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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[0503–AA53]

Amendments to Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Secretary of Agriculture is authorized to delegate functions, powers, and duties as the Secretary deems appropriate. This document amends the existing delegations of authority by removing, adding, and modifying certain delegations, as explained in the Supplementary Information section below. This document also amends our regulations to reflect the current order of succession for the Secretary of Agriculture.

DATES: Effective on July 9, 2013.

FOR FURTHER INFORMATION CONTACT: Adam J. Hermann, General Law and Research Division, Office of the General Counsel, 3311–S, USDA, 1400 Independence Ave. SW., Washington, DC 20250; Voice: (202) 720–9425; Email: *adam.hermann@ogc.usda.gov*.

SUPPLEMENTARY INFORMATION: This rulemaking makes a number of changes to the United States Department of Agriculture's (USDA) delegations of authority in 7 CFR part 2 by removing obsolete delegations, adding new delegations, and modifying existing delegations.

This rulemaking removes as obsolete the delegations of authority to the Under Secretaries for Farm and Foreign Agricultural Services in 7 CFR 2.16(a)(2)(viii) and Rural Development in 7 CFR 2.17(a)(17), and to the Administrators of the Farm Service Agency in 7 CFR 2.42(a)(35), Rural Utilities Service in 7 CFR 2.47(a)(9), Rural Business-Cooperative Service in 7 CFR 2.48(a)(15), and Rural Housing Service in 7 CFR 2.49(a)(7), regarding claims collection authority in light of the Department's debt management regulations in 7 CFR part 3. Under 7 CFR 3.4, the head of an agency (defined in 7 CFR 3.3 as ''a subagency, office, or corporation within USDA subject to the authority and general supervision of the Secretary'') ''is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility, and may delegate and authorize the redelegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.''

This rulemaking also amends the delegations of authority to reflect that administrative supervision of the Office of Ethics has been transferred from the Office of Human Resources Management, Departmental Management, to the General Counsel. The delegations also reflect that the Director, Office of Ethics, is the USDA Designated Agency Ethics Official, and the Assistant Director, Office of Ethics, is the USDA Alternate Agency Ethics Official. This rulemaking also amends the delegations to the General Counsel in 7 CFR 2.31 by removing an obsolete authority regarding proceedings before the Interstate Commerce Commission, and by adding a new authority to assert in litigation the deliberative process privilege and other legally recognized privileges. As a result of a recent reorganization of the Office of the General Counsel, there is now both a Principal Deputy General Counsel and a Deputy General Counsel. The amendment to 7 CFR 2.200 reflects that the Principal Deputy General Counsel is the ''first assistant'' for purposes of the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345—3349d. The Principal Deputy General Counsel is delegated the authority to perform all duties and exercise all powers delegated to the General Counsel during the absence or unavailability of the General Counsel.

This rulemaking amends the delegations to the Chief Economist in 7 CFR 2.29, and adds a new § 2.74, to reflect the responsibilities of the Climate Change Program Office (CCPO) within the Office of the Chief Economist. CCPO, known as the Global Change Program Office until recently, has been responsible for carrying out these activities since the office was established pursuant to section 2402 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 6701), but 7 CFR part 2 was never updated to reflect the authorities. This rulemaking also amends the delegations to the Chief Economist in 7 CFR 2.29, and adds a new § 2.75, to reflect the responsibilities of the Office of Environmental Markets (OEM) within the Office of the Chief Economist. OEM was established to assist in implementing section 1245 of the Food Security Act of 1985 (16 U.S.C. 3845), as added by section 2709 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246. Section 1245 of the Food Security Act of 1985 directs the Secretary to establish various types of guidelines regarding the participation of farmers, ranchers, and forest landowners in environmental services markets. The amendments also add a new delegation from the Secretary to the Under Secretary for Natural Resources and Environment (NRE) in 7 CFR 2.20, and from the Under Secretary for NRE to the Chiefs of the Forest Service and the Natural Resources Conservation Service in 7 CFR 2.60 and 2.61, respectively, to conduct activities that assist the Office of the Chief Economist and OEM in establishing guidelines regarding the development of environmental services markets.

These amendments also make a technical change to the delegations of authority from the Secretary to the Chief Economist in 7 CFR 2.29 by moving the delegations of authority in §§ 2.29(a)(2)(iii) and (a)(11)(iii) (authority to enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences) and § 2.29(a)(11)(iv) (authority to enter into cost-reimbursable agreements relating to agricultural research) to a new paragraph in § 2.29 to clarify that the delegated authorities are not limited to risk assessment or energy-related activities, respectively. The delegations of authority from the Chief Economist to the Director, Office of Risk Assessment and Cost-Benefit Analysis in 7 CFR 2.71 are amended by removing as unnecessary the delegation of authority to enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences because any such

agreements would be signed by the Chief Economist.

This rulemaking also amends the delegations of authority to the Assistant Secretary for Administration (ASA) in 7 CFR 2.24 and the delegations of authority to certain officials within USDA's Departmental Management organization that report to the ASA (Chief Information Officer (7 CFR 2.89), Chief Financial Officer (7 CFR 2.90), Director, Office of Human Resources Management (7 CFR 2.91), Director, Office of Procurement and Property Management (7 CFR 2.93), and Director, Office of Operations (7 CFR 2.96), to reflect the abolishment of the Management Services office and to modify and realign Management Services functions to other Departmental Management offices in order to streamline operations and reduce costs. Accordingly, the delegations from the ASA to the Director, Management Services in 7 CFR 2.98 are removed. Additionally, the delegations to the ASA and Chief Information Officer regarding management of enterprise data centers and end user office automation services are revised to reflect the authority to perform such services as a Working Capital Fund activity. Also, a new delegation is added to the Chief Financial Officer, through the ASA, to redelegate authorities, as appropriate, to general officers of the Department and heads of Departmental agencies.

This rulemaking amends the delegations of authority to the ASA in 7 CFR 2.24 to reflect that the ASA is the designated Chief Acquisition Officer for the Department. It also amends the delegations of authority to the ASA and to the Director, Office of Advocacy and Outreach in 7 CFR 2.94 to clarify that administration of the Hispanic Serving Institutions National Program includes the authority to enter into cooperative agreements pursuant to section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318(b)). Additionally, this rulemaking amends the delegations of authority to the ASA and to the Director of the Office of Human Resources Management in 7 CFR 2.91 by removing the delegations relating to conflict management and Alternative Dispute Resolution (ADR) and transferring them to the Assistant Secretary for Civil Rights (ASCR) in 7 CFR 2.25. This amendment consolidates ADR authorities in one place, but the ASCR retains the authority in 7 CFR 2.25(a)(23) to re-delegate these responsibilities to other general officers or agency heads as the ASCR deems appropriate.

This rulemaking also amends 7 CFR 2.25 to reflect the authority of the Assistant Secretary for Civil Rights to prepare, submit, and make publicly available the civil rights report required by section 14010 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2279–2).

Finally, this rulemaking amends 7 CFR 2.5 to reflect the current order of succession for the Secretary of Agriculture as established by Executive Order 13612, May 21, 2012.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* and the Small Business Regulatory Fairness Enforcement Act, 5 U.S.C. 801 *et seq.,* and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

■ 1. The authority citation for part 2 is revised to read as follows:

Authority: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

Subpart A—General

■ 2. Revise § 2.5 to read as follows:

§ 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 13612, ''Providing an Order of Succession Within the Department of Agriculture'' (77 FR 31153, May 24, 2012), during any period in which both the Secretary and the Deputy Secretary have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary, the following officials designated in paragraphs (a)(1) through (a)(15) of this section shall act as Secretary, in the order in which they are listed. Each official shall act only in the event of the death, resignation, or inability to perform the functions and duties of Secretary of the immediately preceding official:

(1) Under Secretary of Agriculture for Farm and Foreign Agricultural Services.

(2) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

(3) Assistant Secretary of Agriculture for Administration.

(4) Under Secretary of Agriculture for Research, Education, and Economics.

(5) Under Secretary of Agriculture for Food Safety.

(6) Under Secretary of Agriculture for Natural Resources and Environment.

(7) Under Secretary of Agriculture for Rural Development.

(8) Under Secretary of Agriculture for Marketing and Regulatory Programs.

(9) General Counsel of the Department of Agriculture.

(10) Chief of Staff, Office of the Secretary.

(11) State Executive Directors of the Farm Service Agency for the States of California, Iowa, and Kansas, in order of seniority fixed by length of unbroken service as State Executive Director of that State.

(12) Regional Administrators of the Food and Nutrition Service for the Mountain Plains Regional Office (Denver, Colorado), Midwest Regional Office (Chicago, Illinois), and Western Regional Office (San Francisco, California), in order of seniority fixed by length of unbroken service as Regional Administrator of that Regional Office.

(13) Chief Financial Officer of the Department of Agriculture.

(14) Assistant Secretary of Agriculture (Civil Rights).

(15) Assistant Secretary of Agriculture (Congressional Relations).

(b) If any two or more individuals designated in paragraphs (a)(11) or (a)(12) of this section were sworn in to, or commenced service in, their respective offices on the same day, precedence shall be determined by the alphabetical order of the State in which the individual serves.

(c) No individual who is serving in an office listed in paragraphs (a)(1) through (a)(15) of this section shall, by virtue of so serving, act as Secretary pursuant to this section.

(d) No individual who is serving in an office listed in paragraphs (a)(1) through (a)(15) of this section shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345, *et seq.*).

(e) Notwithstanding the provisions of this section and Executive Order 13612, the President retains discretion, to the extent permitted by law, to depart from the order of succession in paragraph (a) of this section in designating an acting Secretary.

Subpart C—Delegations of Authority to the Deputy Secretary, Under Secretaries, and Assistant Secretaries

§ 2.16 [Amended]

■ 3. Amend § 2.16 by removing and reserving paragraph (a)(2)(viii).

§ 2.17 [Amended]

■ 4. Amend § 2.17 by removing and reserving paragraph (a)(17).

■ 5. Amend § 2.20 by adding new paragraphs (a)(2)(xlv) and (a)(3)(xxiv), to read as follows:

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) * * *

(2) * * *

(xlv) Conduct activities that assist the Chief Economist in developing guidelines regarding the development of environmental services markets.

(3) * * *

(xxiv) Conduct activities that assist the Chief Economist in developing guidelines regarding the development of environmental services markets.

* * * * *

■ 6. Amend § 2.24 as follows:

■ a. Revise paragraphs (a)(2)(xi)(C), (a)(2)(xi)(D), (a)(3)(xxv), (a)(4)(xx), and (a)(7)(xiv);

■ b. Remove paragraph (a)(4)(xxii);

■ c. Remove and reserve paragraph (a)(11);

■ d. Add and reserve new paragraphs (a)(3)(xxix) and (a)(6)(xix); and

■ e. Add new paragraphs (a)(3)(xxx), (a)(6)(iii)(I), (a)(6)(xx), (a)(9)(vi), (a)(9)(vii), and (a)(9)(viii), to read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(2) * * *

(xi) * * *

(C) Manage the Enterprise Data Centers, including setting rates to recover the cost of goods and services within approved policy and funding levels; and oversee the delivery of Enterprise Data Center goods and services, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

(D) Manage a comprehensive set of end user office automation services, including setting rates to recover the cost of goods and services within approved policy and funding levels; and oversee the delivery of goods and services associated with end user office automation services, including desktop computers, enterprise networking support, handheld devices, and voice telecommunications, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

* * * * *

(3) * * *

(xxv) Provide budget, accounting, fiscal, and related financial management services, with authority to take action required by law or regulation to provide such services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department, except the Inspector General.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other offices or agencies of the Department as may be agreed.

* * * * *

(xxix) [Reserved]

(xxx) Redelegate, as appropriate, any authority delegated under paragraph (a)(3) to general officers of the Department and heads of Departmental agencies.

(4) * * *

(xx) Provide human resources operational services for the following:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) The Office of the Assistant Secretary for Civil Rights.

(E) Any other offices or agencies of the Department as may be agreed.

* * * * *

(xxii) [Removed]

* * * * *

(6) * * *

(iii) * * *

(I) Serve as the designated Chief Acquisition Officer for the Department pursuant to section 1702 of title 41, United States Code.

* * * * *

(xix) [Reserved]

(xx) Provide services, including procurement of supplies, services, and equipment, with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department, except the Inspector General.

(C) Any other offices or agencies of the Department as may be agreed, including as a Working Capital Fund activity.

(7) * * *

(xiv) Administer the Hispanic Serving Institutions National Program, including through the use of cooperative agreements under 7 U.S.C. 3318(b).

* * * * *

(9) * * *

(vi) Provide services, including travel support, conference management, and general administrative support including coordination of office renovations and moves (within USDA Whitten Building), with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department, except the Inspector General.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) The Office of the Assistant Secretary for Civil Rights.

(E) Any other offices or agencies of the Department as may be agreed.

(vii) Prepare responses to requests under the Freedom of Information Act with authority to take actions as required by law or regulation for the office and agencies reporting to the Assistant Secretary for Administration.

(viii) Administer the records management program in support of Departmental Management, and prepare and coordinate responses to management audits by the Inspector General and the Government Accountability Office, with authority to take actions as required by law or regulation for the offices and agencies reporting to the Assistant Secretary for Administration.

* * * * *

(11) [Reserved]

* * * * *

■ 7. Amend § 2.25 as follows:

■ a. Revise paragraph (a)(21);

■ b. Redesignate paragraph (a)(22) as paragraph (a)(23); and

■ c. Add a new paragraph (a)(22).

The revision and addition read as follows:

§ 2.25 Assistant Secretary for Civil Rights.

(a) * * *

(21) *Related to Alternative Dispute Resolution.*

(i) Designate the senior official to serve as the Department Dispute Resolution Specialist pursuant to section 3 of the Administrative Dispute Resolution Act, Public Law 101–552, as amended (5 U.S.C. 571 note), and provide leadership, direction, and coordination for the Department's

conflict prevention and resolution activities.

