, designating areas where no vehicles are permitted, designating areas where vehicles will remain on roads only, and designating areas where no digging is allowed, among other conservation measures. JBLM has further committed to enhancing and expanding suitable habitat for the Roy Prairie and Yelm pocket gophers in ''priority habitat'' areas on base (areas that were proposed as critical habitat); enforcing restrictions on recreational use of occupied habitat by dog owners and horseback riders; and continuing to support the off-base recovery of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Several moderate- to large-sized areas occupied by Mazama pocket gophers have been identified on JBLM within the historical range of the Roy Prairie pocket gopher (Pierce County) and Yelm pocket gopher (Thurston County). Their absence from some sites of what is presumed to have been formerly suitable habitat may be related to compaction of the soil due to years of mechanized vehicle training, which impedes burrowing activities of pocket gophers (Steinberg 1995, p. 36). Training infrastructure (roads, firing ranges, bunkers) also degrades gopher habitat and may lead to reduced use of these areas by pocket gophers. For example, as part of the Grow the Army effort, JBLM has plans to add a third rifle range on the south impact area where it overlaps with a densely occupied Mazama pocket gopher site. The area may be usable by gophers when the project is completed; however, construction of the rifle range may result in removal of forage and direct mortality of gophers through crushing of burrows (Stinson 2011, *in litt.*). Recent survey access to the center of the artillery impact area on 91st Division Prairie, where bombardment is presumably of the highest intensity, did detect some unspecified level of occupancy by the Roy Prairie pocket gopher (WDFW 2013b, enclosure 1, p. 6). This apparently suitable central portion of the 91st Division Prairie is subject to repeated and ongoing bombardment, which may create an ecological trap for dispersing juveniles. JBLM training areas have varying levels of use; some allow excavation and off-road vehicle use, while other areas have restrictions that limit off-road vehicle use. The ESMP specifically requires coordination between the JBLM Fish and Wildlife personnel and the JBLM entities responsible for training activities (e.g., Range Support, battalion commanders, and/or first field grade officers) to ensure all parties are aware of where gopher-occupied areas occur in relation to training activities, the effects of training, and the potential ramifications of habitat destruction or animal mortality. Since military training has the potential to directly or indirectly harm or harass Mazama pocket gophers, we conclude that these activities will

negatively impact the Roy Prairie and Yelm pocket gophers.

JBLM has committed to operational restrictions on military training areas, in order to avoid and minimize potential negative impacts to Roy Prairie and Yelm pocket gophers on portions of the base. Currently-occupied areas will be buffered from training activities, with an emphasis on occupied habitat in ''priority habitat'' areas. Regular surveys will be conducted with a goal of determining distribution of Mazama pocket gophers, protecting gophers and their habitat from disturbance or destruction, and determining population status. Where possible, JBLM will alleviate training pressure by transferring training activities to unoccupied areas where encroaching forest has been removed from former prairie habitat. This strategy has the effect of both releasing large areas of land that were historically prairie and providing unoccupied areas where training is free of the risk of negatively impacting Roy Prairie or Yelm pocket gophers. While the Service fully supports the implementation of these impact minimization efforts and will continue to collaborate with DOD to address all aspects of training impacts on the species, not all adverse impacts of training on the pocket gophers can be fully avoided. Military training continues to pose a threat to the Roy Prairie and Yelm subspecies at this time.

No military training occurs in the range of the Olympia or Tenino subspecies of the Mazama pocket gopher.

Restoration Activities

Management for invasive species and encroachment of woody plants requires control through equipment, herbicides, and other activities. While restoration has conservation value for the subspecies, management activities to implement restoration may also have directly negative impacts to the subspecies that are the target of habitat restoration if best management practices are not followed.

In the south Puget Sound, Mazama pocket gopher habitat has been degraded and encroached upon by native and nonnative woody plants, including Scot's broom and Douglas-fir, and several Washington State listed noxious weeds, such as *Euphorbia esula* (leafy spurge) and *Centaurea* sp. (knapweed) (Dunn and Ewing 1997, p. v; Vaughan and Black 2002, p. 11). Steinberg (1995, p. 26) observed that pocket gophers on JBLM did not occur in areas with thick Scot's broom, and Olson (2011a, pp. 12–13) also found that pocket gopher presence was negatively associated with Scot's broom. Most restoration activities are unlikely to have direct impacts on pocket gophers, though removal of nonnative vegetation is likely to temporarily decrease available forage for Mazama pocket gophers and, if heavy equipment is used during the removal (e.g., the mowing of established Scot's broom), burrows and individuals could be crushed. Where best management practices are implemented, these impacts could be minimized or avoided.

Summary of Factor A

Here we summarize the factors associated with the destruction or degradation of habitats for the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Much of the habitat originally used by the four Thurston/Pierce subspecies has been fragmented and/or lost to development. Residential and commercial development in the restricted remaining range of the four Thurston/Pierce subspecies is expected to continue into the future, and is likely to continue to result in substantial negative impacts to the subspecies' habitat and populations. Development removes forage vegetation, renders soils unsuitable for burrowing by covering them with impervious surfaces or compacting them, or by grading or removing them. Proposed development triggers Critical Areas Ordinances (CAOs) in Thurston and Pierce Counties where the pocket gophers occur, but resultant set-asides are not always adequate to conserve local populations into the future (for further discussion on existing regulatory mechanisms, see Factor D).

Past military training at JBLM has likely negatively affected two of the four Thurston/Pierce subspecies (Roy Prairie and Yelm pocket gophers) by direct and indirect mortality from bombardment and other types of military training, unintentional fires, and soils compaction on prairies. These threats are expected to continue in the future due to planned increases in stationing and military training at JBLM, but the negative impacts will be partially ameliorated through the measures outlined in the ESMP recently developed for the conservation benefit of the Mazama pocket gopher.

The four Thurston/Pierce subspecies of the Mazama pocket gopher also face threats from encroachment of native and nonnative plant species into their prairie environments due to succession and fire suppression, and are particularly negatively affected by the encroachment of woody vegetation. This has resulted in loss of forage vegetation for pocket gophers, as well as loss of burrowing habitat, as tree and shrub roots overtake the soils. Degradation of habitat due to encroachment by woody species such as Scot's broom and Douglas-fir continues to be an ongoing significant threat to the four Thurston/Pierce subspecies of the Mazama pocket gopher.

While restoration activities are intended to improve prairie ecosystem function, some types of restoration have the potential to negatively impact Mazama pocket gophers, such as instances where heavy equipment may be used in occupied areas, especially when best management practices such as avoidance of active areas are not carefully implemented.

The Washington prairie ecosystem upon which the four Thurston/Pierce subspecies of the Mazama pocket gopher primarily depend has been reduced by an estimated 90 to 95 percent over the past 150 years, with less than 10 percent of the native prairie remaining in the south Puget Sound region today. Due to loss and degradation of gopher habitat from ongoing and future residential and commercial development, encroachment of shrubs and trees into their prairie habitats, and negative impacts from both current and future military training (for Roy Prairie and Yelm subspecies), we conclude that the threats to the habitat of the four Thurston/Pierce subspecies of the Mazama pocket gopher are significant.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization of species results when the number of individuals removed from the system exceeds the ability of the population of the species to sustain its numbers or reduces populations of the species to a level such that it is vulnerable to other influences (threats) upon its survival. This overutilization can result from removal of individuals from the wild for commercial, recreational, scientific, or educational purposes.

One local population of the Mazama pocket gopher at Lost Lake Prairie in Mason County (Shelton pocket gopher) may have been extirpated as a result of collecting by Dalquest and Scheffer in the late 1930s or early 1940s (Dalquest and Scheffer 1944a, p. 314), though based on the numbers of gophers removed, this must have already been a very small local population prior to such collection. Later, Steinberg (1996, p. 23) conducted surveys in the vicinity and found no evidence of pocket

gophers. In addition, Mazama pocket gophers in Washington were used in a rodenticide experiment as recently as 1995 (Witmer *et al.* 1996, p. 97). Witmer *et al.* (1996, p. 95) claim these were likely *Thomomys mazama tumuli* (Tenino pocket gophers), but these Lacey-area gophers may fall in the range of the Olympia pocket gopher. As awareness of the plight of the Mazama pocket gopher subspecies in Washington has grown, the scientific community has found less invasive ways to monitor and study these animals. Further, the agricultural and silvicultural communities are developing new practices that allow for both crop production and the use of suitable habitat by Mazama pocket gophers.

Beyond direct collection of individuals, research may affect pocket gopher populations through other avenues as well. During the initial translocation experiments and research conducted by WDFW at Wolf Haven and West Rocky Prairie, respectively, between 2005 and 2011, pocket gopher mortality was extremely high (Linders 2008, p. 9; Olson 2011c; Olson 2012a, *in litt.*). In the case of the Wolf Haven translocations, gophers were removed from development sites near Olympia Airport and at the intersection of Yelm Highway and Rich Road, where pocket gopher mortality would have likely occurred as a result of direct negative impacts due to site development (crushing of individuals and burrows from heavy machinery excavation, grading, and construction, etc.). Pocket gophers continue to occupy Wolf Haven, despite there being no known occurrence records for the site prior to translocations. Similarly, pocket gophers were not known to inhabit West Rocky Prairie prior to translocation experiments there, though West Rocky Prairie was likely contiguous with Rocky Prairie in the recent past, making it probable that West Rocky Prairie was within the historical range of the Tenino pocket gopher. In the case of the West Rocky Prairie translocated population, pocket gophers were taken from the Olympia Airport, where a large and well-studied expanse of densely occupied Mazama pocket gopher habitat occurs in Thurston County. Although no comparative analysis has been conducted on the number of individuals at the Olympia Airport site before and after the translocations, there is no evidence that the source population suffered any adverse effects from the research conducted. The analysis and evaluation of this research is ongoing. Aside from historical negative impacts from collection and outside of this controlled research, we have no information or evidence that overutilization of any four Thurston/Pierce subspecies of the Mazama pocket gopher is an ongoing threat now or will become a threat in the future.

Summary of Factor B

In summary, although there is some evidence of historical mortality from overutilization of the Mazama pocket gopher, and there may have been some recent mortality from utilization of the Mazama pocket gopher for research purposes, we have no information to indicate that these activities have negatively impacted the subspecies as a whole, and have no information to suggest that overutilization is presently occurring or will become a significant threat in the future. In addition, we have no evidence that commercial, recreational, scientific, or educational use is occurring at a level that would pose a threat to any of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Factor C. Disease or Predation

Disease

Most healthy ecosystems include organisms such as viruses, bacteria, fungi, and parasites that cause disease. Healthy wildlife and ecosystems have evolved defenses to fend off most diseases before they have devastating impacts. An ecosystem with high levels of biodiversity (diversity of species and genetic diversity within species) is more resilient to the impacts of disease because there are greater possibilities that some species and individuals within a species have evolved resistance, or if an entire species is lost, that there will likely be another species to fill the empty niche.

Where ecosystems are not healthy due to a loss of biodiversity and threats such as habitat loss, climate change, pollutants or invasive species, wildlife and ecosystems are more vulnerable to emerging diseases. Diseases caused by or carried by invasive species can be particularly severe threats, as native wildlife may have no natural immunity to them (National Wildlife Federation 2012).

Our review of the best available scientific and commercial data found no evidence to indicate that disease is a threat to the Mazama pocket gopher subspecies found in Washington. We conclude that disease is not a threat to the subspecies now, nor do we anticipate it to become so in the future.

Predation

Predation is a process of major importance in influencing the distribution, abundance, and diversity of species in ecological communities. Generally, predation leads to changes in both the population size of the predator and that of the prey. In unfavorable environments, prey species are stressed or living at low population densities such that predation is likely to have negative effects on all prey species, thus lowering species richness. In addition, when a nonnative predator is introduced to the ecosystem, negative effects on the prey population may be higher than those from co-evolved native predators. The effect of predation may be magnified when populations are small, and the disproportionate effect of predation on declining populations has been shown to drive rare species even further towards extinction (Woodworth 1999, pp. 74–75).

Predation has an impact on populations of the four Thurston/Pierce subspecies of the Mazama pocket gopher. For these four subspecies, urbanization has resulted in not only habitat loss, but the increased exposure to feral and domestic cats and dogs. Domestic cats are known to have serious impacts on small mammals and birds and have been implicated in the decline of several endangered and threatened mammals, including marsh rabbits in Florida and the salt-marsh harvest mouse in California (Ogan and Jurek 1997, p. 89). Domestic cats and dogs have been specifically identified as common predators of pocket gophers (Wight 1918, p. 21; Henderson 1981, p. 233; Case and Jasch 1994, p. B–21) and at least two Mazama pocket gopher locations were found as a result of house cats bringing home pocket gopher carcasses (WDFW 2001, entire). Informal interviews with area biologists document multiple incidents of domestic pet predation on pocket gophers generally as well as Mazama pocket gophers specifically (Clouse 2012, *in litt.;* Chan 2013, *in litt.;* Skriletz 2013 *in litt.;* Wood 2013 *in litt.*). There is also one recorded instance of a WDFW biologist being presented with a dead Mazama pocket gopher by a dog during an east Olympia, Washington, site visit in 2006 (Burke Museum 2012; McAllister 2013, *in litt.*). Some local populations of the Mazama pocket gopher occur in areas where people recreate with their dogs, bringing these potential predators into environments that may otherwise be relatively free of them, consequently increasing the risks to individual pocket gophers and

populations that may be small and isolated.

The four Thurston/Pierce subspecies of the Mazama pocket gopher occur in rapidly developing areas. Local populations that survive commercial and residential development (adjacent to and within habitat) are potentially vulnerable to extirpation by domestic and feral cats and dogs (Henderson 1981, p. 233; Case and Jasch 1994, p. B–21). As stated previously, predation is a natural part of the Mazama pocket gopher's life history; however, the effect of predation may be magnified when populations are small and habitat is fragmented. The disproportionate effect of additional predation on declining populations has been shown to drive rare species even further towards extinction (Woodworth 1999, pp. 74–75). Predation, particularly from nonnative species, will likely continue to be a threat to the four Thurston/Pierce subspecies of the Mazama pocket gopher now and in the future. This is particularly likely where development abuts gopher habitat, resulting in increased numbers of cats and dogs in the vicinity, and in areas where people recreate with their dogs—particularly if dogs are off-leash and not prevented from harassing wildlife. In such areas where local populations of pocket gophers are already small, this additional predation pressure (above natural levels of predation) is expected to further negatively impact population numbers.

Summary of Factor C

Based on our review of the best available information, we conclude that disease is not a threat to the four Thurston/Pierce subspecies of the Mazama pocket gopher now, nor do we expect it to become a threat in the future.

Areas of suitable occupied habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher are small and declining and often occur as fragments of isolated habitat islands, frequently in proximity to increasingly urbanized areas with high numbers of cats and dogs. This consideration, in conjunction with the fact that feral and domestic cats and dogs are known predators of Mazama pocket gophers, leads us to conclude that predation by feral and domestic pets (cats and dogs) likely has a negative impact on these subspecies. At present, this impact is likely greatest on the Olympia and Yelm subspecies, which occur in close proximity to intensely developed areas; the Roy Prairie pocket gopher occurs primarily on JBLM, where DOD is working with the Service to diminish the negative impacts of active military training through conservation measures outlined in the ESMP. The relatively fewer known occurrences of the Roy Prairie pocket gopher that have been identified off the base are likely subject to increased predation pressure from feral and domestic cats and dogs where they are situated closely to developed areas. The Tenino pocket gopher is not currently surrounded by properties subject to increasing development, and thus predation pressure for the Tenino pocket gopher is likely restricted to that of native predators, such as coyotes and birds of prey. Therefore, based on our review of the best available scientific and commercial information, we conclude that predation is currently a threat to the four Thurston/Pierce subspecies of the Mazama pocket gopher now and will continue to be in the future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the subspecies discussed under the other factors. Section 4(b)(1)(A) of the Act requires the Service to take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species. . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such mechanisms that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the subspecies. We give strongest weight to statutes and their implementing regulations and to management direction that stems from those laws and regulations. An example would be State governmental actions enforced under a State statute or constitution, or Federal action under statute.

The following section includes a discussion of Federal, State, Tribal, or local laws, regulations, or treaties that apply to the Mazama pocket gopher. It includes legislation for Federal land management agencies and State and Federal regulatory authorities affecting land use or other relevant management.

United States Federal Laws and Regulations

No Federal laws in the United States specifically address the Mazama pocket gopher or any of its subspecies.

The Sikes Act (16 U.S.C. 670) authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act Improvement Act of 1997 requires Department of Defense installations to prepare Integrated Natural Resources Management Plans (INRMPs) that provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces. INRMPs incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. While INRMPs are not technically regulatory mechanisms because their implementation is subject to funding availability, they can be an added conservation tool in promoting the recovery of endangered and threatened species on military lands.

On JBLM in Washington, several policies and an INRMP are in place to provide conservation measures to grassland-associated species, including the endangered species, Taylor's checkerspot butterfly (*Euphydryas editha taylori*), and threatened species, streaked horned lark (*Eremophila alpestris strigata*), that occupy training lands on the military base. JBLM in partnership with local agencies and nongovernmental organizations has provided funding to conserve these species through the acquisition of new conservation properties and management actions intended to improve the amount and distribution of habitat for these species. JBLM has also provided funding to reintroduce declining species into suitable habitat on and off military lands. In June 2011, representatives from DOD (Washington, DC, office) met with all conservation partners to assess the success of this program and make decisions as to future funding needs. Support from the Garrison Commander of JBLM and all partners resulted in an increase in funding for habitat management and acquisition projects for these species on JBLM.

The Service has worked closely with the DOD to develop conservation measures for military training as well as recreation activities that occur within ''priority habitat'' areas (areas that were proposed as critical habitat) for the Roy Prairie and Yelm Mazama pocket gophers on JBLM. These include, but are not limited to, areas where no vehicles are permitted on occupied habitat, where vehicles are restricted to roads, and where digging is prohibited. The ESMP further dictates the establishment of buffer zones around occupied areas

and specific coordination and training requirements for entities responsible for troops who may train in occupied habitat (e.g., Range Support, battalion commanders, and/or first field grade officers). Rules regarding recreation will be fully funded and enforced in all occupied areas.

JBLM policies include Army Regulation 420–5, which covers the INRMP, and AR–200–1. This is an agreement between each troop and DOD management that actions taken by each soldier will comply with restrictions placed on specific Training Areas, or range lands. Within the INRMP, the wildlife branch of the DOD has developed an updated ESMP that provides site-specific management and protection actions that are taken on military lands for the conservation of the Mazama pocket gopher. The ESMP provides assurances of available funding to achieve intended goals of Mazama pocket gopher conservation. Compliance, implementation, and effectiveness monitoring reports will be submitted annually to the USFWS. ESMPs require regular updates to account for local or rangewide changes in species status. INRMPs also have a monitoring component that would require modifications in the form of, or adaptive management to, planning actions when the result of that specific action may differ from the intent of the planned action.

Under the Sikes Act, the JBLM INRMP (and associated ESMP) includes provisions that will promote protection and conservation practices to support the four Thurston/Pierce subspecies of the Mazama pocket gopher (due to conservation efforts they help fund both on- and off-base). These efforts will facilitate the prevention of further population declines in the Roy Prairie and Yelm pocket gophers associated with habitat loss or destruction on JBLM properties. However, current military actions are likely to continue to result in the mortality of individual animals and damage or destroy occupied habitat, even with the above mitigating efforts implemented by the military. Thus we conclude that the regulatory mechanisms in place at JBLM are not sufficient to fully offset the negative impacts of military training activities to the Roy Prairie and Yelm pocket gophers where they occur on the base.

State Laws and Regulations

Although the State of Washington has no State Endangered Species Act, the Washington Fish and Wildlife Commission has authority to list species as endangered or threatened (in addition to other possible designations; Revised Code of Washington (RCW) 77.12.020). The Mazama pocket gopher is currently listed as a threatened species by WDFW (the State does not list each of the Mazama pocket gopher subspecies as threatened individually; all eight subspecies of the Mazama pocket gopher that occur in Washington are listed by the State as threatened as a single taxon). State-listed species are protected from direct take and/or malicious ' take', but their habitat is not protected (RCW 77.15.120). State listings generally consider only the status of the species within the State's borders, and do not depend upon the same considerations as a potential Federal listing. The Washington State Growth Management Act of 1990 requires counties to develop CAOs that address development impacts to important wildlife habitats, thus habitat receives protection through county or municipal CAOs. CAOs may require environmental review and habitat management plans for development proposals that affect State-listed species, depending on the county. The specifics and implementation of CAOs vary by county (see specific discussions below).

The Mazama pocket gopher (i.e., all subspecies of Mazama pocket gopher in Washington) is a Priority Species under WDFW's Priority Habitats and Species Program (WDFW 2008, pp. 19, 80, 120). As Priority Species, the four Thurston/Pierce subspecies of the Mazama pocket gopher benefit from some protection of their habitats under environmental reviews of applications for county or municipal development permits (Stinson 2005, pp. 46, 70). WDFW provides Priority Habitats and Species Management Recommendations to local government permit reviewers, applicants, consultants, and landowners in order to avoid, minimize, and mitigate negative impacts to Mazama pocket gophers and their habitat (WDFW 2011, p.1). These recommendations are not regulatory, but are based on best available science.

WDNR manages approximately 66,000 ac (26,710 ha) of lands as Natural Area Preserves (NAP). NAPs provide the highest level of protection for excellent examples of unique or typical land features in Washington State. These NAPs provide protection for the Mazama pocket gopher where they overlap with Mazama pocket gopher habitat, and, based on their proactive management, we do not find that the inadequacy of existing regulatory mechanisms poses a threat to the four Thurston/Pierce subspecies of the Mazama pocket gopher on WDNR lands.

Based on our review of the existing regulatory mechanisms for the State of Washington, we conclude that, while the State's regulations may protect individuals of the subspecies, they do not guarantee protection for the four Thurston/Pierce subspecies of the Mazama pocket gopher from further population declines associated with habitat loss or inappropriate management, nor do they provide for these subspecies' long-term population viability.