(ii) Issue Departmental regulations, policies, and procedures relating to the use of Alternative Dispute Resolution (ADR) to resolve employment complaints and grievances, workplace disputes, program complaints alleging civil rights violations, and contract and procurement disputes.

(iii) Provide ADR services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other office or agency of the Department as may be agreed.

(iv) Develop and issue standards for mediators and other ADR neutrals utilized by the Department.

(v) Coordinate ADR activities throughout the Department.

(vi) Monitor agency ADR programs and report at least annually to the Secretary on the Department's ADR activities.

(22) Prepare, submit, and make publicly available the civil rights report required by section 14010 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2279–2).

* * * * *

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

■ 8. Amend § 2.29 as follows:

■ a. Remove paragraph (a)(2)(iii);

■ b. Remove and reserve paragraphs (a)(11)(iii) and (a)(11)(iv); and

■ c. Add new paragraphs (a)(12) through (a)(14) to read as follows:

§ 2.29 Chief Economist.

(a) * * *

(12) *Related to climate change.*

(i) Coordinate policy analysis, long-range planning, research, and response strategies relating to climate change issues.

(ii) Provide liaison with other Federal agencies, through the Office of Science and Technology Policy, regarding climate change issues.

(iii) Inform the Department of scientific developments and policy issues relating to the effects of climate change on agriculture and forestry, including broader issues that affect the impact of climate change on the farms and forests of the United States.

(iv) Recommend to the Secretary alternative courses of action with which to respond to such scientific developments and policy issues.

(v) Ensure that recognition of the potential for climate change is fully integrated into the research, planning, and decisionmaking processes of the Department.

(vi) Coordinate global climate change studies.

(vii) Coordinate the participation of the Department in interagency climate-related activities.

(viii) Consult with the National Academy of Sciences and private, academic, State, and local groups with respect to climate research and related activities.

(ix) Represent the Department to the Office of Science and Technology Policy on issues related to climate change.

(x) Represent the Department on the Intergovernmental Panel on Climate Change.

(xi) Review all Department budget items relating to climate change issues, including specifically the research budget to be submitted by the Secretary to the Office of Management and Budget.

(13) *Related to environment.*

(i) Coordinate implementation of section 1245 of the Food Security Act of 1985 regarding environmental services markets (16 U.S.C. 3845).

(ii) [Reserved]

(14) *Related to agreements.*

(i) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(ii) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

■ 9. Amend § 2.31 as follows:

■ a. Redesignate paragraphs (a) through (p) as paragraphs (a)(1) through (a)(16);

■ b. Redesignate the introductory text as paragraph (a) and revise the newly redesignted text;

■ c. Remove and reserve newly redsignated paragraph (a)(8);

■ d. Redesignate newly redesignated paragraphs (a)(12)(1) through (a)(12)(5) as paragraphs (a)(12)(i) through (v); and

■ e. Add new paragraphs (a)(17) and (b).

The revision and additions read as follows:

§ 2.31 General Counsel.

(a) *Related to legal services.* The General Counsel, as the chief law officer of the Department, is legal advisor to the Secretary and other officials of the Department and responsible for providing legal services for all the activities of the Department. The delegations of authority by the Secretary of Agriculture to the General Counsel include the following:

* * * * *

(17) On a non-exclusive basis, assert in litigation the deliberative process privilege and other legally recognized privileges.

(b) *Related to ethics.* The following delegation of authority is made by the Secretary to the General Counsel: Provide administrative supervision for the Office of Ethics.

Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

§ 2.42 [Amended]

■ 10. Amend § 2.42 by removing and reserving paragraph (a)(35).

Subpart G—Delegations of Authority by the Under Secretary for Rural Development

§ 2.47 [Amended]

■ 11. Amend § 2.47 by removing and reserving paragraph (a)(9).

§ 2.48 [Amended]

■ 12. Amend § 2.48 by removing and reserving paragraph (a)(15).

§ 2.49 [Amended]

■ 13. Amend § 2.49 by removing and reserving paragraph (a)(7).

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

■ 14. Amend § 2.60 by adding new paragraph (a)(54), to read as follows:

§ 2.60 Chief, Forest Service.

(a) * * *

(54) Conduct activities that assist the Director, Office of Environmental Markets, in developing guidelines regarding the development of environmental services markets.

* * * * *

■ 15. Amend § 2.61 by adding new paragraph (a)(29), to read as follows:

§ 2.61 Chief, Natural Resources Conservation Service.

(a) * * *

(29) Conduct activities that assist the Director, Office of Environmental Markets, in developing guidelines regarding the development of environmental services markets.

* * * * *

Subpart L—Delegations of Authority by the Chief Economist

§ 2.71 [Amended]

■ 16. Amend § 2.71 by removing paragraph (a)(3).

17. Amend subpart L by adding new sections §§ 2.74 and 2.75 to read as follows:

§ 2.74 Director, Climate Change Program Office.

(a) *Delegations.* Pursuant to § 2.29(a)(12), the following delegations of authority are made by the Chief Economist to the Director, Climate Change Program Office:

(1) Coordinate policy analysis, long-range planning, research, and response strategies relating to climate change issues.

(2) Provide liaison with other Federal agencies, through the Office of Science and Technology Policy, regarding climate change issues.

(3) Inform the Department of scientific developments and policy issues relating to the effects of climate change on agriculture and forestry, including broader issues that affect the impact of climate change on the farms and forests of the United States.

(4) Recommend to the Chief Economist alternative courses of action with which to respond to such scientific developments and policy issues.

(5) Ensure that recognition of the potential for climate change is fully integrated into the research, planning, and decisionmaking processes of the Department.

(6) Coordinate global climate change studies.

(7) Coordinate the participation of the Department in interagency climate-related activities.

(8) Consult with the National Academy of Sciences and private, academic, State, and local groups with respect to climate research and related activities.

(9) Represent the Department to the Office of Science and Technology Policy on issues related to climate change.

(10) Represent the Department on the Intergovernmental Panel on Climate Change.

(11) Review all Department budget items relating to climate change issues, including specifically the research budget to be submitted by the Secretary to the Office of Management and Budget.

(b) [Reserved]

§ 2.75 Director, Office of Environmental Markets.

(a) *Delegations.* Pursuant to § 2.29(a)(13), the following delegations of authority are made by the Chief Economist to the Director, Office of Environmental Markets:

(1) Coordinate implementation of section 1245 of the Food Security Act of 1985 regarding environmental services markets (16 U.S.C. 3845).

(2) [Reserved]

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

■ 18. Amend § 2.89 by revising paragraphs (a)(11)(iii) and (a)(11)(iv), to read as follows:

§ 2.89 Chief Information Officer.

(a) * * *

(11) * * *

(iii) Manage the Enterprise Data Centers, with the exception of the National Finance Center; and oversee the delivery of Enterprise Data Center goods and services, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

(iv) Manage a comprehensive set of end user office automation services and oversee the delivery of goods and services associated with end user office automation services, including desktop computers, enterprise networking support, handheld devices, and voice telecommunications, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

* * * * *

■ 19. Amend § 2.90 as follows:

■ a. Revise paragraph (a)(25); and

■ b. Add a new paragraph (a)(30), to read as follows:

§ 2.90 Chief Financial Officer.

(a) * * *

(25) Provide budget, accounting, fiscal, and related financial management services, with authority to take action required by law or regulation to provide such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department, except the Inspector General.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

* * * * *

(30) Redelegate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

■ 20. Amend § 2.91 as follows:

■ a. Revise paragraph (a)(20) to read as set forth below; and

■ b. Remove paragraph (a)(22).

§ 2.91 Director, Office of Human Resources Management.

(a) * * *

(20) Provide human resources operational services for the following:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) The Office of the Assistant Secretary for Civil Rights.

(v) Any other offices or agencies of the Department as may be agreed.

* * * * *

■ 21. Amend § 2.93 by adding a new paragraph (a)(20) to read as follows:

§ 2.93 Director, Office of Procurement and Property Management.

(a) * * *

(20) Provide services, including procurement of supplies, services, and equipment, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department, except the Inspector General.

(iii) Any other offices or agencies of the Department as may be agreed, including as a Working Capital Fund activity.

* * * * *

■ 22. Amend § 2.94 by revising paragraph (a)(14) to read as follows:

§ 2.94 Director, Office of Advocacy and Outreach.

(a) * * *

(14) Administer the Hispanic Serving Institutions National Program, including through the use of cooperative agreements under 7 U.S.C. 3318(b).

■ 23. Amend § 2.96 by adding new paragraphs (a)(6), (a)(7), and (a)(8) to read as follows:

§ 2.96 Director, Office of Operations.

(a) * * *

(6) Provide services, including travel support, conference management, and general administrative support including coordination of office renovations and moves (within USDA Whitten Building), with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department, except the Inspector General.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) The Office of the Assistant Secretary for Civil Rights.

(v) Any other offices or agencies of the Department as may be agreed.

(7) Prepare responses to requests under the Freedom of Information Act with authority to take actions as required by law or regulation for the office and agencies reporting to the Assistant Secretary for Administration.

(8) Administer the records management program in support of Departmental Management, and prepare and coordinate responses to management audits by the Inspector General and the Government Accountability Office, with authority to take actions as required by law or regulation for the offices and agencies reporting to the Assistant Secretary for Administration.

* * * * *

§ 2.98 [Removed]

■ 24. Remove § 2.98.

Subpart Q—Delegations of Authority by the General Counsel

■ 25. Revise § 2.200 to read as follows:

§ 2.200 Principal Deputy General Counsel.

Pursuant to § 2.31, the following delegation of authority is made by the General Counsel to the Principal Deputy General Counsel, to be exercised only during the absence or unavailability of the General Counsel: Perform all duties and exercise all powers that are now or which may hereafter be delegated to the General Counsel.

■ 26. Amend subpart Q by adding new §§ 2.201 and 2.202 to read as follows:

§ 2.201 Director, Office of Ethics.

Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, the Director, Office of Ethics, shall be the USDA Designated Agency Ethics Official with the authority to coordinate and manage the Department's ethics program as provided in part 2638.

§ 2.202 Deputy Director, Office of Ethics.

Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, the Deputy Director, Office of Ethics, shall be the USDA Alternate Agency Ethics Official and shall exercise the authority reserved to the USDA Designated Agency Ethics Official as provided in part 2638 in the absence or unavailability of the USDA Designated Agency Ethics Official.

Done at Washington, DC, this 25th day of June, 2013.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2013–15849 Filed 7–8–13; 8:45 am]

BILLING CODE 3410–90–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 357

[Docket No. APHIS–2009–0018]

RIN 0579–AD11

Lacey Act Implementation Plan; Definitions for Exempt and Regulated Articles

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: In response to recent amendments to the Lacey Act, we are establishing definitions for the terms ''common cultivar'' and ''common food crop'' and several related terms. The amendments to the Act expanded its protections to a broader range of plant species, extended its reach to encompass products, including timber, that derive from illegally harvested plants, and require that importers submit a declaration at the time of importation for certain plants and plant products. Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. Our definitions specify which plants and plant products will be excluded from the provisions of the Act, including the declaration requirement.

DATES: *Effective dates:* The addition of 7 CFR part 357, with the exception of the definitions of the terms ''commercial scale'' and ''tree'' in § 357.2, is effective August 8, 2013. The addition of the definitions of the terms ''commercial scale'' and ''tree'' to § 357.2 is effective September 9, 2013 unless we take action to delay the effective date or to amend or withdraw either or both definitions.

Comment date: We will consider all comments on the definitions of the terms ''commercial scale'' and ''tree'' that we receive on or before August 8, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0018.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2009–0018, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0018* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Staff Officer, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1231; (301) 851–2240.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

Purpose of the Regulatory Action

The Food, Conservation, and Energy Act of 2008 amended the Lacey Act by expanding its protections to a broader range of plants and plant products. Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to the U.S. Department of Agriculture (USDA) and the U.S. Department of the Interior (DOI) to define these terms by regulation.

Summary of the Major Provisions of the Regulatory Action

In this rule, we adopt definitions for the terms ''common cultivar'' and ''common food crop'' and also, at the request of commenters, adopt definitions for the related terms ''artificial selection,'' ''commercial scale,'' and ''tree.''

Costs and Benefits

Since the terms ''common cultivar'' and ''common food crop,'' while not yet defined by regulation, were previously included in the statute, there should be no instances in which an importer will be required because of this rule to make declarations for commodities that are not now being declared. To the extent that the rule defines which products are excluded from the provisions of the Act, it will benefit U.S. importers. By defining ''common cultivar'' and ''common food crop,'' the rule will facilitate importer understanding of and compliance with the Act's requirements.

II. Background

The Lacey Act (16 U.S.C. 3371 *et seq.*), first enacted in 1900 and significantly amended in 1981, is the United States' oldest wildlife protection statute. The Act combats trafficking in ''illegal'' wildlife, fish, and plants. The Food, Conservation, and Energy Act of 2008, effective May 22, 2008, amended the Lacey Act by expanding its protections to a broader range of plants and plant products (Section 8204, Prevention of Illegal Logging Practices). As amended, the Lacey Act now makes it unlawful to, among other things, import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of any Federal, State, tribal, or foreign law that protects plants or that regulates: the theft of plants; the taking of plants from a park, forest reserve, or other officially protected area; the taking of plants from an officially designated area; or the taking of plants without, or contrary to, required authorization.

The statute excludes from the definition of the term ''plant'' the following categories: (i) Common cultivars, except trees, and common food crops; (ii) scientific specimens for laboratory or field research (unless they are listed in an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES, 27 UST 1087; TIAS 8249); as an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction); and (iii) plants that are to remain planted or to be planted or replanted (unless they are listed in an appendix CITES; as an endangered or threatened species under the Endangered Species Act of 1973; or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction). The Lacey Act also now makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act.