Local Laws and Regulations

The Washington State Growth Management Act (GMA) of 1990 requires all jurisdictions in the State to designate and protect critical areas. The State defines five broad categories of critical areas, including: (1) Wetlands; (2) areas with critical recharging effects on aquifers used for potable water; (3) fish and wildlife habitat conservation areas; (4) frequently flooded areas; and (5) geologically hazardous areas. *Quercus garryana* (Oregon white oak) habitat and prairie both predominantly fall into the category of fish and wildlife habitat conservation areas, though due to the coarse nature of prairie soils and the presence of wet prairie habitat across the landscape, critical area protections for crucial aquifer recharge areas and wetlands may also address some prairie habitat protection. The GMA requires counties to develop CAOs that address development impacts to important wildlife habitats. The specifics and implementation of CAOs vary by county, although the Mazama pocket gopher is recognized as a species of local importance in the CAOs of Mason, Thurston, and Pierce Counties. In Thurston County, when development activities are proposed where pocket gophers are likely to be present, the developer must determine if gophers are present, assess the impact to gophers, and submit a Habitat Management Plan. Habitat Management Plans have been developed for Mazama pocket gophers for many sites in Thurston County since 2006. In Pierce County, a Habitat Assessment Report is required only where Mazama pocket gophers are known to be present (but not in areas where they are likely to be present, but have not been documented), resulting in substantially weaker protection for the Roy Prairie pocket gophers that exist off JBLM.

Due to their State-listed status in Washington, Mazama pocket gophers are included in three county CAOs in the State (Mason, Pierce, and Thurston). Within counties, CAOs apply to all unincorporated areas, but incorporated cities are required to independently address critical areas within their UGA. The incorporated cities within the range

of the four Thurston/Pierce subspecies of the Mazama pocket gopher in Washington are: (1) Olympia, Lacey, Rainier, Tenino, Tumwater, and Yelm (Thurston County); and (2) Roy (Pierce County). Actions in gopher habitat under such ordinances are intended to protect and minimize impacts to gophers and their habitats. As such, development applications in suspected gopher areas have spurred surveys and habitat assessments by WDFW or contractors in Thurston and Pierce Counties. While survey techniques are more-or-less consistent from site to site, potential development properties found to be occupied by gophers are subject to varied species protection measures. These measures have included habitat set-asides, on-site fencing, signage, and suggested guidelines for long-term management. These measures are inadequate for protecting the site from nonnative predators, ensuring long-term habitat functioning or population viability, providing connectivity to adjacent habitat areas, or prompting corrective management actions if the biological functioning of the set-aside declines.

In 2009, the Thurston County Board of Commissioners adopted Interim Ordinance No. 14260, which strengthened protections for prairie and Oregon white oak habitat in consideration of the best available science. Thurston County worked with the Service and WDFW to include an up-to-date definition of prairie habitat and to delineate soils where prairie habitat is likely to occur. In July 2010, the ordinance was renewed and amended, including revisions to the prairie soils list and changes to administrative language. Since July 2010, the interim prairie ordinance has been renewed on a 6-month basis. The provisions of this ordinance were made permanent with the adoption of Thurston County's CAO in July 2012. Several prairie species were also included as important species subject to critical areas regulation, including three subspecies of the Mazama pocket gopher (for Thurston County, these would be the Olympia, Tenino, and Yelm pocket gophers, although the CAO doesn't separate out subspecies by name) (Thurston County 2012, p. 1).

Implementation of the Thurston County CAOs includes delineation of prairie soils at the time of any land use application. County staff use the presence of prairie soils and soils identified as Mazama pocket gopher habitat as well as known presence of these or other prairie-dependent species to determine whether prairie habitat and/or soils that support the Mazama pocket gopher may be present at a site and negatively impacted by the land use activity. After a field review, if prairie habitat, gopher soils, or one of these species is found on the site and impacts to the prairie habitat or occupied area cannot be avoided through changes to the development application, the County requires a habitat management plan (HMP) to be developed, typically by a consultant for the landowner, in accordance with WDFW's Priority Habitats and Species Management Recommendations. This HMP specifies how site development should occur, and assists developers in achieving compliance with CAO requirements to minimize negative impacts to the prairie habitat and species. The HMPs typically include onsite fencing and semi-annual mowing. Mitigation for prairie impacts may also be required, on-site or off (Thurston County 2012, p. 2). HMPs are required to be submitted to WDFW for review as part of the permitting process, but WDFW biologists only review HMPs as staff time allows, and the permitting county or city is not required to incorporate WDFW comments, thus WDFW review is not a required step before implementation by a developer. After HMP development, the County may still vacate all or part of the HMP if it determines a reasonable use exception (discussed towards the end of this section) is appropriate.

Measures are implemented with varying degrees of biological assessment, evaluation, and monitoring to ensure ecological success. Unless a reasonable use exception is determined by Thurston County, development properties occupied by Mazama pocket gophers are required to set aside fenced, signed areas for pocket gopher protection that must be maintained into the future. However, the required fencing is often inadequate to exclude predators, and the size of the set-asides may not be large enough to sustain a population of gophers over time. Additionally, there appears to be no mechanism in place for oversight to ensure that current and future landowners are complying with the habitat maintenance requirements, so within these set-asides, pocket gopher habitat may become unsuitable over time. Because monitoring is a County policy issue, with no dedicated funding (Thurston County Long Range Planning and Resource Stewardship 2011, *in litt.,* p. 2), legal procedures to ensure performance, permanency, funding, and enforcement for long-term site stewardship are inadequate. Enforcement is largely complaint driven, and there is no scheduled monitoring of HMP set-asides due to lack of available staff (Clark 2013, *in litt.*). Consequently, for the Mazama pocket gophers negatively impacted by development in Thurston County, the contribution of these sites to maintaining pocket gopher populations and viability is unreliable for long-term conservation.

For a few property owners in Thurston County, the size of the set-aside would have precluded the proposed use of the properties. In these cases, landowners may apply for a ''reasonable use exception,'' which would allow development to proceed if approved. In some cases, gophers that could be live-trapped have been moved (translocated) to other locations. These were termed emergency translocations. In cases such as this, or where the set-aside doesn't wholly overlap all occupied habitat, destruction of occupied habitats (due to building construction, grading or paving over, etc.) likely results in death of individuals due to the gopher's underground existence and sedentary nature, which makes them vulnerable in situations where their burrows are crushed.

County-level CAOs do not apply to incorporated cities within county boundaries, thus the incorporated cities of Lacey, Olympia, Rainier, Tenino, Tumwater, and Yelm that overlap the ranges of the four Thurston/Pierce subspecies of the Mazama pocket gopher do not provide the same specificity of protection as the Thurston County CAO. Below we address the relevant city ordinances that overlap the subspecies' ranges. We conclude below with a summary of our evaluation of these existing ordinances in regard to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

The City of Lacey. The City of Lacey CAO includes in its definition of ''critical area'' any area identified as habitat for a Federal or State endangered, threatened, or sensitive species or State-listed priority habitat, and calls these Habitat Conservation Areas (HCAs) (Lacey Municipal Code (LMC) 14.33.060). These areas are defined through individual contract with qualified professional biologists on a site-by-site basis as development is proposed. The Code further states that, ''No development shall be allowed within a habitat conservation area or buffer [for a habitat conservation area] with which state or federally endangered, threatened, or sensitive species have a primary association'' (LMC 14.33.117).

The City of Olympia. The City of Olympia's municipal code states that ''The Department [City] may restrict the uses and activities of a development proposal which lie within one thousand feet of important habitat or species location,'' defined by WDFW's Priority Habitat and Species (PHS) Management Recommendations of 1991, as amended (Olympia Municipal Code (OMC) 18.32.315 B). When development is proposed within 1,000 ft (305 m) of habitat of a species designated as important by Washington State, the Olympia CAO requires the preparation of a formal ''Important Habitats and Species Management Plan'' unless waived by WDFW (OMC 18.32.325).

The City of Rainier. The City of Rainier municipal code identifies ''critical areas as defined by RCW 36.70A.030 to include . . . fish and wildlife habitat areas'' (Rainier Municipal Code (RMC) 18.100.030A) and further ''protects unique, fragile, and valuable elements of the environment, including critical fish and wildlife habitat'' (RMC 180.100.030D). The City of Rainier mandates protective measures that include avoiding impact to critical areas first and mitigation second (RMC 18.100.B030B). Fish and wildlife habitat critical areas may be designated either by a contracted ''qualified professional'' or a qualified city employee (RMC 18.100.H040H).

The City of Tenino. The City of Tenino municipal code gives Development Regulations for Critical Areas and Natural Resource Lands that include fish and wildlife habitat areas (Tenino Municipal Code (TMC) 18D.10.030 A) and further ''protects unique, fragile, and valuable elements of the environment, including critical fish and wildlife habitat'' (TMC 18D.10.030 D). The City of Tenino references the WDNR Critical Areas Fish and Wildlife Habitat Areas-Stream Typing Map and the WDFW PHS Program and PHS Maps as sources to identify fish and wildlife habitat (TMC 18D.10.140 E1, 2). The City also defines critical fish and wildlife species habitat areas as those areas known to support or have ''a primary association with State or Federally listed endangered, threatened, or sensitive species of fish or wildlife (specified in 50 CFR 17.11, 50 CFR 17.12, WAC 232–12–011) and which, if altered, may reduce the likelihood that the species will survive and reproduce over the long term'' (TMC 18D.40.020A, B).

The City of Tumwater. The City of Tumwater CAO outlines protections for HCAs and for ''habitats and species of local importance.'' Tumwater's HCAs are established on a case-by-case basis by a ''qualified professional'' as development is proposed and the HCAs are required to be consistent with the recommendations issued by the WDFW (Tumwater Municipal Code (TMC) 16.32.60). Species of local importance are defined as locally significant species that are not State-listed as threatened, endangered, or sensitive, but live in Tumwater and are of special importance to the citizens of Tumwater for cultural or historical reasons, or if the City is a critically significant portion of its range (TMC 16.32.055 A). TMC 16.32.050 A.1 further states that Areas with which State or Federally designated endangered, threatened, and sensitive species have a primary association are considered fish and wildlife habitat areas that are to be protected within the city of Tumwater. Tumwater is considered a ''critically significant portion of a species' range'' if the species' population would be divided into nonviable populations if it is eliminated from Tumwater'' (TMC 16.32.055 A2). Species of local importance are further defined as ''State monitor'' or ''candidate species'' where Tumwater is a significant portion of its range such that a significant reduction or elimination of the species from Tumwater would result in changing the status of the species to that of State endangered, threatened, or sensitive (TMC 16.32.055 A3).

The City of Yelm. The municipal code of Yelm states that it will ''regulate all uses, activities, and developments within, adjacent to, or likely to affect one or more critical areas, consistent with the best available science'' (Yelm Municipal Code (YMC) 14.08.010 E4f) and mandates that ''all actions and developments shall be designed and constructed to avoid, minimize, and restore all adverse impacts.'' Further, it states that ''no activity or use shall be allowed that results in a net loss of the functions or values of critical areas'' (YMC 14.08.010 G) and ''no development shall be allowed within a habitat conservation area or buffer which state or federally endangered, threatened, or sensitive species have a primary association, except that which is provided for by a management plan established by WDFW or applicable state or federal agency'' (YMC 14.080.140 D1a). The City of Yelm municipal code states that by ''limiting development and alteration of critical areas'' it will ''maintain healthy, functioning ecosystems through the protection of unique, fragile, and valuable elements of the environment, and . . . conserve the biodiversity of plant and animal species'' (17.08.010 A4b).

The City of Roy. The CAO for the city of Roy (Pierce County) defines HCAs according to WDFW PHS (Roy Municipal Code (RMC) 10–5E1 C), alongside habitats and species of local importance as identified by the City (RMC 10–5E1 D). HCAs are delineated by qualified professional fish and wildlife biologists (RMC 10–5–9 A5). These HCAs are subject to mitigation if direct impacts to the HCA are unavoidable (RMC 10–5–13 E3).

Summary. County and City CAOs have been crafted with the intent of preserving the maximum amount of biodiversity while at the same time encouraging high-density development within their respective UGAs. County and City CAOs require that potential fish and wildlife habitat be surveyed by qualified professional habitat biologists as development is proposed (with the exception of Rainier, where a qualified city staffer may complete the survey). It should be noted that, although the cities of Rainier, Roy, Tenino, and Yelm have language relating to protection of State-listed or locally important species, none of these four cities are presently requiring surveys for Mazama pocket gophers to be conducted as part of the development permit review process, despite the fact that it is listed by the State as a threatened species, as is the case in the cities of Lacey, Olympia, and Tumwater (WDFW 2013b, enclosure 1, p. 8). An HCA is determined according to the WDFW PHS list, which is associated with WDFW management recommendations for each habitat and species. If an HCA is identified at a site, the development of the parcel is then subject to the CAO regulations. Mitigation required by each County or City CAO prioritizes reconsideration of the proposed development action in order to avoid the impact to the HCA.

These efforts are laudable, but are unlikely to prevent isolation of local populations of sensitive species. Increased habitat fragmentation and degradation, decreased habitat connectivity, and pressure from onsite and offsite factors are not fully taken into consideration in the establishment of these mitigation sites. This may be due to a lack of standardization in assessment protocols, though efforts have been made on the part of WDFW to implement training requirements for all ''qualified biologists'' who survey for pocket gopher presence. Variability in the expertise and training of ''qualified habitat biologists'' has led to broad variation in the application of CAO guidelines in completion of the HMPs. Coupled with the lack of requirement

for WDFW to review and approve every HMP and flexibility in application of county and city CAO guidelines, this variability does not equally or adequately support the conservation of Mazama pocket gophers and their habitat.

Connectivity of populations, abundance of resources (e.g., forage habitat), and undisturbed habitat are three primary factors affecting plant and animal populations. The piecemeal pattern that development typically creates is difficult to reconcile with the needs of the Mazama pocket gopher within a given location. Further, previously common species may become uncommon due to disruption by development, and preservation of small pockets of habitat is unlikely to prevent extirpation of some species without intensive species management, which is beyond the scope of individual CAOs. The four Thurston/Pierce subspecies of the Mazama pocket gopher are affected by habitat loss through development and conversion. Protective measures undertaken while development of lands is taking place may provide benefits for these species; however, based on our review of the Washington State, County, and City regulatory mechanisms, we conclude that these measures are currently inadequate to protect the four Thurston/Pierce subspecies of the Mazama pocket gopher from further population declines associated with habitat loss, inappropriate management, and loss of connectivity.

Summary of Factor D

In summary, the existing regulatory mechanisms described above are not sufficient to significantly reduce or remove the negative threats presently experienced by the four Thurston/Pierce subspecies of the Mazama pocket gopher. Lack of essential habitat protection under State laws leaves these subspecies at continued risk of habitat loss and degradation.

On JBLM, regulations applying to the Mazama pocket gopher are covered by the current INRMP and ESMP. We conclude that military training, as it currently occurs, causes direct mortality of individuals and negatively affects habitat for the Roy Prairie and Yelm subspecies of the Mazama pocket gopher in all areas where training and the subspecies overlap. Both the Roy Prairie pocket gopher and the Yelm pocket gopher are known to occur on JBLM. Within the estimated range of the Roy Prairie pocket gopher, more than 80 percent of the soils known to be used by the subspecies are within JBLM's boundaries. JBLM also provides roughly 14 percent of the area of soils known to be used by the Yelm pocket gopher within its range. Military training, despite the policies and regulations in place on JBLM, will continue to result in mortality events and loss and destruction of occupied Roy Prairie and Yelm pocket gopher habitat; thus we conclude that the inadequacy of existing regulatory mechanisms poses a threat to the Roy Prairie and Yelm subspecies on JBLM lands. In addition, as discussed in the Summary of Factors Affecting the Species, where these subspecies occur off JBLM lands and are not covered by the ESMP, we do not consider existing regulatory mechanisms to be adequate to ameliorate threats to the subspecies (in Pierce County for the Roy Prairie pocket gopher and Thurston County for the Yelm pocket gopher).

The Washington CAOs generally provide conservation measures to minimize habitat removal and direct effects to the four Thurston/Pierce subspecies of the Mazama pocket gopher. However, habitat removal and degradation, direct loss of individuals, increased fragmentation, decreased connectivity, and the lack of consistent regulatory mechanisms to address the threats associated with these effects continues to occur.

Based upon our review of the best commercial and scientific data available, we conclude that the existing regulatory mechanisms are inadequate to reduce the threats experienced by the four Thurston/Pierce subspecies of the Mazama pocket gopher now or in the future.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Low Genetic Diversity, Small or Isolated Populations, and Low Reproductive Success

Most species' populations fluctuate naturally, responding to various factors such as weather events, disease, and predation. Andrén (1999, p. 358), however, suggested that population decline is more likely when habitat quality declines and habitat fragmentation increases. Populations that are small, fragmented, or isolated by habitat loss or modification of naturally patchy habitat, and other human-related factors, are more vulnerable to extirpation by natural randomly occurring events, cumulative effects, and to genetic effects that plague small populations, collectively known as small population effects. These effects can include genetic drift (loss of recessive alleles), founder effects (over time, an increasing percentage of the population inheriting a narrow range of traits), and genetic bottlenecks leading to increasingly lower genetic diversity, with consequent negative effects on evolutionary potential.

To date, of the eight subspecies of the Mazama pocket gopher in Washington, only the Olympic pocket gopher has been documented as having low genetic diversity (Welch and Kenagy 2008, p. 7), although the six other extant subspecies have local populations that are small, fragmented, and physically isolated from one another. The four Thurston/Pierce subspecies of the Mazama pocket gopher face threats from further loss or fragmentation of habitat. Historically, Mazama pocket gophers probably persisted by continually recolonizing habitat patches after local extinctions. This process, in concert with widespread development and conversion of habitat, has resulted in widely separated populations since intervening habitat corridors are now gone, likely stopping much of the natural recolonization that historically occurred (Stinson 2005, p. 46). Although the four Thurston/Pierce subspecies of the Mazama pocket gopher are not known to have low genetic diversity, small population sizes at most sites, coupled with disjunct and fragmented habitat, may contribute to further population declines. Little is known about the local or rangewide reproductive success of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007a, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007a, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, substantial increases in precipitation in some regions of the world, and decreases in other regions. (For these

and other examples, see IPCC 2007a, p. 30; and IPCC 2007d, pp. 35–54, 82–85.) Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007a, pp. 5–6 and figures SPM.3 and SPM.4; IPCC 2007d, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded that it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., IPCC 2007c, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the extent and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the 21st century, and that the scope and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007a, pp. 44–45; IPCC 2007c, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011 (entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007e, pp. 214–246). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, scope, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007a, p. 89; see also Glick *et al.* 2011, pp. 19–22). No single method for conducting such analyses applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

As is the case with all threats that we assess, even if we conclude that a species is currently affected or is likely to be affected in a negative way by one or more climate-related impacts, it does not necessarily follow that the species meets the definition of an ''endangered species'' or a ''threatened species'' under the Act. If a species is listed as endangered or threatened, knowledge regarding the vulnerability of the species to, and known or anticipated impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007a, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). With regard to our analysis for the four Thurston/Pierce subspecies of the Mazama pocket gopher, downscaled projections are available.

Downscaled climate change projections for the Puget Sound trough ecoregion, where the four Thurston/Pierce subspecies of the Mazama pocket gopher are found, predict consistently increasing annual mean temperatures from 2012 to 2095 using the IPCC's medium (A1B) emissions scenario (IPCC 2000, p. 245). Using the General Circulation Model (GCM) that most accurately predicts precipitation for the Pacific Northwest, the Third Generation Coupled Global Climate Model (CGCM3.1) under the medium emissions scenario (A1B), annual mean temperature is predicted to increase approximately 1.8 °Fahrenheit (F) (1 °Celsius (C)) by the year 2020, 3.6 °F (2 °C) by 2050, and 5.4 °F (3 °C) by 2090 (Climatewizardcustom 2012). This analysis was restricted to the ecoregion encompassing the overlapping range of the subspecies of interest and is well supported by analyses focused only on the Pacific Northwest by Mote and Salathé in their 2010 publication, Future Climate in the Pacific Northwest (Mote and Salathé 2010, entire). Employing the same GCM and medium emissions scenario, downscaled model runs for precipitation in the ecoregion project a small (less than 5 percent) increase in mean annual precipitation over approximately the next 80 years. Most months are projected to show an increase in mean annual precipitation. May through August are projected to show a decrease in mean annual precipitation, which corresponds with the majority of the reproductive season for the Mazama pocket gopher (Climatewizardcustom 2012).

The potential impacts of a changing global climate to the Mazama pocket gopher are presently unclear. Projections localized to the Georgia Basin-Puget Sound Trough-Willamette Valley Ecoregion suggest that temperatures are likely to increase approximately 5 °F (2.8 °C) at the north end of the region by the year 2080 based on an average of greenhouse gas emission scenarios B1, A1B, and A2 and all Global Circulation Models employed by Climatewizard (range = 2.6 °F to 7.6 °F; 1.4 °C to 4.2 °C). Similarly, the mid-region projection predicts an increase on average of 4.5 °F (range = 2.1 °F to 7.1 °F; average of 2.5 °C with a range of 1.2 °C to 3.9 °C) and the southern end to increase by 4.5 °F (range = 2.2 °F to 7.1 °F; average of 2.5 °C with a range of 1.2 °C to 3.9 °C). Worldwide, the IPCC states that it is very likely that extreme high temperatures, heat waves, and heavy precipitation events will increase in frequency (IPCC 2007c, p. 783).

Climate change has been linked to a number of conservation issues and changes in animal populations and ranges. However, direct evidence that climate change is the cause of these alterations is often lacking (McCarty 2001, p. 327). The body of work examining the response of small

mammals to climate change is small and is primarily focused on reconstruction of mammalian communities through the comparison of small mammal fossils from the late Pleistocene to those of the Holocene, a time period that spans the last significant climate warming event that took place between 15,000 and 11,000 years ago (Blois *et al.* 2010, entire; Terry *et al.* 2011, entire). Paleontological work done by Blois *et al.* (2010, p. 772) in northern California reveals a strong correlation between climate change and the decline and extirpation of small mammal species during the last major global warming event. The loss in species richness (number of taxa) of small mammals at their research site is equal to that documented for large mammal extinctions in North America during the same warming event at the transition from the Pleistocene to the Holocene: 32 percent (Blois *et al.* 2010, p. 772). Blois *et al.* (2010, supplemental data, p. 9) determined that *Thomomys mazama* were more vulnerable to climate change than other *Thomomys* species in the area due to the steep decline of *T. mazama* population numbers that coincided with the first significant warming event around 15,000 years ago and their extirpation from the site around 6,000 years ago.