In addition, Section 3 of the Lacey Act, as amended, makes it unlawful, beginning December 15, 2008, to import plants and plant products without an import declaration. The declaration must contain, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the plant was harvested. Currently, enforcement of the declaration requirement is being phased in, as described in two notices we published in the **Federal Register** [1] (74 FR 5911–5913 and 74 FR 45415–45418, Docket No. APHIS–2008–0119).

On August 4, 2010, we published in the **Federal Register** (75 FR 46859–46861, Docket No. APHIS–2009–0018) a proposal [2] to establish a new part in the plant-related provisions of title 7, chapter III of the Code of Federal Regulations (CFR), containing definitions for the terms ''common cultivar'' and ''common food crop.'' Common cultivars and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to USDA and DOI to define these terms by regulation.

We solicited comments concerning our proposal for 60 days ending October 4, 2010. We reopened and extended the deadline for comments until November 29, 2010, in a document published in the **Federal Register** on October 29, 2010 (75 FR 66699, Docket No. APHIS–2009–0018). We received 21 comments by that date. They were from domestic and foreign industry associations, importers, exporters, and representatives of State and foreign governments. They are discussed below by topic.

One commenter stated that the definitions as proposed were too vague and that the proposed rule should be withdrawn and re-proposed with concrete examples of products that would be considered common food crops or common cultivars.

We disagree. General definitions, such as the ones we proposed, provide sufficient guidance to the public regarding the scope of the definition while allowing us the flexibility necessary to adapt to the changing nature of international trade. As we explained in the proposed rule, we will provide guidance in the form of a list of taxa within various commodity types that would fall within the definitions of ''common food crop'' and ''common cultivar,'' but this list is intended to be illustrative, not exhaustive.

Several commenters expressed concern that products that might be considered both common food crops and common cultivars would be put on only one list.

The list of common food crops and common cultivars will not be mutually exclusive; we recognize that some plants may have more than one end use. For example, corn (*Zea mays*) may be raised for human food, for animal feed, or for conversion into ethanol, but in all cases is the same plant and meets the definition of both ''common food crop'' and ''common cultivar.''

Many commenters requested that particular crops or commodities be included on the list of common cultivars and common food crops.

As we explained in the proposed rule, the list of common cultivars and common food crops are intended to be illustrative, not exhaustive. However, we have considered all these requests in developing the list. The list is available on the Animal and Plant Health Inspection Service (APHIS) Web site at *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml.* The public may also send inquiries about specific taxa or commodities and requests to add taxa or commodities to the list, or remove them from the list by writing to The Lacey Act, ATT: Common Cultivar/Common Food Crop, c/o U.S. Department of Agriculture, Box 10, 4700 River Road, Riverdale, MD 20737 or by email to *lacey.act.declaration@aphis.usda.gov* and including the following information:

- Scientific name of the plant (genus, species);
- Common or trade names;
- Annual trade volume (e.g., cubic meters) or weight (e.g., metric tons/kilograms) of the commodity; and
- Any other information that will help us make a determination, such as countries or regions where grown, estimated number of acres or hectares in commercial production, and so on.

Decisions about which products will be included on the list will be made jointly by APHIS and the DOI's Fish and Wildlife Service (FWS). We will inform our stakeholders when the list is updated via email and other electronic media. We will also note updates of the list on APHIS's Lacey Act Web site mentioned above.

Three commenters stated that APHIS and FWS should develop a process by which products may be added to or removed from the list.

We agree that stakeholder input on the content of the list will be valuable. As discussed above, stakeholders may contact APHIS with inquiries or suggestions for changes to the list.

Two commenters stated that the list should be arranged by Harmonized Tariff Schedule (HTS) chapters and include entire tariff codes.

[1] To view these notices and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0119.*

[2] To view the proposed rule and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0018.*

We do not believe that basing the list of common food crops and common cultivars on HTS codes would be practical. Tariff codes do not always describe processed products in sufficient detail to distinguish between products. For example, the chapter covering umbrellas and umbrella parts does not distinguish between umbrellas with aluminum or steel shafts and those with wooden shafts. Furthermore, HTS codes may change, and as a result, arranging the list by the codes could result in confusion regarding which products are subject to the requirements of the Act and which are excluded.

One commenter stated that APHIS should make it clear that the definitions are intended to apply to excluded classes of food crops and cultivars, but not apply to specific shipments.

The definitions refer only to plants. Therefore, we do not believe any changes are necessary to clarify that these terms apply to the entire species or hybrid of plant. The determination of whether a plant falls within these definitions is not made at the shipment or facility level. For example, bananas are a common food crop because bananas in general meet the definition of a common food crop. It is not necessary to determine whether specimens of bananas in a particular shipment or from a particular facility meet the definition.

Three commenters stated that plantation-raised trees and trees harvested from sustainable forests should be included in the definitions of common food crops and common cultivars.

The Act states specifically that the term ''common cultivar'' does not include trees, and trees are not common food crops. For these reasons we cannot include plantation-raised trees or those harvested from sustainable forests in the definitions of common food crops and common cultivars.

Two commenters asked whether certain products that are common but do not qualify as either common cultivars or common food crops will be subject to the declaration requirement. These include products such as wild spices and seaweed, as well as maple syrup, rubber, and latex products derived from trees that do not require that the tree be cut down. We plan to address specific concerns about non-timber derivatives of living trees in a future action. We also expect that the guidance provided by the list should reduce confusion as to what is excluded and what is not. As we noted above, the public can send inquiries about specific taxa or commodities and requests to add taxa or commodities to the list to APHIS.

One of the proposed requirements for a plant to be classified as a common cultivar is that it has been developed ''through selective breeding or other means'' for specific traits. Several commenters stated that the phrase ''through selective breeding or other means'' is unclear and asked for clarification.

The phrase ''selective breeding or other means'' was intended to include plants selected or hybridized in the traditional way as well as plants selected by cloning or developed through genetic modification. We agree with the commenters that the phrase was not clear and have replaced the phrase with ''through artificial selection'' in the definition. This rule also defines *artificial selection* as ''the process of selecting plants for particular traits, through such means as breeding, cloning, or genetic modification.''

A proposed requirement for plants to be classified as either common food crops or common cultivars is that they are a ''species or hybrid that is cultivated on a commercial scale.'' One commenter suggested that both definitions be revised to remove the phrase ''species or hybrid that is cultivated . . .'' because it is unclear. The commenter suggested rephrasing the definitions to read ''is a species or hybrid, or a selection thereof, that is cultivated . . .;'' because many crop plants are selections of species rather than the wild-type plant, or are selections of a hybrid rather than the original cross. The commenter stated that this change would eliminate ambiguity.

We agree with the commenter and have made this revision to both definitions.

Consistent with the provisions of the Act, both definitions refer to plants in general. One commenter suggested that both definitions be revised to refer to ''a plant, or any part of a plant'' to clarify that roots, seeds, and other parts or products of a plant are included in the definitions.

The Act includes roots, seeds, parts, or products in the definition of plant, and we also proposed to include a definition of ''plant'' consistent with the definition in the Act to the regulations. Therefore, we do not believe it is necessary to specify that plant parts are included in the definitions of common food crops and common cultivars.

A proposed requirement for a plant to be classified as a common food crop is that it be ''raised, grown, or cultivated for human or animal consumption.'' Two commenters suggested that the definition for common food crop be revised to read ''raised, grown, or cultivated primarily for human or animal consumption'' to avoid imposing an overly broad end-use requirement.

While we agree with the commenters that imposing specific end-use requirements would be undesirable, as we explained above, we do not consider ''common food crops'' and ''common cultivars'' to be mutually exclusive categories. A common cultivar not intended for human or animal consumption would still be excluded from the provisions of the Act.

One commenter expressed concern that the definition of ''common cultivar'' could be problematic for the seed trade industry. The commenter stated that some seed companies routinely work with organizations such as botanical gardens to bring new flower seeds to market. These seeds may be selected for existing characteristics but were not part of a selective breeding process.

As we noted above, the definition of ''plant'' in the Act includes seeds. The Act further specifies that plants that are to remain planted or to be planted or replanted are excluded from the provisions of the Act, unless they are listed in a CITES appendix; as an endangered or threatened species under the Endangered Species Act of 1973; or pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction. Therefore, seeds for planting are excluded from the provisions of the Act unless they are listed in the CITES Appendices, are listed as endangered or threatened under the Endangered Species Act, or are protected under State law.

One commenter asked for clarification in regard to how precommercial seed will be considered under the regulations. The commenter cited seeds for research, breeding, and foundation programs as specific examples.

Scientific specimens of plant genetic material, including roots, seeds, germplasm, parts, or products thereof, like the plants for planting described above, are excluded from the provisions of the Act.

Two commenters expressed concern that the definitions as proposed would not cover maricultural products, such as carrageenan, that are derived from harvested seaweeds and may not fall under the traditional meaning of ''cultivated.'' One of these commenters suggested revising the definitions to read ''raised, grown, *harvested,* or cultivated.''

The provisions of the Act do not distinguish between terrestrial and

aquatic plants. Many maricultural products are cultivated on a commercial scale on seaweed farms; however, some are collected from the wild. While these wild-collected seaweeds may not necessarily be of conservation concern, the laws and conditions under which they are gathered may vary. For this reason, adopting the commenter's suggestion would not be consistent with the provisions of the Act.

One commenter stated that APHIS and FWS should specify a threshold, based on quantity or value of plant material of the product, below which the declaration requirement (as distinct from the substantive provision of the Act) would not apply.

We have received similar requests in response to our earlier notices. We note that on June 30, 2011, we published in the **Federal Register** (76 FR 38330–38332, Docket No. APHIS–2010–0129) an advance notice of proposed rulemaking [3] in which we discussed the possibility of establishing such a threshold related to the declaration requirement. In contrast, the current rulemaking deals with exclusions from the entire Act, not just exemptions from the declaration requirement.

One commenter asked that sufficient notice be given to importers when implementing final regulations. The commenter suggested that 2 years would be an appropriate minimum phase-in period for Lacey Act-related regulations.

APHIS will attempt to provide sufficient notice of the effective dates of this and any future regulations. How much lead time is sufficient when implementing regulations may vary; for example, regulations that relieve restrictions are often made effective upon publication or a short time after publication, while implementing regulations that impose restrictions may require more time.

One commenter stated that APHIS should clarify that primary responsibility for compliance with the declaration requirement lies with the individual to whom the products are shipped, not the Customs and Border Protection importer of record.

Our current guidance already specifies that the responsibility lies with the importer of record, who may be a business, a broker, or a private courier. We note that most shipments brought in by private couriers fall below the threshold for formal entry and therefore are not currently subject to enforcement of the declaration requirement

Several commenters asked that APHIS provide guidance on compliance with the Act.

APHIS does provide guidance on our Web site at *http://www.aphis.usda.gov/plant_health/lacey_act/index.shtml,* but we will take these requests into consideration and develop additional guidance if needed.

Several commenters requested that we consider additional exclusions that would not be consistent with the plant-related provisions of the Act. These included requests to provide exclusions for: plants that have previously been imported into the United States, or were exported and then re-imported; highly manufactured products that may contain plant products that were introduced before the manufacture or import of the final product; or whole classes of commodities, such as hydrocolloidal products. As we explained above, we published an advance notice of proposed rulemaking in which we discussed not only the possibility of establishing a de minimis threshold for the declaration requirement, but also how importers may comply with the declaration requirement when importing composite plant materials, and how to accommodate products made of re-used plant materials, or plant materials harvested or manufactured prior to the 2008 Lacey Act amendments. We plan to address these questions in a future action.

Additional Definitions

The comments we received on the proposed rule included concerns about two additional terms used in the regulations. Specifically, some commenters stated that the phrase ''commercial scale'' should be removed from the definitions of ''common cultivar'' and ''common food crop'' because it implies a sizeable market rather than a viable one, and would unfairly impact small industries. Other commenters asked that we define ''commercial scale'' to clarify that the definitions apply to specialty products grown commercially on a smaller scale. One commenter also asked that we define the word ''tree'' as it is used in the regulations. The commenter noted that there is no globally accepted botanical definition for ''tree'' and stated that adding a definition to the regulations would help clarify which products require a declaration.

As we explained in the proposed rule, the definitions are designed to ensure that the exclusions do not place at risk plants of conservation concern. The fact that a plant is not listed as endangered or threatened does not mean that it is necessarily a common one. In order to ensure that the exclusion from the provisions of the Act applies only to plants that are common food crops or cultivars, the definitions are limited to plants of species grown on a commercial scale. We agree, however, that a definition of ''commercial scale'' would improve clarity.

Therefore, we are proposing to define ''commercial scale'' as ''production, in individual products or markets, that is typical of commercial activity, regardless of the production methods or amount of production of a particular facility.'' As we explained above, the determination of whether a plant falls within these definitions is not made at the shipment or facility level, but applies to the entire species or hybrid of plant.

We also agree that a definition of ''tree'' would clarify which products require a declaration. We propose to define ''tree'' as ''a woody perennial plant that has a well-defined stem or stems and a continuous cambium, and that exhibits true secondary growth.'' This definition is intended to be consistent with common dictionary and botanical definitions. We note that this definition includes plants which may, in a natural state, [demonstrate] low height and/or multiple stems, as well as tall, single-stemmed plants.

We invite public comment on these two definitions.