To explore the potential impacts of climate change within the Anthropocene (the current geologic epoch), Blois (2009, p. 243) constructed a climate niche (the estimated tolerance of environmental variables for a given species) for *Thomomys mazama* reflecting the average minimum and average maximum temperatures range wide. Blois used climate data compiled by PRISM Group, Oregon State University, for the years 1971–2000, to construct the climate niche. Temperatures given are mean annual temperatures based on mean monthly averages. The climate niche Blois constructed for the Mazama pocket gopher gives 22.3 °F (−5.4 °C) for the lowest of the mean annual minimum temperatures across all localities and 66.9 °F (19.4 °C) for the highest of the mean annual maximum temperatures across all localities where Mazama pocket gophers are found. Minimum and maximum temperatures above the surface of the soil are attenuated with increased soil depth. Whether or not Mazama pocket gophers are able to regulate the temperature in their burrow system by digging deeper in the soil is unknown; however, it is likely that any temperature changes experienced by pocket gophers underground are attenuated relative to observed changes in surface temperatures.

The effects of climate change may be buffered by pocket gophers' fossorial lifestyle and are likely to be restricted to indirect effects in the form of changes in vegetation structure and subsequent habitat shifts through plant invasion and encroachment (Blois 2009, p. 217). Further, the impacts of climate change on western Washington are projected to be less severe than in other parts of the country. While overall annual average precipitation in western Washington is predicted to increase, seasonal precipitation is projected to become increasingly variable, with wetter and warmer winters and springs and drier, hotter summers (Mote and Salathé 2010, p. 34; Climatewizard 2012). These shifts in temperature, precipitation, and soil moisture may result in changes in the vegetation structure through woody plant invasion and encroachment and thus affect the habitat for all pocket gopher species and subspecies in the region. Despite this potential for future environmental changes, we have not identified nor are we aware of any data on an appropriate scale to evaluate habitat or populations trends for the four Thurston/Pierce subspecies of the Mazama pocket gopher or to make predictions about future trends and whether the subspecies will be significantly impacted by climate change.

Stochastic Weather Events

Stochasticity of extreme weather events may impact the ability of threatened and endangered species to survive. Vulnerability to weather events can be described as being composed of three elements: Exposure, sensitivity, and adaptive capacity.

The small, isolated nature of the remaining populations of the four Thurston/Pierce subspecies of the Mazama pocket gopher increases the subspecies' vulnerability to stochastic natural events. When species are limited to small, isolated habitats, they are more likely to become extinct due to a local event that negatively affects the population. While a population's small, isolated nature does not represent an independent threat to the species, it does substantially increase the risk of extirpation from the effects of all other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

The impact of stochastic weather and extreme weather events on pocket gophers is difficult to predict. Pocket gophers may largely be buffered from these impacts due to their fossorial lifestyle, but Case and Jasch (1994, p. B–21) connect sharp population declines of pocket gophers of several genera with stochastic weather events such as heavy snow cover and rapid snowmelt with a corresponding rise in the water table. Based on our review, we found no information to indicate that the effects of stochastic weather events are a threat to any of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Pesticides and Herbicides

The Mazama pocket gopher is not known to be impacted by pesticides or herbicides directly, but may be affected by the equipment used to dispense them. These impacts are covered under Factor A.

Control as a Pest Species

Pocket gophers are often considered a pest because they sometimes damage crops and seedling trees, and their mounds can create a nuisance. Several site locations in the WDFW wildlife survey database were found as a result of kill-trapping on Christmas tree farms, a nursery, and in a livestock pasture (WDFW 2001). For instance, the type locality for the Cathlamet pocket gopher is on a commercial tree farm. Mazama pocket gophers in Thurston County were also used in a rodenticide experiment as recently as 1995 (Witmer *et al.* 1996, p. 97).

In Washington it is currently illegal to trap or poison pocket gophers or trap or poison moles where they overlap with Mazama pocket gopher populations, but not all property owners are cognizant of these laws, nor are most citizens capable of differentiating between mole and pocket gopher soil disturbance. In light of this, it is reasonable to believe that mole trapping or poisoning efforts still have the potential to adversely affect pocket gopher populations. Local populations of Mazama pocket gophers that survive commercial and residential development (adjacent to and within habitat) may be subsequently extirpated by trapping or poisoning by humans. Lethal control by trapping or poisoning is most likely to be a threat to the four Thurston/Pierce subspecies where their ranges overlap with residential properties.

Recreation

The Mazama pocket gopher is not known to be directly negatively impacted by recreation activities, although predation by domestic dogs associated with recreational activities does occur (Clause 2012, pers. comm.). These impacts are covered under Predation in Factor C.

Summary of Factor E

Based upon our review of the best commercial and scientific data available, the loss, degradation, and fragmentation of prairies has resulted in smaller local population sizes, potential loss of genetic diversity, reduced gene flow among populations, destruction of population structure, and increased susceptibility to local population extirpation for the four Thurston/Pierce subspecies of the Mazama pocket gopher from a series of threats including poisoning and trapping, as summarized below.

Small population sizes coupled with disjunct and fragmented habitat may contribute to further population declines for the four Thurston/Pierce subspecies of the Mazama pocket gopher, which occur in habitats that face continuing fragmentation due to development and land conversion.

Mole trapping or poisoning efforts have the potential to adversely affect the four Thurston/Pierce subspecies of the Mazama pocket gopher, especially where they abut commercial and residential areas. Such efforts may have a particularly negative impact on the populations that are already small and isolated.

Due to small population effects caused by fragmentation of habitat, and impacts from trapping and poisoning efforts, we find that the threats associated with other natural or manmade factors are significant for the four Thurston/Pierce subspecies of the Mazama pocket gopher, when considered in conjunction with the other factors considered here.

Determination

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We have carefully assessed the best scientific and commercial data available regarding the past, present, and future threats to the four Thurston/Pierce subspecies of the Mazama pocket gopher. The Mazama pocket gophers of Washington State are hypothesized to have initially dispersed into and later fully occupied the glacial outwash aprons after the last glaciation period (Dalquest and Scheffer 1942, pp. 95–96), which would have later become the open prairies and grasslands of the south Puget Sound. In the south Puget Sound region, where most of western Washington's prairies historically occurred, and where the four Thurston/Pierce subspecies occur, less than 10 percent of the original prairie persists (Crawford and Hall 1997, pp. 13–14). Each of these four subspecies has varying degrees of impacts acting on them.

We find that both development and fire suppression have caused the loss of a majority of prairie habitats or made such habitat unavailable to the four Thurston/Pierce subspecies of the Mazama pocket gopher due to conversion of land to incompatible uses (e.g., residential and commercial development) and the encroachment of native and nonnative species of woody plants. These significant impacts are expected to continue into the foreseeable future. Impacts from military training, affecting large expanses of areas occupied by the Roy Prairie and Yelm pocket gopher on JBLM, are expected to increase under the DOD's Grow the Army initiative, although JBLM's Mazama pocket gopher ESMP provides an overall conservation benefit to the subspecies. Predation of gophers by feral and domestic cats and dogs has occurred and is expected to increase with increased residential development on prairie soils occupied by gophers, and to continue to occur where people recreate with their dogs in areas occupied by Mazama pocket gophers. Increased predation pressure is of particular concern for the Olympia and Yelm pocket gophers, while the majority of the Roy Prairie pocket gopher populations are buffered from increasing development by their location on JBLM, and the Tenino pocket gopher is currently isolated from residential development due to the location of their only known population.

We find that the threat of development and adverse impacts to habitat from conversion to other uses, the loss of historically occupied locations resulting in the present isolation and limited distribution of the subspecies, the impacts of military training, existing and likely future habitat fragmentation, land use changes, long-term fire suppression, and the threats associated with the present and threatened destruction, modification, and curtailment of the four Thurston/Pierce subspecies' habitat is significant. We conclude that there are likely to be significant, ongoing threats to the four Thurston/Pierce subspecies of the Mazama pocket gopher due to factors such as small population effects (risk of population loss due to catastrophic or stochastic events), predation, poisoning, and trapping. The small size of most of the remaining local populations, coupled with disjunct and fragmented habitat, may render them increasingly vulnerable to additional threats such as those mentioned above.

The four Thurston/Pierce subspecies face a combination of several high-magnitude threats; the threats are immediate; these subspecies are highly restricted in their ranges; the threats occur throughout the subspecies' ranges and are not restricted to any particular significant portion of those ranges. Therefore, we assessed the status of each of these subspecies throughout their entire ranges, and our assessment and proposed determination will apply to each of these subspecies throughout their entire ranges.

Therefore, for the reasons provided in this rule, on the basis of the best available scientific and commercial information, we are listing the four Thurston/Pierce subspecies of the Mazama pocket gopher (*Thomomys mazama pugetensis, glacialis, tumuli,* and *yelmensis*—the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers, respectively) as threatened throughout their ranges in accordance with sections 3(20) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is endangered or threatened throughout all or a significant portion of its range. The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the four Thurston/Pierce subspecies (*Thomomys mazama pugetensis, glacialis, tumuli,* and *yelmensis*) are likely to become endangered species throughout all or a significant portion of their ranges within the foreseeable future, based on the

immediacy, severity, and scope of the threats described above. We do not, however, have information to suggest that the present threats are of such great magnitude that any of these four subspecies are in immediate danger of extinction (that is, they do not meet the definition of an endangered species). Rather, we conclude that they are likely to become so in the foreseeable future (which is the definition of a threatened species). Therefore, on the basis of the best available scientific and commercial data, we determine that *T. m. pugetensis, glacialis, tumuli,* and *yelmensis* meet the definition of threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

The threats to the survival of the four Thurston/Pierce subspecies of the Mazama pocket gopher occur throughout the range of each subspecies and are not restricted to any particular significant portion of that range. Accordingly, our assessment and determination applies to each subspecies—the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers—throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, Tribal, State, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan identifies site-specific management actions that set a trigger for review of the five factors that control whether a species remains endangered or may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site at *http://www.fws.gov/endangered,* or at *http://www.fws.gov/wafwo/mpg.html* (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, Tribes, States, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, permanent habitat protection, and outreach and education. The recovery of many listed species often cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on Tribal, State, and private lands.

When this listing becomes effective, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Washington will be eligible for Federal funds to implement management actions that promote the protection or recovery of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants.*

Please let us know if you are interested in participating in recovery efforts for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Additionally, we invite you to submit any new information on these subspecies whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by any Federal agency. These activities include any actions to manage or restore critical habitat, actions that require collecting or handling the species for the purpose of captive propagation and translocation to new habitat, actions that may negatively affect the subspecies through removal, conversion, or degradation of habitat. Examples of activities conducted, regulated or funded by Federal agencies that may affect the four Thurston/Pierce subspecies of the Mazama pocket gopher or their habitat include, but are not limited to:

(1) Military training activities and operations conducted in or adjacent to occupied or suitable habitat;

(2) Activities with a Federal nexus that include vegetation management such as burning, mechanical treatment, and/or application of herbicides/pesticides on Federal, State, or private lands;

(3) Ground-disturbing activities regulated, funded, or conducted by Federal agencies in or adjacent to occupied and/or suitable habitat; and

(4) Import, export, or trade of the subspecies.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered and threatened wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within the range of listed species. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Introduction of species that compete with or prey upon the Mazama pocket gopher, or its habitat, such as the introduction of competing, invasive plants or animals;

(2) Unauthorized modification of the soil profiles or the forage habitat on sites known to be occupied by any of the four Thurston/Pierce subspecies of the Mazama pocket gopher;

(3) Unauthorized utilization of trapping or poisoning techniques in areas occupied by any of the four Thurston/Pierce subspecies of the Mazama pocket gopher; and

(4) Intentional harassment or removal of any of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181 (telephone 503–231–6158; facsimile 503–231–6243).