Miscellaneous Change

Paragraph (1) of the definition for ''common food crop'' requires that the plant ''has been ''*raised, grown, or cultivated* for human or animal consumption.'' Paragraph (2) of the definitions of both ''common food crop'' and ''common cultivar'' requires that they be ''*cultivated* on a commercial scale.'' After consideration, we believe that, since the scope of paragraph (1) in the definition of ''common food crop'' covers plants ''raised, grown, or cultivated,'' the requirement in paragraph (2) that the plant must be ''cultivated'' is overly limiting. Therefore, we have revised paragraph (2) of the ''common food crop'' definition to require that the plants be ''*produced* on a commercial scale'' instead. We have also made the same revision to paragraph (2) of the ''common cultivar'' definition in order to be consistent between both definitions.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

[3] To view the advance notice of proposed rulemaking and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0129.*

Executive Orders 12866 and 13563 and Regulatory Flexibility Act

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Orders 12866 and 13563, which 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, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The economic analysis also examines the potential economic effects of this rule on small entities, as required by the Regulatory Flexibility Act. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

''Common cultivar'' and ''common food crop'' are defined in this rule to ensure that the exclusions do not place at risk plants of conservation concern. The definitions are also consistent with the terms' existing and commonly understood definitions. Since the terms have not previously been defined, there should be no instances in which importers will be required because of this rule to take actions they are not currently taking. In other words, the definitions presented in this rule and the related exclusions will not result in additional costs for importers based on their current activities. On the other hand, APHIS has estimated that about 5 percent of declarations being made under the current stage of phased-in enforcement of the Act are either for common cultivars or common food crops that would be excluded under the definitions in this rule. The costs incurred in making these declarations are a measure of the expected benefits of the rule. We estimate the total annual cost savings associated with not making these declarations alone will be between $1 million and $3 million. Implementation of the declaration requirement for all plants, including common food crops and common cultivars, would cover far more product categories than those that currently require a declaration.

To the extent that the rule defines which products are excluded from the provisions of the Act, it will benefit U.S. importers, large and small. By defining the terms ''common cultivar'' and ''common food crop,'' the rule will facilitate importer understanding of and compliance with the Act's requirements.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications. If a request is made for consultation once the rule has been implemented, APHIS will work with the Tribe(s) to conduct a consultation session.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 357

Endangered and threatened species, Plants (Agriculture).

Accordingly, we are amending Title 7, subtitle B, chapter III, of the Code of Federal Regulations by adding part 357 to read as follows:

PART 357—CONTROL OF ILLEGALLY TAKEN PLANTS

Sec.
357.1 Purpose and scope.
357.2 Definitions.

Authority: 16 U.S.C. 3371 *et seq.;* 7 CFR 2.22, 2.80, and 371.2(d).

§ 357.1 Purpose and scope.

The Lacey Act, as amended (16 U.S.C. 3371 *et seq.*), makes it unlawful to, among other things, import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any plant, with some limited exceptions, taken, possessed, transported or sold in violation of any Federal, State, tribal, or foreign law that protects plants. The Lacey Act also makes it unlawful to make or submit any false record, account, or label for, or any false identification of, any plant covered by the Act. In addition, the Act requires that importers submit a declaration at the time of importation for plants and plant products. Common cultivars (except trees) and common food crops are among the categorical exclusions to the provisions of the Act. The Act does not define the terms ''common cultivar'' and ''common food crop'' but instead gives authority to the U.S. Department of Agriculture and the U.S. Department of the Interior to define these terms by regulation. The regulations in this part provide the required definitions.

§ 357.2 Definitions.

Artificial selection. The process of selecting plants for particular traits, through such means as breeding, cloning, or genetic modification.

Commercial scale. Production, in individual products or markets, that is typical of commercial activity, regardless of the production methods or amount of production of a particular facility or the purpose of an individual shipment.

Common cultivar. A plant (except a tree) that:

(1) Has been developed through artificial selection for specific morphological or physiological characteristics; and

(2) Is a species or hybrid, or a selection thereof, that is produced on a commercial scale; and

(3) Is not listed:

(i) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(ii) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(iii) Pursuant to any State law that provides for the conservation of species that are indigenous to the State and are threatened with extinction.

Common food crop. A plant that:

(1) Is raised, grown, or cultivated for human or animal consumption; and

(2) Is a species or hybrid, or a selection thereof, that is produced on a commercial scale; and

(3) Is not listed:

(i) In an appendix to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (27 UST 1087; TIAS 8249);

(ii) As an endangered or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*); or

(iii) Pursuant to any State law that provides for the conservation of species

that are indigenous to the State and are threatened with extinction.

Plant. Any wild member of the plant kingdom, including roots, seeds, parts or products thereof, and including trees from either natural or planted forest stands.

Tree. A woody perennial plant that has a well-defined stem or stems and a continuous cambium, and that exhibits true secondary growth.

Done in Washington, DC, this 27th day of June 2013.

Max Holtzman,

Acting Deputy Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 2013–16463 Filed 7–8–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 433

[Docket No. EERE–2011–BT–STD–0055]

RIN 1904–AC60

Energy Efficiency Design Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) is publishing this final rule to implement provisions in the Energy Conservation and Production Act (ECPA) that require DOE to update the baseline Federal energy efficiency performance standards for the construction of new Federal commercial and multi-family high-rise residential buildings. This rule updates the baseline Federal commercial standard to the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1–2010.

DATES: This rule is effective September 9, 2013. The incorporation by reference of certain publications in the rule is approved by the Director of the Federal Register as of September 9, 2013.

ADDRESSES: This rulemaking can be identified by docket number EERE–2011–BT–STD–0055 and/or RIN number 1904–AC60.

Docket: The docket is available for review at *http://www.regulations.gov* including **Federal Register** Notices, public meeting attendee lists, transcripts, comments and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

For further information on how to review public comments or review hard copies of the docket in the resource room, contact Ms. Brenda Edwards at (202) 586–2945 or email *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7892, email: *Mohammed.Khan@ee.doe.gov,* or Ms. Ami Grace-Tardy Esq., U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–5709, email: *Ami.Grace-Tardy@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This rulemaking incorporates by reference the following standard into 10 CFR Part 433:

- ANSI/ASHRAE/IESNA Standard 90.1–2010, Energy Standard for Buildings Except Low-Rise Residential Buildings, I–P Edition, Copyright 2010.

Copies of this standard are available from the American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., 1791 Tullie Circle, NE., Atlanta, GA 30329, (404) 636–8400, *http://www.ashrae.org.*

Also, a copy of this standard is available for inspection at U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. For information on the availability of this standard at DOE, contact Ms. Brenda Edwards at (202) 586–2945 or email *Brenda.Edwards@ee.doe.gov.*

I. Introduction
II. Executive Summary
III. Discussion of Today's Action
IV. Compliance Date
V. Reference Resources
VI. Regulatory Analysis
VII. Congressional Notification

I. Introduction

Section 305 of the Energy Conservation and Production Act (ECPA), as amended, requires DOE to establish building energy efficiency standards for all new Federal buildings. (42 U.S.C. 6834(a)(1)) The standards established under section 305(a)(1) of ECPA must contain energy efficiency measures that are technologically feasible, economically justified, and meet the energy efficiency levels in the applicable voluntary consensus energy codes specified in section 305. (42 U.S.C. 6834(a)(1)–(3))

Under section 305 of ECPA, the referenced voluntary consensus code for commercial buildings (including multi-family high rise residential buildings) is the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Standard 90.1 and the referenced code for low-rise residential buildings is the International Energy Conservation Code (IECC). (42 U.S.C. 6834(a)(2)(A)) DOE codified these referenced codes as baseline Federal building standards into energy efficiency standards in 10 CFR parts 433, 434, and 435. Also under section 305 of ECPA, DOE must establish, by rule, revised Federal building energy efficiency performance standards for new Federal buildings that require such buildings be designed to achieve energy consumption levels that are at least 30 percent below the levels established in the referenced codes (baseline Federal building standards), if life-cycle cost-effective. (42 U.S.C. 6834(a)(3)(A)(i)(I))

Under section 305 of ECPA, not later than one year after the date of approval of each subsequent revision of the ASHRAE Standard or the IECC, DOE must determine whether to amend the baseline Federal building standards with the revised voluntary standard based on the cost-effectiveness of the revised voluntary standard. (42 U.S.C. 6834(a)(3)(B)) It is this requirement that today's rulemaking addresses. ASHRAE Standard 90.1 has been updated from the version currently referenced in DOE's regulations at 10 CFR part 433. DOE is now revising the latest baseline Federal building standard for 10 CFR part 433 from ASHRAE Standard 90.1–2007 to ASHRAE Standard 90.1–2010.

Section 306(a) of ECPA provides that each Federal agency and the Architect of the Capitol must adopt procedures to ensure that new Federal buildings will meet or exceed the Federal building energy efficiency standards established under section 305. (42 U.S.C. 6835(a)) Section 306(b) bars the head of a Federal agency from expending Federal funds for the construction of a new Federal building unless the building meets or exceeds the applicable baseline Federal building energy standards established under section 305. (42 U.S.C. 6835(b)) This includes both the requirement that all new Federal buildings comply with the baseline standards in ASHRAE Standard 90.1 and the IECC and the requirement that new Federal buildings achieve energy consumption levels at least 30 percent below these minimum

baseline standards where life-cycle cost-effective. (42 U.S.C. 6834 (a)(3)(A))

II. Executive Summary

Under the Energy Conservation and Production Act (ECPA) DOE must determine whether the energy efficiency standards for new Federal buildings should be updated to reflect revisions to ASHRAE Standard 90.1 based on the cost-effectiveness of the revisions. (42 U.S.C. 6834(a)(3)(B)) One of the objectives considered by the committee developing Standard 90.1–2010 is for the requirements to be cost-effective for use in the private sector. Using a scalar ratio for cost-effectiveness based on an ASTM standard, as described below, the Standard 90.1 committee determined that ASHRAE Standard 90.1–2010 is cost-effective. Therefore, in today's final rule, DOE updates the energy efficiency standards for new Federal buildings to ASHRAE Standard 90.1–2010 for buildings for which design for construction began on or after one year after today's rule is published in the **Federal Register**.

III. Discussion of Today's Action

DOE is issuing today's action as a final rule. As indicated above, DOE must determine whether the energy efficiency standards for new Federal buildings should be updated to reflect revisions to ASHRAE Standard 90.1 based on the cost-effectiveness of the revisions. (42 U.S.C. 6834(a)(3)(B)) In today's final rule, DOE determines that the energy efficiency standards for new Federal buildings should be updated to reflect the 2010 revisions to ASHRAE Standard 90.1 based on the cost-effectiveness of the revisions.

DOE reviewed ASHRAE Standard 90.1 for DOE's state building codes program and determined that the 2010 version of ASHRAE Standard 90.1 would achieve greater energy efficiency than the prior version. This determination was subject to notice and comment. See 76 FR 43298 (July 20, 2011). In that determination DOE found that the 2010 version of Standard 90.1 would save 18.2% more source energy than the 2007 version of Standard 90.1. (In a prior determination, DOE found that the 2007 version of Standard 90.1 would save 3.9% more source energy than the 2004 version of Standard 90.1 (76 FR 43287))

In DOE's determination for the state building codes program, and again in today's rule, DOE states that the cost-effectiveness of revisions to the voluntary codes is considered through DOE's statutorily directed involvement in the codes process. See 76 FR 43300. Section 307 of ECPA requires DOE to participate in the ASHRAE code development process and to assist in determining the cost-effectiveness of the voluntary standards. (42 U.S.C. 6836) DOE is required to periodically review the economic basis of the voluntary building energy codes and participate in the industry process for review and modification, including seeking adoption of all technologically feasible and economically justified energy efficiency measures. (42 U.S.C. 6836(b))

ASHRAE Standard 90.1 is developed through an American National Standards Institute (ANSI) consensus process. The ANSI consensus process involves representatives of producers (industry), users (owners and designers), and general (advocates and government) segments of the building industry. Part of that process involves development of cost-effectiveness criteria to use in the development of Standard 90.1. Another part of the process is extensive public review and comment of each change to Standard 90.1. During the course of the public review and comment process, cost-effectiveness is often a topic. One of the objectives considered by the committee developing Standard 90.1 is for the requirements of Standard 90.1 to be cost-effective for use in the private sector. As described below, the 90.1 committee used a scalar ratio for cost-effectiveness based on ASTM Standard E917—Standard Practice for Measuring Life-Cycle Costs of Buildings and Building Systems to determine that ASHRAE Standard 90.1–2010 is cost-effective. The 90.1 committee simplified the life-cycle cost (LCC) model in ASTM Standard E917 by condensing the economic variables into a single variable called the scalar ratio, which is simply a ratio of economic present worth factors. A scalar ratio of 20.2 was used in the development of Standard 90.1–2010. This is mathematically equivalent to a LCC analysis using the following parameters:

Economic Life—40 years
Loan Interest Rate—7%
Heating Fuel Escalation Rate—3.7%
Cooling Fuel Escalation Rate—3.7%
Federal Tax Rate—34%
State Tax Rate—5%
Discount Rate—7%

The above parameters and ASTM Standard E917 form the basis of the Federal LCC requirements found in 10 CFR Part 436.

In today's rule, DOE is amending the energy efficiency standards applicable to new Federal buildings based on the determinations made by DOE as to the energy efficiency improvements of ASHRAE Standard 90.1–2010, as compared to the predecessor version, and based on the considerations of cost-effectiveness incorporated into the codes processes, as well as DOE's involvement in those processes. This final rule amends 10 CFR part 433 to update the referenced baseline Federal energy efficiency performance standards. No other changes are proposed to 10 CFR part 433 by this rule.