When the listing of the four Thurston/Pierce subspecies of the Mazama pocket gopher under the Act becomes effective, the State of Washington may enter into agreements with Federal agencies to administer and manage any area required for the conservation, management, enhancement, or protection of endangered species. Funds for these activities could be made available under section 6 of the Act (Cooperation with the States) or through competitive application to receive funding through our Recovery Program under section 4 of the Act. Thus, the Federal protection afforded to the subspecies by listing them as threatened species will be reinforced and supplemented by protection under State law.

Special Rule

Under section 4(d) of the Act, the Secretary may publish a special rule that modifies the standard protections for threatened species in the Service's regulations at 50 CFR 17.31, which implement section 9 of the Act, with special measures that are determined to be necessary and advisable to provide for the conservation of the species. As a means to promote conservation efforts on behalf of the four Thurston/Pierce subspecies of the Mazama pocket gopher, we are promulgating a special rule for these subspecies under section 4(d) of the Act. As a means to promote conservation efforts by encouraging activities that inadvertently create needed habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher, we are issuing this special rule for these subspecies under section 4(d) of the Act. Under this special rule, all prohibitions and provisions of 50 CFR 17.31 apply to the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers, except for the activities described here. These activities are specifically exempted from the take prohibitions of section 9 of the Act, because we have determined it necessary and advisable for the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher for the reasons outlined below.

Under the special rule, take of these subspecies caused by certain airport management actions on civilian airports; certain common practices by agricultural operations on State, county, private, or Tribal lands; certain ongoing single-family residential non-commercial activities; noxious weed and invasive plant control conducted on non-Federal lands; and certain vegetation management actions and fencing of roadside rights-of-way on highways and roads by Federal, State, county, private, or Tribal entities would be exempt from section 9 of the Act. Activities on Federal lands or with any Federal agency involvement will still need to be addressed through consultation under section 7 of the Act. Although we are exempting these activities from section 9 of the Act, we strongly encourage landowners and managers to use best management practices when they conduct actions that may negatively impact the four Thurston/Pierce subspecies of the Mazama pocket gopher, and to avoid impacts to these subspecies to the maximum extent practicable. Although this special 4(d) rule exempts any ''take'' (e.g., harass, harm, wound, kill) associated with conducting the activities described below, as a recommended conservation measure we encourage landowners to avoid soil-disturbing activities in areas of known or suspected active pocket gopher activity to minimize such take. Avoidance may include operating around such areas of activity or delaying the ground-disturbing activity at a site until pocket gopher activity appears to have ceased.

Routine Maintenance Activities and Wildlife Hazard Management at Civilian Airports. Some management actions taken at civilian airports are generally beneficial to Mazama pocket gophers. Mazama pocket gophers maintain populations at airports in the south Puget Sound (i.e., Olympia Airport and Shelton Airport). Airports routinely implement programs to minimize the presence of hazardous wildlife on airfields, and these activities

unintentionally create suitable habitat for Mazama pocket gophers. While some airport management activities like discing or grading can result in individuals being injured or killed, large areas of airport lands are kept free of shrubs and trees that would otherwise overtake occupied gopher habitat and render it unsuitable for use by gophers. These same areas are largely fenced, which restricts access to airport lands by coyotes, a major predator of Mazama pocket gophers. While the airports are in operation, safety measures require that airport-maintained lands themselves (areas adjacent to runways, taxiways, etc.) remain open and undeveloped.

Section 9 of the Act provides general prohibitions on activities that would result in take of a threatened species; however, because the Olympia Airport provides important habitat for the Olympia subspecies of the Mazama pocket gopher, and the subspecies has persisted there under current management, we are exempting certain routine airport management activities at civilian airports. The special rule for airport management acknowledges the benefits to pocket gophers from these activities; covered actions would include vegetation management to maintain desired grass height on or adjacent to airports through mowing, discing, herbicide use, or burning; hazing of hazardous wildlife (geese and other large birds and mammals); routine management, repair and maintenance of runways, roads, taxiways, and aprons; and management of forage, water, and shelter to be less attractive to these hazardous wildlife, as described under the Regulation Promulgation section, below. Many of the activities that benefit the Mazama pocket gopher on civilian airports such as the Olympia Airport are a result of practices to maintain safe conditions for aviation; we recommend that airport operators follow the guidance provided in Federal Aviation Administration advisory circular 150/5200–33C Hazardous Wildlife Attractants on or Near Airports (FAA 2007, entire), and all other applicable related guidance.

In response to public comments received on the proposed rule, we have revised the 4(d) special rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Based on feedback from the FAA and Port of Olympia (Olympia Airport), we have amended the list of covered activities to address specific airport management practices that may affect the Mazama pocket gopher by deleting restrictions on use of heavy equipment from the 4(d) special rule and adding other allowable activities (i.e., hazing of hazardous wildlife, management of forage, water, and shelter to deter hazardous wildlife, use of additional methods to control noxious weeds and invasive plants). See also Summary of Changes from the Proposed Rule section of this document.

We believe that a 4(d) special rule for specific activities on civilian airports is necessary and advisable to provide for the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher. We therefore exempt take of the Olympia gopher resulting from routine management activities and wildlife hazard management activities on civilian airports, which are specified below in the Regulation Promulgation section, under section 9 of the Act.

Agricultural Activities. Agricultural lands provide important habitats for the four Thurston/Pierce subspecies of the Mazama pocket gopher. This is particularly true for the Olympia, Tenino, and Yelm pocket gophers, in Thurston County, as the majority of known locations of the Roy Prairie pocket gopher occur on JBLM. While there are sites occupied by the Roy Prairie pocket gopher in and around the City of Roy, the known occurrences are extremely limited off the base. Examples of farmed areas that are occupied by Mazama pocket gophers and provide suitable habitat include livestock ranches, pastures, seed nurseries, market crop farms, and open rural areas where vegetation is maintained in an early seral condition. Agricultural lands in Thurston County account for a portion of the total area that the Service believes may be occupied or could be occupied by Mazama pocket gophers, approximately 15,370 ac (6,220 ha) of approximately 180,000 ac (72,843 ha) of suitable soils. While some farming activities like tilling or discing can result in individuals being injured or killed, if individual Mazama pocket gophers remain unharmed in adjacent undisturbed areas, they may readily recolonize the disturbed areas and continue to persist in areas that are farmed, grazed, and used for agricultural production, thereby providing a net conservation benefit.

Lands that are currently occupied by Mazama pocket gophers and that have been subject to repeated years of previous tilling are likely capable of sustaining continued tilling without significant impact to the population, assuming practices remain consistent, and surrounding lands are also managed as they have been in the past. Section 9 of the Act provides general prohibitions on activities that would result in take of a threatened species; however, because agricultural areas provide important habitats for the four Thurston/Pierce subspecies of the Mazama pocket gopher, we are exempting normal agricultural activities, including: Grazing; stock water facility installation and maintenance; routine installation and maintenance of fencing; planting, harvest, fertilization, etc., of crops; maintenance of corrals, sheds, and other outbuildings; maintenance of existing roads; placement of animal, plant, or soil supplements; noxious weed and invasive plant management; and occasional deep tillage. Although among all of these activities, deep tillage has the highest likelihood of inadvertently killing gophers, the potential scope of impact this activity may incur is limited by virtue of its application only to a subset of agricultural lands and its intermittent use within a year or between years.

The Service recognizes that in the long term, it is a benefit to the four Thurston/Pierce subspecies of the Mazama pocket gopher to maintain those aspects of the agricultural landscape that can aid in the recovery of the species. We believe this special rule will further conservation of these subspecies by discouraging conversions of the agricultural landscape into habitats unsuitable for the four Thurston/Pierce subspecies of the Mazama pocket gopher and encouraging landowners to continue managing the remaining landscape in ways that meet the needs of their operation and provide suitable habitat for these subspecies.

In addition, we believe that, in certain instances, easing the general take prohibitions on non-Federal agricultural lands may encourage continued responsible land uses that provide an overall benefit to the subspecies. We also believe that such a special rule will promote the conservation efforts and private lands partnerships critical for species recovery (Bean and Wilcove 1997, pp. 1–2). However, in easing the take prohibitions under section 9, the measures developed in the special rule must also contain prohibitions necessary and appropriate to conserve the species.

As discussed elsewhere in this rule, Mazama pocket gophers face many threats. Foremost among these is the loss of suitable vegetative habitat on suitable soils. With the loss of these natural habitats during the last century, alternative breeding, foraging, and dispersal sites, including active agricultural lands, have become critical for the continued survival and recovery of the four Thurston/Pierce subspecies of the Mazama pocket gopher. The unique challenge for conservation of

these subspecies on agricultural lands will be to find a way to work with private landowners to voluntarily create habitat for these subspecies rather than allow the habitats on their lands to become unsuitable through inaction. Section 9 of the Act prohibits a range of actions that would take a listed species, including actions that destroy habitats essential to individuals of the species. However, section 9 of the Act does not prohibit inaction; thus, a landowner's failure to disturb habitat on a regular basis to maintain the vegetation structure needed by Mazama pocket gophers would not be a violation of section 9 of the Act. If recovery of the four Thurston/Pierce subspecies of the Mazama pocket gopher requires the availability of agricultural lands, and we believe it does, then we need to give landowners reasons and incentives to manage their lands in ways that allow gophers to thrive on those lands.

While it appears that Mazama pocket gophers may be benefiting from agricultural practices, much remains to be learned about the effects of agricultural activities on these subspecies. We have concluded that developing a conservation partnership with the agricultural community will allow us to answer important questions about the impact of various agricultural practices, and will provide valuable information to assist in the recovery of the subspecies. We further believe that, where consistent with the discretion provided by the Act, implementing policies that promote such partnerships is an essential component for the recovery of listed species, particularly where species occur on private lands. Conservation partnerships can provide positive incentives to private landowners to voluntarily conserve natural resources, and can remove or reduce disincentives to conservation (Knight 1999, p. 224; Brook *et al.* 2003, p. 1644; Sorice *et al.* 2011, p. 594). The Service will work closely with the farming community to develop ways to monitor impacts on Mazama pocket gophers from routine agricultural activities. We conclude that this commitment is necessary and appropriate, and will provide further insights into land stewardship practices that foster the continued use of farm land in ways beneficial to both Mazama pocket gophers and the agricultural community.