DOE notes that the 2012 IECC was finalized in summer 2011. On May 17, 2012, DOE issued a final determination that the 2012 IECC would achieve greater energy efficiency in low-rise residential buildings than the previous editions of the IECC. (77 FR 29322)

DOE also notes that there are a number of statutory provisions, regulations, Executive Orders, and memoranda of understanding that govern energy consumption in new Federal buildings. These include, but are not limited to, Executive Order 13514 (74 FR 52117 (October 8, 2009)); sections 323, 433, 434, and 523 of EISA 2007; Executive Order 13423 (72 FR 3919 (January 26, 2007)); the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings originally adopted in the Federal Leadership in High Performance and Sustainable Buildings MOU; section 109 of the Energy Policy Act of 2005 (Pub. L. 109–58); and 10 CFR Parts 433 and 435. Today's rule supports and does not supplant these other applicable legal requirements for new Federal buildings. For example, by designing buildings to meet the ASHRAE 90.10–2010 baseline, Federal agencies also help achieve the energy intensity reductions mandated under section 431 of EISA 2007.

IV. Compliance Date

Today's final rule applies to new Federal buildings for which design for construction begins on or after one year from the date of this rulemaking. Such buildings must be designed to exceed the energy efficiency level of the appropriate updated voluntary standard by 30 percent if life-cycle cost-effective. However, at a minimum, such buildings must achieve the energy efficiency equal to that of the appropriate updated voluntary standard. One year lead time before the design for construction begins is consistent with DOE's previous updates to the energy efficiency baselines and the original statutory mandate for Federal building standards. One year lead time before design for construction begins helps minimize compliance costs to agencies, which may have planned buildings in various stages of design, and allows for design changes to more fully consider life-cycle cost-effective measures (as opposed to

having to revise designs in development, which may make incorporation of energy efficiency measure more difficult or expensive.)

V. Reference Resources

The Department originally prepared this list of resources to help Federal agencies achieve building energy efficiency levels of at least 30 percent below ASHRAE Standard 90.1–2004. The Department has reviewed these resources and believes that they are still applicable to helping agencies achieve building energy efficiency levels of at least 30% better than ASHRAE Standard 90.1–2010. The Department has updated this resource list as necessary. These resources come in many forms and in a variety of media. Resources are provided for all buildings, and also specifically for commercial and multi-family high-rise residential buildings.

Resources for Commercial and Multi-Family High-Rise Residential Buildings

Energy Efficient Products—U.S. DOE Federal Energy Management Program and U.S. Environmental Protection Agency (EPA) ENERGY STAR Program *http://www.eere.energy.gov/femp/procurement http://www.energystar.gov/products*

Federal agencies are required by the Energy Policy Act of 2005 to specify Federal Energy Management Program (FEMP) designated or ENERGY STAR equipment, including building mechanical and lighting equipment and builder-supplied appliances, for purchase and installation in all new construction. This equipment is generally more efficient than the corresponding requirements of ASHRAE Standard 90.1–2010, and may be used to achieve part of the savings required of Federal building designs. (Today's rule does not specifically address the use of this equipment, but this Web site is listed for convenience because it is a very useful resource for achieving part of the energy savings required by the rule.)

Life-Cycle Cost Analysis—U.S. DOE Federal Energy Management Program *http://www.access.gpo.gov/nara/cfr/waisidx_04/10cfr436_04.html*

The life-cycle cost analysis rules promulgated in 10 CFR part 436 Subpart A *Life-Cycle Cost Methodology and Procedures* conform to requirements in the Federal Energy Management Improvement Act of 1988 (Pub. L. 100–615) and subsequent energy conservation legislation, as well as Executive Order 13123, *Greening the Government through Efficient Energy Management.* The life-cycle cost guidance and required discount rates and energy price projections are determined annually by FEMP and the Energy Information Administration, and are published in the Annual Supplement to The National Institute of Standards and Technology Handbook 135: ''Energy Price Indices and Discount Factors for Life-Cycle Cost Analysis'' *http://www1.eere.energy.gov/femp/pdfs/ashb10.pdf.* FEMP also provides guidance on the life-cycle cost requirements of Executive Order 13123 at *http://www1.eere.energy.gov/femp/information/download_blcc.html.*

ENERGY STAR Buildings—U.S. Environmental Protection Agency and U.S. Department of Energy *http://www.energystar.gov/index.cfm?c=new_bldg_design.bus_target_finder* (non-residential buildings)

ENERGY STAR is a Government-backed program helping businesses and individuals protect the environment through superior energy efficiency. The benchmarking tool and other information at the ENERGY STAR Target Finder Web site can be useful in determining an annual energy target for building design and computer simulations, evaluating cost-effectiveness of efficiency measures, and tracking a building's actual energy performance after construction.[1]

Commercial Building Initiative—U.S. DOE Building Technologies Program *http://www1.eere.energy.gov/buildings/commercial_initiative/*

A collection of design approaches, tools, technologies and case studies focused on high performance buildings that achieve savings of 30 percent to 50 percent better than generally accepted good practice. One specific resource on the Commercial Building Initiative site are the Fifty Percent Technical Support Documents available at *http://apps1.eere.energy.gov/buildings/commercial_initiative/resource_database/* (enter ''50% technical support document'' in search window). This is a set of technical support documents for users who wish to go beyond Standard 90.1. The technical support documents are targeted at 50% better than ASHRAE Standard 90.1–2004 (which translates to approximately 20% better than Standard 90.1–2010).

[1] The use of EPA's Target Finder tool during the design process of applicable new Federal buildings helps ensure that buildings are on a pathway to meet the existing building Federal Sustainable Building Guiding Principle (Energy Efficiency: Option 1), which is to receive an ENERGY STAR score of 75 or higher in EPA's Portfolio Manager.

Building Energy Software Tools—U.S. DOE Building Technologies Program *http://apps1.eere.energy.gov/buildings/tools_directory/*

This directory provides information on building software tools for evaluation energy efficiency, renewable energy, and sustainability in buildings.

ASHRAE Standard 90.1–2010—ASHRAE

http://www.techstreet.com/standards/ashrae/90_1_2010_i_p_?product_id=1739526

The baseline energy efficiency standard for commercial and multi-family high-rise buildings is ANSI/ASHRAE/IESNA Standard 90.1–2010. This link also contains a link to a read-only version of Standard 90.1–2010 under the Preview button.

Whole Building Design Guide—National Institute of Building Sciences

http://www.wbdg.org

A portal providing one-stop access to up-to-date information on a wide range of building-related guidance, criteria and technology from a ''whole buildings'' perspective.

Advanced Energy Design Guides—ASHRAE

http://www.ashrae.org/publications/page/aedg50pct

A set of design guides for users who wish to go beyond Standard 90.1. The design guides are targeted at 50 percent better than ASHRAE Standard 90.1–2004 (which translates to approximately 20 percent better than Standard 90.1–2010). The design guides are available for free download.

Advanced Buildings™ Core Performance Guide™—New Buildings Institute

http://www.newbuildings.org/advanced-design/advanced-buildings

A set of guidelines for the design, construction, and operation of new and renovated nonresidential buildings targeted at 30 percent better than ASHRAE Standard 90.1–2004 (which translates to approximately the same level as ASHRAE Standard 90.1–2010).

Labs for the 21st Century—U.S. EPA and U.S. DOE

http://www.labs21century.gov/

A Web site focused on improving the energy efficiency and environmental performance of laboratory space. This site includes training and educational resources and design tools focused on laboratories.

VI. Regulatory Analysis

A. Review Under Executive Order 12866, ''Regulatory Planning and Review''

Today's final rule is a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review.'' 58 FR 51735 (October 4, 1993). Accordingly, today's action was subject to review by the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB). OMB has completed its review. As discussed previously in this notice, DOE is required to determine, based on the cost-effectiveness, whether the standards for Federal buildings should be updated to reflect an amendment to the ASHRAE standard. As stated above DOE complied with the statutory language by relying on the cost-effectiveness criteria used in the ASHRAE development process. The ASHARE development process used a scalar ratio for cost-effectiveness based on ASTM E917.

The Environmental Assessment for this rulemaking identified a rate of new Federal commercial construction of 22 million square feet per year with a distribution of building types as shown in Table 1. As described in the referenced Environmental Assessment, the distribution of building types is based on the 2007 and 2008 GSA Federal real property reports. Table 1 also shows the prototype buildings used for computer simulations utilized for estimating energy use in each building type. DOE derived these prototype buildings from 16 building types in 17 climate zones using its Commercial Reference Building models.[2]

Table 1. New Federal Commercial and High-Rise Multi-Family Construction Volume by Building Type

Building Type	Fraction of Federal Construction Volume (by floor area)	Assumed Prototypes
Office	0.63	**Small Office**, Medium Office, **Large Office**
Education	0.083	**Primary School**, Secondary School
Dorm/Barracks	0.09	**Small Hotel, Mid-Rise Apartment**
Warehouse	0.15	Non-Refrigerated Warehouse
Hospital	0.04	Outpatient Healthcare, Hospital

Notes:

1. **Bold font** in Assumed Prototypes column indicates prototypes for which costs are available (See Table 2)
2. Note that first cost data is not available for the prototypes assumed for warehouses and hospitals. As described below, DOE considered costs for the warehouse and hospital to be equivalent to the weighted cost for offices, education, and dorm/barracks, which represents 81% of the Federal building stock.

DOE has preliminarily determined incremental cost and the life-cycle cost net savings information for the building types and climate zones analyzed. This information is shown in Tables 2 and 3.

[2] DOE's prototype buildings are described at *http://www.energycodes.gov/development/commercial/90.1_models.*

Table 2. Incremental Construction First Cost (2012$) for ASHRAE 90.1-2010 vs. ASHRAE 90.1-2007

Prototype	Value	ASHRAE Climate Zone[3]				
		2A	3A	3B	4A	5A
Small Office	First Cost	$4,024	$2,987	$3,651	$9,988	$2,987
	$/ft^2	$0.73	$0.54	$0.66	$1.82	$0.54
Large Office	First Cost	$86,463	$157,083	$90,665	$131,058	-$112,435
	$/ft^2	$0.17	$0.32	$0.18	$0.26	-$0.23
Primary School	First Cost	$161,793	$177,029	$43,243	$177,400	$133,745
	$/ft^2	$2.19	$2.39	$0.58	$2.40	$1.81
Small Hotel	First Cost	-$48,706	-$56,732	-$51,337	-$48,880	-$64,202
	$/ft^2	-$1.13	-$1.31	-$1.19	-$1.13	-$1.49
Mid-rise Apartment	First Cost	$19,024	$19,024	$19,024	$19,024	$19,024
	$/ft^2	$0.56	$0.56	$0.56	$0.56	$0.56

Notes:

1. Costs shown are preliminary, and still undergoing final review as of June 2013.
2. Negative costs indicate a reduction in cost due to changes in the code, usually due to reduced HVAC capacity.[4]

Data from Table 1 and Table 2 were used to calculate preliminary values for overall incremental first cost of construction for Federal commercial and high-rise multi-family residential buildings. DOE calculated the incremental first cost of the Federal building types based on the DOE prototypes shown in bold font in Table 1. DOE then calculated the weighted average incremental cost for Federal building types based on the office, education, and dorm/barracks building types which represent an estimated 81% of new Federal construction. This weighted incremental cost was assigned to the warehouse and hospital building types and a total weighted incremental cost was calculated by multiplying the incremental cost for each Federal building type by the fraction of Federal construction shown in Table 1. For warehouses and hospitals DOE considered costs to be equivalent to the weighted cost for offices, education, and dorm/barracks.[5]

The national total incremental first cost for building types was developed by multiplying the average (across climate zones) incremental first cost of the prototypes (determined from the 90.1 cost-effectiveness analysis) by the fraction of the Federal sector construction volume shown in Table 1.[6] The resulting building type incremental first costs were then summed together to determine an overall incremental first cost for the entire Federal commercial and high-rise multi-family residential buildings sector. The resulting preliminary total incremental first cost estimate is $12 million per year. The average first cost increase is $0.54 per square foot.

Turning to LCC net savings, Table 3 shows preliminary annual LCC net savings by prototype buildings. For LCC net savings, a similar approach to that used for incremental first cost was used. That is, the national total annual LCC net savings[7] for building types was developed by multiplying the average (across climate zones) LCC net savings (determined from the 90.1 cost-effectiveness analysis) by the fraction of the federal sector construction volume shown in Table 1.[8] The results of the

[3] Briggs, R.S., R.G. Lucas, and Z.T. Taylor. 2003. ''Climate classification for building energy codes and standards: Part 1—Development Process.'' ASHRAE Transactions 109(1): 109:121. American Society of Heating, Refrigerating and Air-Conditioning Engineers. Atlanta, Georgia. The 90.1–2010 climate zone map may be viewed as Figure B.1 of the online version of Standard 90.1–2010 at *http://openpub.realread.com/rrserver/browser?title=/ASHRAE_1/ashrae_90_1_2010_IP_1024.*

[4] In this particular transition from 90.1–2007 to 90.1–2010, the cost reduction was mainly because of smaller and less expensive HVAC equipment since the building load had decreased. This cost reduction is part of the first cost calculation. Note that in addition to reduced equipment costs, there is reduced ductwork or piping costs as well.

[5] There is no data for those years for warehouses or hospitals. It could be expected that costs to a warehouses would be less since it is a simpler building. We assumed both the warehouse and the hospital were the ''average'' of the data we did have. And so, the warehouse value is likely higher than it might have been and the hospital value is likely lower than it might have been had there been data available.

[6] For the Federal office building, the small and large office prototype first costs were averaged. For the Federal education building, the primary school prototype first cost was used. For the Federal dorm/barracks building type, the small hotel and mid-rise apartment prototype first costs were averaged.

[7] The energy costs used were the national average energy costs used by ASHRAE in the development of Standard 90.1–2010. To quote the cost-effectiveness analysis report ''Energy rates used to calculate the energy costs from the modeled energy usage are $1.22/therm and $0.0939/kWh. These rates were used for 90.1–2010 energy analysis, and derived from the US DOE Energy Information Administration (EIA 2006), as reported in Energy and Cost Savings Analysis of ASHRAE Standard 90.1–2010 the 30% Goal. These are the values approved by the SSPC 90.1 for cost-effectiveness for the evaluation of individual addenda during the development of 90.1–2010.''

[8] For the Federal office building, the small and large office prototype life cycle costs were averaged.

Continued

building type LCC net savings were then summed together to determine the overall annual LCC net savings for the entire Federal commercial and high-rise multi-family buildings sector. The resulting total LCC net savings for 22 million square feet of annual construction was estimated to be $58 million. The average life-cycle cost net savings in year one was estimated to be $2.64 per square foot. Note the annual LCC savings are for one year of Federal commercial and high-rise multi-family residential construction and that those savings would accumulate over the LCC evaluation period. For the purpose of this analysis DOE relied on a 30-year period.

Table 3. Annual Life-Cycle Cost (LCC) Net Savings for ASHRAE 90.1-2010 vs. ASHRAE 90.1-2007

Prototype		ASHRAE Climate Zone				
		2A Houston	3A Memphis	3B El Paso	4A Baltimore	5A Chicago
		Life Cycle Cost Net Savings (2012$)				
Small Office	Total	$13,300	$15,300	$14,200	$7,200	$16,900
	$/ft^2	$2.42	$2.78	$2.58	$1.31	$3.07
Large Office	Total	$2,040,000	$1,730,000	$1,220,000	$1,620,000	$1,850,000
	$/ft^2	$4.09	$3.47	$2.45	$3.25	$3.71
Primary School	Total	$58,000	$49,000	$207,000	$52,000	$162,000
	$/ft^2	$0.78	$0.66	$2.80	$0.70	$2.19
Small Hotel	Total	$119,890	$140,000	$127,000	$103,500	$144,000
	$/ft^2	$2.77	$3.24	$2.94	$2.40	$3.33
Mid-rise Apartment	Total	$26,800	$33,900	$25,300	$29,900	$50,200
	$/ft^2	$0.79	$1.00	$0.75	$0.89	$1.49

B. Administrative Procedure Act

DOE notes that the determination regarding the updated voluntary consensus code was subject to notice and comment in evaluating the voluntary consensus codes in the context of State building codes. See 76 FR 43298 (July 20, 2011) for the preliminary determination and 76 FR 64904 (October 19, 2011) for the final determination. The determinations made in the context of the State codes are equally applicable in the context of Federal buildings. DOE finds that providing notice and comment on the determinations again in the context of Federal buildings would be unnecessary. The fact that the voluntary consensus codes apply to Federal buildings as opposed to the general building stock does not require a different evaluation of energy efficiency and cost-effectiveness. Additionally, DOE notes that today's rule, amending standards on energy efficiency performance standards for the design and construction of new Federal buildings, is a rule relating to public property, and therefore, is not subject to the rulemaking requirements of the Administrative Procedure Act, including the requirement to publish a notice of proposed rulemaking. (See, 5 U.S.C. 553(a)(2))

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process, 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE has determined that a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law for issuance of this rule. As such the analytical requirements of the Regulatory Flexibility Act do not apply.

D. Review Under the Paperwork Reduction Act of 1995

This rulemaking will impose no new information or record keeping requirements. Accordingly, Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

E. Review Under the National Environmental Policy Act of 1969

The Department prepared an Environmental Assessment (EA) (DOE/EA–1918) entitled, ''Environmental Assessment for Final Rule, 10 CFR part 433, 'Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings,' Baseline Standards Update,''

For the Federal education building, the primary school prototype life cycle cost was used. For the Federal dorm/barracks building type, the small hotel and mid-rise apartment prototype life cycle costs were averaged.

pursuant to the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR parts 1500–1508), the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.), and DOE's NEPA Implementing Procedures (10 CFR part 1021).

The EA addresses the possible incremental environmental effects attributable to the application of the final rule. The only anticipated impact would be a decrease in outdoor air pollutants resulting from decreased fossil fuel burning for energy use in Federal buildings. Therefore, DOE has issued a Finding of No Significant Impact (FONSI), pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021).

To identify the potential environmental impacts that may result from implementing the final rule on new Federal commercial buildings, DOE compared the final rule with the ''no-action alternative'' of using the current Federal standards. This comparison essentially compares the baseline standards—ANSI/ASHRAE/IESNA Standards 90.1–2007 and 90.1–2010 for Federal commercial and multi-family high-rise residential buildings. This comparison is identical to that undertaken by DOE in its determinations of energy savings of those standards and codes. For the purposes of this environmental assessment, DOE also investigated the impact of buildings achieving energy consumption below Standard 90.1–2010 in increments of 10 percent, up to 50 percent.

The 2011 *Annual Energy Outlook* (2011 AEO) projects approximately 2.2 billion square feet of commercial floor space will be added annually to the U.S. building stock (*http://www.eia.gov/forecasts/aeo/*). Since Federal buildings represent about 1 percent of total U.S. building stock, about 22 million square feet of new Federal buildings are added each year. Federal multi-family high-rise residential buildings are rare. Table 4 summarizes the estimated emissions impacts for each of the alternatives for the Federal building energy efficiency standard.[9] It shows cumulative changes in emissions for CO_2, NO_X, and Hg for a thirty year period for each of the alternatives. Cumulative CO_2, NO_X, and Hg emissions are reduced compared to the reference case for all alternatives. For comparison, the cumulative power sector emissions in the 2011 AEO reference case, over the period 2014 through 2043, are 74,571 Million metric tons for CO_2, 61,625 thousand metric tons for NOx, and 917 metric tons for Hg.

TABLE 4—AIR EMISSIONS REDUCTIONS IN METRIC TONS (30-YEARS OF COMMERCIAL CONSTRUCTION)

Baseline (no-action alternative)	Final rule—code or standard	Carbon dioxide	Nitrogen oxides	Mercury
ASHRAE 90.1–2007	90.1–2010	89,888,200	91,851	1.2795
	10% below 90.1–2010	126,091,100	128,857	1.7950
	20% below 90.1–2010	162,293,900	165,864	2.3105
	30% below 90.1–2010	198,496,800	202,870	2.8260
	40% below 90.1–2010	234,699,600	239,876	3.3415
	50% below 90.1–2010	270,902,400	276,882	3.8570
30% Below ASHRAE 90.1–2007	30% below 90.1–2010	62,921,800	64,296	0.8957
	40% below 90.1–2010	99,124,600	101,302	1.4112
	50% below 90.1–2010	135,327,500	138,308	1.9267

F. Review under Executive Order 13132, ''Federalism''

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations, 65 FR 13735. DOE examined this rule and determined that it does not preempt State law and does 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. No further action is required by Executive Order 13132.

G. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or

[9] The alternatives and the methodology used to determine these emissions impacts may be found in the Environmental Assessment (EA) (DOE/EA–1918) entitled, ''Environmental Assessment for Final Rule, 10 CFR part 433, 'Energy Efficiency Standards for New Federal Commercial and Multi-Family High-Rise Residential Buildings,' Baseline Standards Update''.

more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

H. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause 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), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://energy.gov/gc/office-general-counsel*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

I. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

J. Review Under Executive Order 12630, ''Governmental Actions and Interference With Constitutionally Protected Property Rights''

The Department has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this rule would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

K. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

L. Review Under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use''

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This final rule would not have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

M. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), DOE must comply with section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the NOPR must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Department of Justice (DOJ) and the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Although section 32 specifically refers to the proposed rule state, DOE is meeting these requirements at the final rule stage because there was no proposed rule for today's action. Today's final rule incorporates testing methods contained in the following commercial standard: ANSI/ASHRAE/IESNA Standard 90.1–2010, Energy Standard for Buildings Except Low-Rise Residential Buildings, 2010, American Society of Heating Refrigerating and Air-Conditioning Engineers, Inc., ISSN 1041–2336.

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (i.e. whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

VII. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 433

Buildings and facilities, Energy conservation, Engineers, Federal

buildings and facilities, Housing, Incorporation by reference.

Issued in Washington, DC, on June 28, 2013.

David T. Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, the Department of Energy amends chapter II of title 10 of the Code of Federal Regulations as set forth below:

PART 433—ENERGY EFFICIENCY STANDARDS FOR NEW FEDERAL COMMERCIAL AND MULTI–FAMILY HIGH–RISE RESIDENTIAL BUILDINGS

■ 1. The authority citation for part 433 continues to read as follows:

Authority: 42 U.S.C. 6831–6832; 6834–6835; 42 U.S.C. 7101 *et seq.*

■ 2. Amend § 433.2 by adding in alphabetical order the definition of ''ASHRAE Baseline Building 2010'' to read as follows:

§ 433.2 Definitions.

* * * * *

ASHRAE Baseline Building 2010 means a building that is otherwise identical to the proposed building but is designed to meet, but not exceed, the energy efficiency specifications in ANSI/ASHRAE/IESNA Standard 90.1–2010, Energy Standard for Buildings Except Low-Rise Residential Buildings, 2010 (incorporated by reference, see § 433.3).

* * * * *

■ 3. Amend § 433.3 by adding paragraph (b)(3) to read as follows:

§ 433.3 Materials incorporated by reference.

* * * * *

(b) * * *

(3) ANSI/ASHRAE/IESNA 90.1–2010, (''ASHRAE 90.1–2010''), Energy Standard for Buildings Except Low-Rise Residential Buildings, I–P Edition, Copyright 2010, IBR approved for §§ 433.2, 433.4, 433.5.

■ 4. Section 433.4 is amended by revising paragraph (a)(2) introductory text and adding paragraph (a)(3) to read as follows:

§ 433.4 Energy efficiency performance standard.

(a) * * *

(2) All Federal agencies shall design new Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after August 10, 2012, but before July 9, 2014, to:

* * * * *

(3) All Federal agencies shall design new Federal buildings that are commercial and multi-family high-rise residential buildings, for which design for construction began on or after July 9, 2014, to:

(i) Meet ASHRAE 90.1–2010, (incorporated by reference, see § 433.3); and

(ii) If life-cycle cost-effective, achieve energy consumption levels, calculated consistent with paragraph (b) of this section, that are at least 30 percent below the levels of the ASHRAE Baseline Building 2010.

* * * * *

■ 5. Section 433.5 is amended by revising paragraph (a)(2) and adding paragraph (a)(3) to read as follows:

§ 433.5 Performance level determination.

(a) * * *

(2) For Federal buildings for which design for construction began on or after August 10, 2012, but before July 9, 2014, each Federal agency shall determine energy consumption levels for both the ASHRAE Baseline Building 2007 and proposed building by using the Performance Rating Method found in Appendix G of ASHRAE 90.1–2007 (incorporated by reference, see § 433.3), except the formula for calculating the Performance Rating in paragraph G1.2 shall read as follows:

Percentage improvement = 100 × ((Baseline building consumption − Receptacle and process loads) − (Proposed building consumption − Receptacle and process loads))/(Baseline building consumption − Receptacle and process loads) (which simplifies as follows):

Percentage improvement = 100 × (Baseline building consumption − Proposed building consumption)/(Baseline building consumption − Receptacle and process loads).

(3) For Federal buildings for which design for construction began on or after July 9, 2014, each Federal agency shall determine energy consumption levels for both the ASHRAE Baseline Building 2010 and proposed building by using the Performance Rating Method found in Appendix G of ASHRAE 90.1–2010 (incorporated by reference, see § 433.3), except the formula for calculating the Performance Rating in paragraph G1.2 shall read as follows:

Percentage improvement = 100 × ((Baseline building consumption − Receptacle and process loads) − (Proposed building consumption − Receptacle and process loads))/(Baseline building consumption − Receptacle and process loads) (which simplifies as follows):

Percentage improvement = 100 × (Baseline building consumption − Proposed building consumption)/(Baseline building consumption − Receptacle and process loads).

* * * * *

[FR Doc. 2013–16297 Filed 7–8–13; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AEOO

Loan Participations; Purchase, Sale and Pledge of Eligible Obligations; Purchase of Assets and Assumption of Liabilities; Extension of Effective Date

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule; notice of extension of effective date.

SUMMARY: On June 20, 2013, the NCUA Board (Board) approved, with a 30-day effective date, a final rule titled Loan Participations; Purchase, Sale and Pledge of Eligible Obligations; Purchase of Assets and Assumption of Liabilities, effective July 25, 2013. The Board extends the effective date for the final rule to September 23, 2013, to provide federally insured credit unions with additional time to prepare to comply with the final rule.

DATES: The effective date of the final rule published June 25, 2013 (78 FR 37946) is extended from July 25, 2013, to September 23, 2013.

FOR FURTHER INFORMATION CONTACT: Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone (703) 518–6540; or Matthew J. Biliouris, Director of Supervision, Office of Examination and Insurance, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: The above-referenced final rule regarding loan participations was published at 78 FR 37946 (June 25, 2013) with an effective date of July 25, 2013. The Board extends the effective date to September 23, 2013, to provide federally insured credit unions with additional time to prepare to comply with the final rule.

By the National Credit Union Administration Board, on July 2, 2013.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. 2013–16399 Filed 7–8–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0553; Directorate Identifier 2011–SW–041–AD; Amendment 39–17502; AD 2013–13–14]

RIN 2120–AA64

Airworthiness Directives; Various Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for various restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters with certain main rotor hub inboard strap fittings (fittings) installed. This AD requires a magnetic particle inspection (MPI) of the fittings for a crack, and if there is a crack, replacing the fitting with an airworthy fitting. This AD is prompted by reports of cracked fittings on Bell model helicopters and the determination that these same part-numbered fittings may be installed on various restricted category helicopters. These actions are intended to detect a crack in a fitting, which may lead to failure of a fitting, loss of a main rotor blade, and subsequent loss of helicopter control.

DATES: This AD becomes effective July 24, 2013.