In response to public comments received on the proposed rule, we have revised the 4(d) special rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Based on feedback from NRCS and agricultural interests, we deleted several activities or related descriptions from the 4(d) special rule (i.e., restrictions on types of fencing, timing restrictions on ground-disturbing activities, and discing of fencelines for fire control) and added other allowed activities (i.e., maintenance of troughs, tanks, pipelines, and watering systems, fertilization, harrowing, tilling of less than or equal to a 12-in (30.5-cm) depth, placement of plant nutrients and soil amendments, use of discing, fungicides, and fumigation to control noxious weeds and invasive plants, and deep tillage not to exceed once every 10 years). See also the Summary of Changes from the Proposed Rule section of this document.

We believe that a 4(d) special rule for activities on agricultural lands is necessary and advisable to provide for the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher. We therefore exempt take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers resulting from normal agricultural activities, which are specified below in the Regulation Promulgation section, under section 9 of the Act.

Single-family Residential Landowner Non-commercial Activities. The four Thurston/Pierce subspecies of the Mazama pocket gopher occur on private lands throughout their ranges in Thurston and Pierce Counties in Washington. Activities by single-family residential landowners in these areas have the potential to harm or kill pocket gophers. Section 9 of the Act provides general prohibitions on activities that would result in take of a threatened species; however, the Service recognizes that routine maintenance and some small construction activities, even those with the potential to inadvertently take individual Mazama pocket gophers, may on the whole, provide a conservation benefit to the subspecies, especially on properties larger than 1 acre (0.40 ha). The Service recognizes that in the long term, it is a benefit to the four Thurston/Pierce subspecies of the Mazama pocket gopher to maintain their distribution across private and public lands to aid in their recovery. We believe this special rule will further conservation of the subspecies by discouraging conversions of the landscape into habitats unsuitable for the four Thurston/Pierce subspecies of the Mazama pocket gopher and encouraging landowners to continue managing the remaining landscape in ways that meet their needs and provide suitable habitat for these four subspecies. Under the rule, covered actions would include noxious weed and invasive plant management through mowing or herbicide use or other methods, and the construction and placement of fencing, garden plots, play equipment, dog kennels, storage sheds, and carports.

This special rule, which exempts the non-commercial, single-family residential activities listed above, and which may otherwise result in take under section 9 of the Act, reduces the incentive for small landowners to eliminate populations of Mazama pocket gopher from their lands. In addition, we believe that in certain instances, easing the general take prohibitions on non-Federal small landowner lands may encourage continued responsible land uses that provide an overall benefit to the subspecies. We also believe that such a special rule will promote the conservation efforts and private lands partnerships critical for species recovery (Bean and Wilcove 1997, pp. 1–2). Conservation partnerships can provide positive incentives to private landowners to voluntarily conserve natural resources, and can remove or reduce disincentives to conservation (Knight 1999, p. 224; Brook *et al.* 2003, p. 1644; Sorice *et al.* 2011, p. 594). The Service will work closely with Thurston County and private landowners to develop ways to monitor impacts on Mazama pocket gophers from routine non-commercial activities. We conclude that this commitment is necessary and appropriate, and will provide further insights into land stewardship practices that foster the continued use of private lands in ways beneficial to both Mazama pocket gophers and the community.

In response to public comments received on the proposed rule, we have revised the 4(d) special rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Based on feedback from Thurston County and private landowners, we deleted two restrictions on activities from the 4(d) special rule (i.e., restrictions on types of fencing and play equipment) and added allowed activities (i.e., use of fungicide or fumigation to control noxious and invasive plants). Please see the Summary of Changes from the Proposed Rule section of this document for a complete list of changes to the 4(d) special rule between the proposed and final rule stages.

We believe that a 4(d) rule for single-family residential landowner non-commercial activities is necessary and advisable to provide for the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher. We therefore exempt take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers resulting from ongoing

non-commercial activities on small landowner properties, which are specified below in the Regulation Promulgation section, under section 9 of the Act.

Noxious Weed and Invasive Plant Control on Non-Federal Lands. Based on public comments, we are adding noxious weed and invasive plant control activities on non-Federal lands to the list of activities in the 4(d) special rule that are exempt from take under section 9 of the Act.

The four Thurston/Pierce subspecies of the Mazama pocket gopher breed and forage in areas of short-statured vegetation. These areas include, but are not limited to, native and managed prairies, fallow and active agricultural fields and pastures, and some crop fields. As mentioned under Factor A, the suppression and loss of ecological disturbance regimes, such as fire, across vast portions of the landscape have resulted in altered vegetation structure in these areas. This has facilitated invasion by woody vegetation, rendering habitat unsuitable for the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Habitat management to maintain short-statured vegetation is essential to maintaining suitable breeding, wintering, and foraging habitat for Mazama pocket gophers. Although Mazama pocket gophers are known to eat weedy forbs and grasses, and while use of certain equipment can destroy burrows, nests and young, as well as removing above-ground forage plants, removal of noxious weeds wherever they may occur will help to maintain the short-statured vegetation required by Mazama pocket gophers. Targeted plants include those on County, State, and Federal noxious weed lists (see State and Federal lists via links at *http://plants.usda.gov/java/noxiousDriver;* Washington State counties each have a noxious weed control Web site). By their nature, noxious weeds and invasive plants grow aggressively and multiply quickly, negatively affecting all types of habitats, including those used by Mazama pocket gophers. Some species of noxious weeds spread across long distances through wind, water, and animals, as well as via humans and vehicles, thereby affecting habitats far away from the source plants.

Section 9 of the Act provides general prohibitions on activities that would result in take of a threatened species; however, the Service recognizes that removal of noxious weeds and control of invasive plants, even those with the potential to inadvertently take individual Mazama pocket gophers, is necessary and may in part provide for the long-term conservation needs of the Mazama pocket gopher. The Service recognizes that in the long term, it is a benefit to the Mazama pocket gopher to remove noxious weeds wherever they may occur.

We believe that a 4(d) rule for control of noxious weeds and invasive plants is necessary and advisable to further the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher by helping to prevent spread of those noxious weeds and invasive plants that may render habitat unsuitable for the Mazama pocket gopher, and by encouraging landowners to manage their lands in ways that meet their property management needs as well as helping to prevent degradation or loss of suitable habitat for the Mazama pocket gopher. We therefore exempt take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers under section 9 of the Act resulting from routine removal or other management of noxious weeds and invasive plants, as described under the Regulation Promulgation section, under section 9 of the Act.

Roadside Right-of-Way Maintenance Activities on Federal and Non-Federal Lands. Based on comments from Federal, State, and County officials, we are adding roadside rights-of-way activities on Federal and non-Federal highways and roads to the list of activities in the 4(d) special rule that are exempt from take under section 9 of the Act.

As described above, the four Thurston/Pierce subspecies of the Mazama pocket gopher breed and forage in areas of short-statured vegetation. The suppression and loss of ecological disturbance regimes, such as fire, across vast portions of the landscape have resulted in altered vegetation structure in these areas. This has facilitated encroachment by woody vegetation, rendering habitat unsuitable for the four Thurston/Pierce subspecies of the Mazama pocket gopher.

Habitat management to maintain short-statured vegetation and remove woody plants is essential to maintaining suitable breeding and foraging habitat for Mazama pocket gophers. Although Mazama pocket gophers are known to eat weedy forbs and grasses, and while use of certain equipment can destroy burrows, nests, and young, as well as removing above-ground forage plants, the removal of certain noxious weeds, invasive plants, and woody vegetation and mowing to maintain low vegetation height will help to maintain the open, short-statured vegetation required by Mazama pocket gophers. Similarly, herbicide use to reduce noxious weeds and invasive plants or encroaching woody plants, provides the same benefit, if applied selectively. In association with these vegetation management activities, the repair and maintenance of fences along roadside rights-of-way may be helpful in terms of clearly delineating the area targeted for management, as well as assisting in containment of woody plants or exclusion of potential predators.

Many routine vegetation management activities along roadsides of highways and roads are beneficial to the four Thurston/Pierce subspecies, because they effectively mimic the disturbance regimes that historically maintained the early seral conditions preferred by Mazama pocket gophers. Such activities include those aimed at removing or controlling encroachment of woody plants, and mowing or use of herbicides to control noxious weeds and invasive plants, which results in the maintenance of the short-statured vegetation preferred by pocket gophers. The Service wishes to encourage the continuation of such activities, because there are areas known to be occupied by pocket gophers along the roadsides of highways and roads within the range of the four Thurston/Pierce subspecies of the Mazama pocket gopher, and in addition to maintaining safe conditions for motorists, these management actions provide for the conservation of the pocket gophers by actively maintaining suitable habitat conditions for the listed subspecies.

Section 9 of the Act provides general prohibitions on activities that would result in take of a threatened species. These prohibitions will apply to the four Thurston/Pierce subspecies of the Mazama pocket gopher upon the effective date of this final listing rule, at which point landowners and managers will need to consider how their activities may affect the species and whether that activity may result in an illegal take. However, the Service recognizes that vegetation management for the purposes of maintaining safe highway and roadside conditions, even with the potential to inadvertently take individual Mazama pocket gophers on occasion, is necessary and has the additional benefit of restoring and maintaining habitat in the early seral condition preferred by the pocket gophers. The Service recognizes that in the long term, it is a benefit to the Mazama pocket gopher to encourage this active management that contributes to the control of woody plants and maintenance of short-statured vegetation in areas occupied by pocket gophers.

We believe that a 4(d) rule for roadside right-of-way maintenance activities on Federal and non-Federal highways and roads is necessary and advisable to further the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher by encouraging managers of roadside rights-of-way to manage these areas in ways that meet their safety management needs as well as helping maintain suitable habitat characteristics in areas occupied by the Mazama pocket gopher, without the additional concern of whether these beneficial activities may inadvertently violate section 9 of the Act. We therefore exempt take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers under section 9 of the Act resulting from routine vegetation management and fencing activities along roadside rights-of-way, as described under the Regulation Promulgation section, under section 9 of the Act below.

Provisions of the Special Rule

We determine that issuance of this special rule is necessary and advisable to provide for the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher. We believe the actions and activities discussed above, while they may cause some level of harm to or disturbance to individuals of the four Thurston/Pierce subspecies of the Mazama pocket gopher, on balance create and improve habitat for the subspecies, create or foster conservation partnerships with landowners, and are important elements in the subspecies' conservation and recovery efforts. Exempted activities include certain routine agricultural activities, certain existing routine civilian airport maintenance and wildlife hazard management activities, certain routine single-family residential activities, control of noxious weeds and invasive plants on non-Federal lands, and certain roadside rights-of-way maintenance activities.

We encourage any landowner concerned about potential take of listed species on their property that is not covered under the Special Rule (see also § 17.40 Special Rules—Mammals, later in this document) to contact the Service to explore options for developing a safe harbor agreement or habitat conservation plan that can provide for the conservation of the species and offer management options to landowners, associated with a permit to protect the party from violations under section 9 of the Act (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to indigenous culture, and to make information available to tribes.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Washington Fish and Wildlife Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this final rule are the staff members of the Washington Fish and Wildlife Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding entries for ''Pocket gopher, Olympia (*Thomomys mazama pugetensis*),'' ''Pocket gopher, Roy Prairie'' (*Thomomys mazama glacialis*),'' ''Pocket gopher, Tenino (*Thomomys mazama tumuli*),'' and ''Pocket gopher, Yelm (*Thomomys mazama yelmensis*)'' in alphabetical order under Mammals to 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						
*	*	*	*	*	*		*
MAMMALS							
*	*	*	*	*	*		*
Pocket gopher, Olympia.	*Thomomys mazama pugetensis.*	U.S.A. (WA)	Entire	T	828	17.95(a)	17.40(a)
Pocket gopher, Roy Prairie.	*Thomomys mazama glacialis.*	U.S.A. (WA)	Entire	T	828	NA	17.40(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Pocket gopher, Tenino.	*Thomomys mazama tumuli.*	U.S.A. (WA)	Entire	T	828	17.95(a)	17.40(a)
Pocket gopher, Yelm	*Thomomys mazama yelmensis.*	U.S.A. (WA)	Entire	T	828	17.95(a)	17.40(a)
*	*	*	*	*	*		*

■ 3. Amend § 17.40 by adding paragraph (a) to read as follows:

§ 17.40 Special rules—mammals.