We must receive comments on this AD by September 9, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the economic 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 service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *www.bellcustomer.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas, 76137, phone: (817) 222–5170; fax: (817) 222–5783; email: *7-AVS-ASW-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

On January 28, 2013, we issued AD 2013–03–16, Amendment 39–17339 (78 FR 9793, February 12, 2013), for Bell Model 204B, 205A, 205A–1, 205B, 210, and 212 helicopters with certain part-numbered fittings installed. AD 2013–03–16 requires a one-time MPI of the fittings for a crack, replacing the fittings with airworthy fittings if there is a crack, and re-identifying the fitting by adding ''FM'' to the end of its part-number (P/N) if there is no crack. The AD was prompted by reports of cracks in the fittings. The cracking was determined to have been caused by the manufacturer's failure to follow approved manufacturing processes and controls during the quenching operation from the heat treating of the fittings.

After AD 2013–03–16 was issued, we determined that the same part-numbered Bell fittings may be installed on various restricted category Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters and are susceptible to the same type of cracking. Therefore, we are mandating the inspection requirements for the applicable restricted category helicopters. While Bell is the manufacturer of these helicopters, the type certificates are held by other entities. The type certificate holders for the Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters are: Arrow Falcon Exporters Inc.; AST, Inc.; Bell Helicopter Textron, Inc..; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; JJASPP Engineering Services, LLC; Northwest Rotorcraft, LLC; Overseas Aircraft Support, Inc.; Richards Heavylift Helo, Inc.; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; Southern Helicopter, Inc.; and Tamarack Helicopters, Inc. Southwest Florida Aviation International, Inc. is the type certificate holder for the UH–1B (SW204 and SW204HP) and UH–1H (SW205) helicopters.

The actions specified in this AD are intended to detect a crack in a fitting, leading to a failure of the fitting, loss of a main rotor blade, and subsequent loss of helicopter control.

FAA's Determination

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

Related Service Information

We have reviewed Bell Alert Service Bulletin (ASB) No. UH–1H–11–07 for Model UH–1H helicopters, dated May 31, 2011. The procedures provided in

this ASB concern all applicable helicopters. This ASB specifies:

- For fittings with less than 400 hours time-in-service (TIS), performing an MPI within 100 flight hours but before the fitting reaches 425 flight hours or before November 26, 2011, whichever occurs first.
- For fittings with more than 400 hours, performing an MPI within 25 flight hours or before November 26, 2011, whichever occurs first.
- If cracks are found, replacing the fitting.
- If no cracks are found, visually inspecting all edges for raised material. If raised material is found, removing the material by hand using an India stone, repeating the MPI inspection, and re-identifying the fitting as described below. If the raised material cannot be removed within specified limits, replacing the fitting.
- If no cracks and no raised material are found, re-identifying the fitting and historical service records by adding an ''FM'' at the end of the part number and marking a record entry.

AD Requirements

This AD requires:

- Within 25 hours TIS or 15 days, whichever comes first, performing an MPI of each fitting for a crack.
- If a fitting has a crack, before further flight, replacing the fitting with an airworthy fitting.
- If a fitting has no crack, re-identifying the fitting and its component history card or equivalent record by adding ''FM'' at the end of the P/N.

Differences Between This AD and the Service Information

This AD differs from the ASBs in that we require an MPI within 25 hours TIS or 15 days, whichever comes first, of any fitting with an applicable P/N and S/N. Bell requires different compliance times based on the hours TIS of the fitting. We also do not require returning parts to Bell. Finally, we do not require visually inspecting all edges for raised material (shot peen rollover) on fittings with a certain P/N.

Interim Action

We consider this AD to be an interim action. Bell is investigating the safety risks regarding the raised material at the fittings' edges. Depending on the outcome of the investigation, we might consider additional rulemaking.

Costs of Compliance

We estimate that this AD affects 300 helicopters of U.S. registry and that labor costs average $85 per work-hour. Based on these estimates, we expect the following costs to comply with this AD:

- MPI of each set of fittings (two per helicopter) requires 40 work-hours for a labor cost of $3,400 per helicopter, $1,020,000 for the fleet. No parts are needed.
- If a fitting is cracked, replacement parts will cost $2,367 per fitting. Labor costs will not be an additional expense as they can be absorbed as part of the inspection.

FAA's Justification and Determination of the Effective Date

We find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because of the short compliance time of 25 hours TIS or 15 days, whichever comes first, to magnetic particle inspect for a crack in the fitting. As these helicopters are often used in the timber industry and for firefighting, they may accrue 25 hours TIS within a week. Failure of these fittings could result in a catastrophic accident.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–13–14 Various Restricted Category Helicopters: Amendment 39–17502; Docket No. FAA–2013–0553; Directorate Identifier 2011–SW–041–AD.

(a) Applicability

This AD applies to Arrow Falcon Exporters Inc.; AST, Inc.; Bell Helicopter Textron, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; JJASPP Engineering Services, LLC; Northwest Rotorcraft, LLC; Overseas Aircraft Support, Inc.; Richards Heavylift Helo, Inc.; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; Southern Helicopter, Inc.; and Tamarack Helicopters, Inc. Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters, and Southwest Florida Aviation International, Inc., Model UH–1B (SW204 and SW204HP) and UH–1H (SW205) helicopters, certificated in any category, with a main rotor hub inboard strap fitting (fitting) with a part number (P/N) and serial number (S/N) listed in Table 1 to paragraph (a) of this AD.

TABLE 1 TO PARAGRAPH (a)

Fitting P/Ns	Fitting S/Ns
204–012–102–001	All.
204–012–102–005	All.
204–012–102–009	All, except 7500 or larger with a prefix of "A" or "A–FS."

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the fitting and the determination that the applicable fittings may not have been manufactured in accordance with approved manufacturing processes and controls. This condition could result in failure of a fitting, loss of a main rotor blade, and loss of helicopter control.

(c) Effective Date

This AD becomes effective July 24, 2013.

(d) Compliance

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

(e) Required Actions

Within 25 hours time-in-service or 15 days, whichever occurs first:

(1) Perform a magnetic particle inspection (MPI) of each fitting for a crack. If an MPI was already performed on a fitting resulting in re-identifying the fitting with "FM" at the end of the P/N or at the end of the P/N on the fitting's component history card or equivalent record, then the requirements of this AD have been met.

(2) If a fitting is cracked, before further flight, replace it with an airworthy fitting.

(3) If a fitting is not cracked, before further flight, re-identify the fitting by adding "FM" at the end of the P/N using a vibrating stylus. The depth of the "FM" must not exceed 0.005 inches or extend within 0.10 inch of the part's edge. Also, add "FM" at the end of the P/N on the fitting's component history card or equivalent record.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas, 76137, phone: (817) 222–5710; fax: (817) 222–5783; email: *7-AVS-ASW-170@faa.gov*.

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

(g) Additional Information

Bell Alert Service Bulletin (ASB) No. UH–1H–11–07, dated May 31, 2011, which is not incorporated by reference, contain additional information about the subject of this AD. For this service information, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *www.bellcustomer.com*. You may review this service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6220, Main Rotor Head.

Issued in Fort Worth, Texas, on June 18, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–15946 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0520; Directorate Identifier 2013–SW–027–AD; Amendment 39–17484; AD 2013–12–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland (Eurocopter) Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter Model MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, and MBB–BK117 C–2 helicopters with a Metro Aviation (Metro) vapor-cycle air conditioning kit installed in accordance with Supplemental Type Certificate (STC) No. SH3880SW. This AD requires repetitively inspecting the air conditioning drive pulley (pulley) for looseness and properly installed lockwire, and also requires reinstalling the pulley. This AD is prompted by two reports of the pulley detaching from the rotor brake disc on the tail rotor (T/R) driveshaft. These actions are intended to prevent separation of the pulley, damage to the T/R driveshaft, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective July 24, 2013.

We must receive comments on this AD by September 9, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the "Mail" address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the STC, the economic 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 service information identified in this AD, contact Metro Aviation, Inc., 1214 Hawn Ave, Shreveport, LA 71107; phone: (318) 222–5529; Web site: *metroproductsupport.com*. You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Martin Crane, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5056; email *7-AVS-ASW-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments,

commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

STC No. SH3880SW approves the installation of the Metro vapor-cycle air conditioning kit on Eurocopter Model MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, and MBB–BK117 C–2 helicopters. The air conditioning compressor is driven by a pulley attached to the rotor brake disc. We received a report of a recent incident where the fasteners attaching the air conditioning compressor pulley to the rotor brake disc lost torque and allowed the pulley to separate. After the helicopter landed without incident, the pulley was discovered loose, rotating freely on, and causing damage to the T/R driveshaft. A prior incident in 2008 occurred where the pulley mount bolts sheared, resulting in the pulley detaching from the rotor brake disc. Separation of the pulley from the rotor brake disc could damage the T/R driveshaft, resulting in subsequent loss of control of the helicopter.

FAA's Determination

We are issuing this AD because we evaluated all information provided by Metro and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

We reviewed Metro Alert Service Bulletin No. MA145–21A–003, Revision A, dated April 26, 2013 (ASB MA145–21A–003), which describes procedures to inspect the pulley for properly installed lockwire, and for removing, inspecting, and re-installing the pulley.

AD Requirements

This AD requires, before further flight, and thereafter at intervals not exceeding 10 hours time-in-service (TIS), inspecting the pulley for looseness and proper installation of the lockwire on the pulley mount bolts.

Additionally, within 25 hours TIS, this AD requires removing the pulley, inspecting the bolts and mounting holes with a 10X or higher magnifying glass for damage or distortion, and re-installing the pulley. If there is any damage or distortion, this AD requires replacing the damaged pulley.

Differences Between This AD and the Manufacturer's Service Information

This AD requires repetitively inspecting the pulley bolts every 10 hours TIS; the ASB does not require the repetitive inspections after re-installing the pulley.

This AD also applies to Model MBB–BK117 A–3, MBB–BK117 A–4, MBB–BK117 B–1, and MBB–BK117 C–2 helicopters; the ASB only applies to Model MBB–BK C–2 helicopters.

Interim Action

We consider this AD to be an interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this AD will affect 75 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. At an average labor rate of $85 per hour, inspecting the pulley will require about .5 work-hour, for a cost per helicopter of $43, and a total cost of $3,225 for the fleet per inspection cycle. Inspecting and re-installing the pulley will require about 2 work-hours, for a cost per helicopter of $170, and a total cost of $12,750 for the fleet.

If necessary, replacing a damaged pulley would require about 2 work-hours, and required parts would cost $525, for a total cost per helicopter of $695.

FAA's Justification and Determination of the Effective Date

Providing an opportunity for public comments prior to adopting these AD requirements would delay implementing the safety actions needed to correct this known unsafe condition. Therefore, we find that the risk to the flying public justifies waiving notice and comment prior to the adoption of this rule because the required corrective actions must be accomplished within 25 hours TIS or 30 calendar days, a very short time period based on the average flight hour utilization rate of these helicopters in the air ambulance and offshore operations industries.

Since an unsafe condition exists that requires the immediate adoption of this AD, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify that this AD:

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–12–06 Eurocopter Deutschland (Eurocopter): Amendment 39–17484; Docket No. FAA–2013–0520; Directorate Identifier 2013–SW–027–AD.

(a) Applicability

This AD applies to Eurocopter Model MBB–BK 117 A–3, MBB–BK 117 A–4, MBB–BK 117 B–1, and MBB–BK 117 C–2 helicopters with a Metro Aviation, Inc. (Metro) vapor-cycle air conditioning kit installed in accordance with Supplemental Type Certificate (STC) No. SH3880SW, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as loosening of an air conditioning drive pulley (pulley) mount bolt, which could result in separation of the pulley from the rotor brake disc on the tail rotor (T/R) driveshaft, damage to the T/R driveshaft, and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective July 24, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time.

(e) Required Actions

(1) Before further flight, and thereafter at intervals not exceeding 10 hours time-in-service (TIS), inspect the lockwire securing the pulley mount bolts for proper installation and the pulley for looseness. If the lockwire is damaged or broken, or is not installed in a tightening direction, or if the pulley is loose, remove and inspect the pulley as described in paragraphs (e)(2)(i) and (e)(2)(ii) of this AD.

(2) Within 25 hours TIS:

(i) Remove the pulley from the rotor brake disc and, using a 10X or higher power magnifying glass, inspect the bolts and mounting holes glass for damage or distortion. If there is any damage or distortion, replace the pulley.

(ii) Install the pulley and torque each mount bolt to 90 inch-pounds. After torqueing, determine whether a gap exists among each bolt head, washer, and the mating surface of the rotor brake disc. If there is a gap, replace the pulley.

(iii) Lock wire each pulley mount bolt to its adjacent rotor brake mounting bolt with 0.6 millimeter lockwire.

(f) Special Flight Permits

Special flight permits are prohibited.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Martin Crane, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5056; email *7-AVS-ASW-170@faa.gov.*

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

(h) Additional Information

(1) Metro Alert Service Bulletin No. MA145–21A–003, Revision A, dated April 26, 2013, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Metro Aviation, Inc., 1214 Hawn Ave, Shreveport, LA 71107; phone: (318) 222–5529; Web site: *metroproductsupport.com.* You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) STC No. SH3880SW, amended April 16, 2004, may be found on the Internet at *http://www.regulations.gov* in Docket No. FAA–2013–0520.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6500: Tail Rotor Drive.

Issued in Fort Worth, Texas, on June 13, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–16388 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2013–0515; Airspace Docket No. 13–AWP–8]

RIN 2120–AA66

Amendment of Restricted Areas R–2504A & R–2504B; Camp Roberts, CA, and Restricted Area R–2530; Sierra Army Depot, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the descriptions of restricted areas R–2504A and R–2504B, Camp Roberts, CA, and restricted area R–2530, Sierra Army Depot, CA, by removing the abbreviation ''PST'' from the time of designation. This amendment does not change the dimensions of, or activities conducted within, R–2504A, R–2504B, and R–2530.