(a) Mazama pocket gophers (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis, glacialis, tumuli,* and *yelmensis*)—(1) *Which populations of the Mazama pocket gopher are covered by this special rule?* This special rule covers the four Thurston/Pierce subspecies of the Mazama pocket gopher (Olympia, Roy Prairie, Tenino, and Yelm) (*Thomomys mazama pugetensis, glacialis, tumuli,* and *yelmensis*) wherever they occur.

(2) *What activities are prohibited?* Except as noted in paragraphs (a)(3) through (7) of this section, all prohibitions of § 17.31 apply to the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers.

(3) *What activities are allowed on civilian airports?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from non-Federal routine maintenance activities in or adjacent to Mazama pocket gopher habitat and associated with airport operations on civilian airports. Routine maintenance activities include the following:

(i) Routine management, repair, and maintenance of runways, roads, and taxiways (does not include upgrades, or construction of new runways, roads, or taxiways, or new development at airports);

(ii) Hazing of hazardous wildlife;

(iii) Management of forage, water, and shelter to reduce the attractiveness of the area around airports for hazardous wildlife; and

(iv) Control or other management of noxious weeds and invasive plants through mowing, discing, herbicide and fungicide application, fumigation, or burning. Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable.

(4) *What agricultural activities are allowed on non-Federal lands?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from agricultural or horticultural (farming) practices implemented on such lands consistent with State laws on non-Federal lands. For the purposes of this special rule, farm means any facility, including land, buildings, watercourses, and appurtenances, used in the commercial production of crops, nursery or orchard stock, the propagation and raising of nursery or orchard stock, livestock or poultry, or livestock or poultry products.

(i) For the purposes of this special rule, an agricultural (farming) practice means a mode of operation on a farm that:

(A) Is or may be used on a farm of a similar nature;

(B) Is a generally accepted, reasonable, and prudent method for the operation of the farm to obtain a profit in money;

(C) Is or may become a generally accepted, reasonable, and prudent method in conjunction with farm use;

(D) Complies with applicable State laws;

(E) Is done in a reasonable and prudent manner.

(ii) Accepted agricultural or horticultural (farming) practices include:

(A) Grazing;

(B) Routine installation, management, and maintenance of stock water facilities such as stock ponds, berms, troughs, and tanks, pipelines and watering systems to maintain water supplies;

(C) Routine maintenance or construction of fencing;

(D) Planting, harvest, fertilization, harrowing, tilling, or rotation of crops (Disturbance to the soils shall not exceed a 12-inch (30.5-cm) depth. All activities that do not disturb the soil surface are also allowed, such as haying, baling, some orchard and berry plant management activities, etc.);

(E) Maintenance of livestock management facilities such as corrals, sheds, and other ranch outbuildings;

(F) Repair and maintenance of unimproved agricultural roads (This exemption does not include improvement, upgrade, or construction of new roads.);

(G) Placement of mineral supplements, plant nutrients, or soil amendments;

(H) Harvest, control, or other management of noxious weeds and invasive plants through mowing, discing, herbicide and fungicide application, fumigation, or burning (Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable.); and

(I) Deep tillage (usually at depths of 18–36 inches (45.7–91.4 cm), for compaction reduction purposes) occurring between September 1 and February 28, no more often than once in 10 years.

(5) *What noncommercial activities are allowed on single-family residential private land?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from noncommercial activities that occur in or adjacent to Mazama pocket gopher habitat on existing single-family residential properties. These activities include the following:

(i) Harvest, control, or other management of noxious weeds and invasive plants through mowing, herbicide and fungicide application, fumigation, or burning. Use of herbicides, fungicides, fumigation, and burning must occur in such a way that nontarget plants are avoided to the maximum extent practicable;

(ii) Construction and placement of fencing, garden plots, or play equipment; and

(iii) Construction and placement of dog kennels, carports, or storage sheds less than 120 ft^2 (11.15 m^2) in size.

(6) *What noxious weed and invasive plant control activities are allowed on*

non-Federal lands? Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from routine removal or other management of noxious weeds and invasive plants. Routine removal or other management of noxious weeds and invasive plants are limited to the following, and must be conducted in a way that impacts to nontarget plants are avoided to the maximum extent practicable:

(i) Mowing;

(ii) Discing;

(iii) Herbicide and fungicide application;

(iv) Fumigation; and

(v) Burning.

(7) *What roadside right-of-way maintenance activities are allowed on Federal and non-Federal lands?* Incidental take of the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers will not be a violation of section 9 of the Act, if the incidental take results from routine maintenance of roadside rights-of-way on Federal and non-Federal lands. Routine maintenance activities of roadside rights-of-way of highways and roads are limited to the following, and must be conducted in a way that impacts to nontarget plants are avoided to the maximum extent practicable:

(i) Mowing;

(ii) Mechanical removal of noxious weeds or invasive plants;

(iii) Selective application of herbicides for removal of noxious weeds or invasive plants; and

(iv) Repair or maintenance of fences.

* * * * *

Dated: March 26, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–07414 Filed 4–8–14; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 79 Wednesday,

No. 68 April 9, 2014

Part IV

The President

Proclamation 9099—National Crime Victims' Rights Week, 2014
Proclamation 9100—National Volunteer Week, 2014
Notice of April 7, 2014—Continuation of the National Emergency With Respect to Somalia

Federal Register
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Wednesday, April 9, 2014

Presidential Documents

Title 3—

The President

Proclamation 9099 of April 4, 2014

National Crime Victims' Rights Week, 2014

By the President of the United States of America

A Proclamation

This year marks 30 years since the passage of the Victims of Crime Act and the Family Violence Prevention and Services Act, and two decades since the Violence Against Women Act became law. These milestones represented major steps toward upholding the rights of millions of Americans who become victims of crime each year—from women seeking shelter after leaving abusive relationships to families demanding justice for a loved one's murder to children struggling to rebuild their lives after escaping trafficking rings. During National Crime Victims' Rights Week, we stand with these men, women, and children, and offer our support to crime victims everywhere.

My Administration is taking action to prevent crime, especially against those most at risk. Every American should have a chance to pursue their education in peace and security, yet one in five women is sexually assaulted at college. Because this is unacceptable, I created the White House Task Force to Protect Students from Sexual Assault. And to achieve justice for more survivors of sexual assault from every walk of life, my new budget proposes funding to help process rape kits, develop units to pursue cold cases, and support victims throughout the process.

We also know that young men of color are most likely to become victims of violent crime, and the odds are often stacked against them in ways that require targeted solutions. Earlier this year, I launched the My Brother's Keeper initiative, a program focused on helping boys and young men of color stay on track through some of life's most critical moments. With partners across the public and private sectors, we will give more young Americans the support they need as they face great obstacles, and we will work to decrease their chances of becoming victims of crime.

This week, let us recommit to preventing crime and strengthening rights and services for all victims. Together, we can expand opportunity and build a safer, more just world.

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 April 6 through April 12, 2014, as National Crime Victims' Rights Week. I call upon all Americans to observe this week by participating in events that raise awareness of victims' rights and services, and by volunteering to serve victims in their time of need.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, 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.

[FR Doc. 2014–08132
Filed 4–8–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Proclamation 9100 of April 4, 2014

National Volunteer Week, 2014

By the President of the United States of America

A Proclamation

Through countless acts of kindness, generosity, and service, Americans recognize that we are all bound together—that we move this country forward by giving of ourselves to others and caring for those around us. Every day, Americans carry forward the tradition of service embedded in our character as a people. And as we celebrate National Volunteer Week, we embrace our shared responsibility to one another and recommit to the task of building a more perfect Union.

By performing acts of service, we can shape a Nation big enough and bold enough to accommodate the hopes of all our people. Across our country, volunteers open doors of opportunity, pave avenues of success, fortify their communities, and lay the foundation for tomorrow's growth and prosperity. They are often equipped with few resources and gain little recognition, yet because of their service, our country is a better and a stronger force for good.

My Administration is dedicated to engaging Americans through service. Through the Corporation for National and Community Service, we administer programs like AmeriCorps and Senior Corps, and we have designed innovative initiatives such as School Turnaround AmeriCorps and VetSuccess AmeriCorps. In giving their time and talent, our volunteers can learn new skills and focus their vision, energy, and passion on projects ranging from improving disaster relief, delivering better education, and assisting returning veterans and military families. And by establishing the Task Force on Expanding National Service, we are creating new opportunities to support our communities through service.

The American experience stands apart because our triumph is found in the example of our people. With unity of purpose and unmatched resolve, we confront our shared challenges as one people and emerge stronger than before. We saw this spirit in action when, in the wake of a devastating mudslide in Washington State, Americans stepped in to provide food, shelter, and support to survivors. We saw it last year when a tornado struck Moore, Oklahoma, and volunteers came together to rebuild homes, schools, and hospitals—because we are a Nation that stands with our fellow citizens as long as it takes. As we renew our commitment to each other during National Volunteer Week, I encourage you to visit www.Serve.gov to learn more about service opportunities in your area.

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 April 6 through April 12, 2014, as National Volunteer Week. I call upon all Americans to observe this week by volunteering in service projects across our country and pledging to make service a part of their daily lives.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of April, 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.

[FR Doc. 2014–08134
Filed 4–8–14; 11:15 am]
Billing code 3295–F4

Presidential Documents

Notice of April 7, 2014

Continuation of the National Emergency With Respect to Somalia

On April 12, 2010, by Executive Order 13536, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the deterioration of the security situation and the persistence of violence in Somalia, acts of piracy and armed robbery at sea off the coast of Somalia, which have repeatedly been the subject of United Nations Security Council resolutions, and violations of the arms embargo imposed by the United Nations Security Council.

On July 20, 2012, I issued Executive Order 13620 to take additional steps to deal with the national emergency declared in Executive Order 13536 in view of United Nations Security Council Resolution 2036 of February 22, 2012, and Resolution 2002 of July 29, 2011, and to address: exports of charcoal from Somalia, which generate significant revenue for al-Shabaab; the misappropriation of Somali public assets; and certain acts of violence committed against civilians in Somalia, all of which contribute to the deterioration of the security situation and the persistence of violence in Somalia.

Because the situation with respect to Somalia continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on April 12, 2010, and the measures adopted on that date and on July 20, 2012, to deal with that emergency, must continue in effect beyond April 12, 2014. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13536.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
April 7, 2014.

[FR Doc. 2014–08135
Filed 4–8–14; 11:15 am]
Billing code 3295–F4

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