DATES: *Effective Date:* 0901 UTC, October 17, 2013.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The time of designation for R–2504A and R–2504B currently reads ''0600 to 2400 PST, daily'' and the time of designation for R–2530 currently reads ''0800 to 1800 PST, Monday–Friday; other times by NOTAM.'' Since the restricted areas lie completely within the pacific time zone, it is unnecessary to specify ''PST'' in the descriptions. The use of ''PST'' has led to confusion about the time of designation during that part of the year when daylight saving time is in effect. The intended time of designation for restricted areas R–2504A and R–2504B is 0600–2400 local time, daily, during both standard time and daylight saving time periods and for R–2530 is 0800–1800 local time, Monday–Friday; other times by NOTAM, during both standard time and daylight saving time periods.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR) part 73 by removing ''PST'' from the time of designation for restricted areas R–2504A and R–2504B, Camp Roberts, CA, and R–2530, Sierra Army Depot, CA, and inserting the words ''local time'' in its place. The time of designation is amended to read ''0600 to 2400 local time, daily'' for R–2504A and R–2504B and ''0800–1800 local time, Monday–Friday; other times by NOTAM'' for R–2530. These changes do not alter the current dimensions or usage of the restricted areas.

Because this action is a minor editorial change that does not alter the physical location or utilization of the restricted areas, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.25 of Title 14 CFR part 73 was republished in FAA Order JO 7400.8V, effective February 16, 2013.

The FAA has determined that this regulation only involves an established

body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends airspace descriptions to keep them current.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Policies and Procedures, paragraph 311d. This action updates the technical description of special use airspace that does not alter the dimensions, altitudes, or use of the airspace. It is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.25 [Amended]

■ 2. § 73.25 is amended as follows:

* * * * *

R–2504A Camp Roberts, CA [Amended]

By replacing the current time of designation as follows:

Time of designation. 0600 to 2400 local time, daily.

* * * * *

R–2504B Camp Roberts, CA [Amended]

By replacing the current time of designation as follows:

Time of designation. 0600 to 2400 local time, daily.

* * * * *

R–2530 Sierra Army Depot, CA [Amended]

By replacing the current time of designation as follows:

Time of designation. 0800 to 1800 local time, Monday–Friday; other times by NOTAM.

Issued in Washington, DC on July 1, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–16449 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 90

[OVW Docket No. 110]

RIN 1105–AB40

Removing Unnecessary Office on Violence Against Women Regulations

AGENCY: Office on Violence Against Women, Justice.

ACTION: Final rule.

SUMMARY: This rule removes the regulations for the STOP Violence Against Indian Women Discretionary Grant Program, because the Program no longer exists, and the Grants to Combat Violent Crimes Against Women on Campuses Program, because the regulations are no longer required and are unnecessary.

DATES: This rule is effective September 9, 2013.

FOR FURTHER INFORMATION CONTACT: Marnie Shiels, Office on Violence Against Women (OVW), United States Department of Justice, 145 N Street NE., Suite 10W.121, Washington, DC 20530 at *marnie.shiels@usdoj.gov* or (202) 305–2981.

SUPPLEMENTARY INFORMATION:

Background

STOP VAIW Program

In 1994, Congress passed the Violence Against Women Act (VAWA), a comprehensive legislative package aimed at ending violence against women. VAWA was enacted on September 13, 1994, as title IV of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103–322, 108 Stat. 1796. VAWA was designed to improve criminal justice system responses to domestic violence, sexual assault, and stalking, and to increase the availability of services for victims of these crimes. The STOP VAIW Program was codified at 42 U.S.C. 3796gg through 3796gg–5. The final rule for this program, found at 28 CFR part 90, subpart C, under the heading Indian Tribal Governments Discretionary Program, was promulgated on April 18, 1995 (74 FR 19474).

The Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), Public Law 109–162, 119 Stat. 2960 (January 5, 2006) (hereinafter ''VAWA 2005''), eliminated the STOP VAIW Program and replaced it with the Grants to Indian Tribal Governments Program, which is codified at 42 U.S.C. 3796gg–10. Accordingly, this rule removes the now unnecessary STOP VAIW Program regulations.

Higher Education Amendments of 1998

Violence against women on college and university campuses also is a serious, widespread problem. To help address this problem, Congress authorized the Grants to Combat Violent Crimes Against Women on Campuses Program in title VIII, part E, section 826 of the Higher Education Amendments of 1998, Public Law 105–244, 112 Stat. 1581 (Oct. 7, 1998). Consistent with VAWA, the Grants to Combat Violent Crimes Against Women on Campuses Program was designed to encourage the higher education community to adopt comprehensive, coordinated strategies for preventing and stopping violence against women. This program was originally codified at 20 U.S.C. 1152. The final rule for the program, found at 28 CFR part 90, subpart E, was promulgated on July 22, 1999 (64 FR 39774). VAWA 2005 amended the Campus Program and renamed it the Grants to Combat Violent Crimes on Campus Program (Campus Program) and recodified it at 42 U.S.C. 14045b.

When VAWA 2005 recodified the program, it removed the requirement for

regulations. The current regulations are unnecessary as they add very little that is not already legally required under VAWA 2005 for grantees of the Campus Program. Accordingly, this rule also removes the Grants to Combat Violent Crimes Against Women on Campuses regulation.

The Office on Violence Against Women published the Notice of Proposed Rulemaking in the **Federal Register** on May 18, 2012. Comments were due by July 17, 2012. No comments were received in any form. Therefore, the Office on Violence Against Women is finalizing the proposed rule without change. This rule was reviewed by the Department of Justice's Regulatory Review Working Group, which was formed to implement Executive Order 13563 according to the criteria set forth in the Department's Plan for Retrospective Analysis of Existing Rules.

Regulatory Certifications

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), Principles of Regulation, and in accordance with Executive Order 13563, ''Improving Regulation and Regulatory Review,'' section 1(b). General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Further, both Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has assessed the costs and benefits of this regulation and believes that the regulatory approach selected maximizes net benefits.

Executive Order 13132—Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

As set forth more fully above in the Supplementary Information portion, this rule will not result in substantial direct increased costs to Indian Tribal governments. Eliminating regulations for a program that no longer exists will not affect tribes.

Regulatory Flexibility Act

The Office on Violence Against Women, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reason: The economic impact is limited to the Office on Violence Against Women's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete in domestic and export markets.

List of Subjects in 28 CFR Part 90

Grant programs; Judicial administration.

For the reason set forth in the preamble, the Office on Violence Against Women amends 28 CFR part 90 as follows:

PART 90—VIOLENCE AGAINST WOMEN

■ 1. The authority citation for Part 90 reads as follows:

Authority: 42 U.S.C. 3711–3796gg–7; Sec. 826, Part E, Title VIII, Pub. L. 105–244, 112 Stat. 1581, 1815.

Subpart C—[Removed and Reserved]

■ 2. Remove and reserve subpart C, consisting of §§ 90.50–90.59.

Subpart E—[Removed and Reserved]

■ 3. Remove and reserve subpart E, consisting of §§ 90.100–90.106.

Dated: July 1, 2013.

Bea Hanson,

Acting Director, Office on Violence Against Women, U.S. Department of Justice.

[FR Doc. 2013–16400 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0577]

Drawbridge Operation Regulation; Lake Washington Ship Canal at Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs two Seattle Department of Transportation (SDOT) bridges: The Fremont Bridge, mile 2.6, and the University Bridge, mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA. The deviation is necessary to accommodate the ''See Jane Run Women's Half Marathon.'' This deviation allows the bridges to remain in the closed position to accommodate the safe movement of event participants.

DATES: This deviation is effective from 8 a.m. to 8:15 a.m. on July 14, 2013 for the Fremont Bridge, and from 8:45 a.m. to 9:15 a.m. on July 14, 2013 for the University Bridge.

ADDRESSES: The docket for this deviation, [USCG–2013–0577] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Steven Fischer, Lieutenant Commander, Thirteenth District Bridge Specialist, Coast Guard; telephone 206–220–7277, email *Steven.M.Fischer2@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The SDOT requested a temporary deviation from the operating schedule for the Fremont Bridge, mile 2.6, and the University Bridge, mile 4.3, all crossing the Lake Washington Ship Canal at Seattle, WA. The requested deviation is necessary to accommodate the ''See Jane Run Women's Half Marathon''. This deviation allows the bridges to remain in the closed position to accommodate the safe movement of event participants. To facilitate this event, the draws of the bridges will be maintained in the closed-to-navigation positions as follows: The Fremont Bridge, mile 2.6, need not open for vessel traffic from 8 a.m. on July 14, 2013 to 8:15 a.m. on July 14, 2013; the University Bridge, mile 4.3, need not open for vessel traffic from 8:45 a.m. on July 14, 2013 to 9:15 a.m. on July 14, 2013. Vessels which do not require bridge openings may continue to transit beneath these bridges during the closure periods. The Fremont Bridge, mile 2.6, provides a vertical clearance of 14 feet in the closed position, and the University Bridge, mile 4.3, provides a vertical clearance of 30 feet in the closed position; all clearances are referenced to the mean water elevation of Lake Washington. The current operating schedule for both bridges is set out in 33 CFR 117.1051. The normal operating schedule for both bridges state that the bridges need not open from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday for vessels less than 1000 tons. The normal operating schedule for these bridges also requires one hour advance notification for bridge openings between 11 p.m. and 7 a.m. daily. Waterway usage on the Lake Washington Ship Canal ranges from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridges' operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The bridges will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

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

Dated: June 25, 2013.

Daryl R. Peloquin,

Acting Bridge Administrator.

[FR Doc. 2013–16393 Filed 7–8–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0103]

Safety Zones; Annual Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones for annual marine events in the Captain of the Port Detroit zone from 9:30 p.m. on June 20, 2013 through 11:59 p.m. on August 31, 2013. Enforcement of these zones is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after associated marine events. During the aforementioned period, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During each enforcement period, no person or vessel may enter the respective safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.941 will be enforced at various times between 9:30 p.m. on June 20, 2013 through 11:59 p.m. on August 31, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LT Adrian Palomeque, Prevention, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit MI 48207; telephone (313) 568–9508, email *Adrian.F.Palomeque@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.941, Safety Zones; Annual Events in the Captain of the Port Detroit Zone, at the following dates and times for the following events:

(1) *Bay-Rama Fishfly Festival Fireworks, New Baltimore, MI.*

The safety zone listed in 33 CFR 165.941(a)(29) will be enforced from 9:00 p.m. to 11:00 p.m. on June 20, 2013. In the case of inclement weather on June 20, 2013, this safety zone will be enforced from 9:00 p.m. to 11:00 p.m. on June 21, 2013. In the case of inclement weather on June 21, 2013, this safety zone will be enforced from 9:00 p.m. to 11:00 p.m. on June 22, 2013.

(2) *St. Clair Shores Fireworks, St. Clair Shores, MI.*

The safety zone listed in 33 CFR 165.941(a)(39) will be enforced from 10:00 p.m. to 10:30 p.m. on June 28, 2013. In the case of inclement weather on June 28, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on June 29, 2013.

(3) *Target Fireworks, Detroit, MI.*

The first safety zone listed in 33 CFR 165.941(a)(50), on the waterfront area adjacent to 1351 Jefferson Avenue, Detroit, Michigan will be enforced from 8:00 a.m. on June 21, 2013 to 8:00 p.m. on June 24, 2013. In the case of inclement weather on June 24, 2013, the first safety zone will be enforced one additional day, from 8:00 a.m. on June 21, 2013 to 8:00 p.m. on June 25, 2013.

The second safety zone listed in 33 CFR 165.941(a)(50) will be enforced from 8:00 p.m. to 11:55 p.m. on June 24, 2013. In the case of inclement weather on June 24, 2013, the second safety zone will be enforced from 8:00 p.m. to 11:55 p.m. on June 25, 2013.

The third safety zone listed in 33 CFR 165.941(a)(50) will be enforced from 6:00 p.m. to 11:55 p.m. on June 24, 2013. In the case of inclement weather on June 24, 2013, the third safety zone will be enforced from 6:00 p.m. to 11:55 p.m. on June 25, 2013.

(4) *Sigma Gamma Fireworks, Grosse Pointe Farms, MI.*

The safety zone listed in 33 CFR 165.941(a)(51) will be enforced from 9:30 p.m. to 10:15 p.m. on June 24, 2013.

(5) *Harrisville Fireworks, Harrisville, MI.*

The safety zone listed in 33 CFR 165.941(a)(7) will be enforced from 9:30 p.m. to 11:30 p.m. on July 6, 2013. In the case of inclement weather on July 6,

2013, this safety zone will be enforced from 9:30 p.m. to 11:30 p.m. on July 7, 2013.

(6) *Caseville Fireworks, Caseville, MI.*

The safety zone listed in 33 CFR 165.941(a)(36) will be enforced from 10:00 p.m. to 11:30 p.m. on July 5, 2013. In the case of inclement weather on July 5, 2013, this safety zone will be enforced from 10:00 p.m. to 11:30 p.m. on July 6, 2013.

(7) *Lexington Independence Festival Fireworks, Lexington, MI.*

The safety zone listed in 33 CFR 165.941(a)(42) will be enforced from 10:00 p.m. to 10:30 p.m. on July 4, 2013. In the case of inclement weather on July 4, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 5, 2013.

(8) *Algonac Pickerel Tournament Fireworks, Algonac, MI.*

The safety zone listed in 33 CFR 165.941(a)(37) will be enforced from 10:00 p.m. to 10:30 p.m. on July 5, 2013. In the case of inclement weather on July 5, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 6, 2013.

(9) *Grosse Pointe Farms Fireworks, Grosse Pointe Farms, MI.*

The safety zone listed in 33 CFR 165.941(a)(35) will be enforced from 10:00 p.m. to 10:30 p.m. on June 29, 2013. In the case of inclement weather on June 29, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 6, 2013.

(10) *Belle Maer Harbor 4th of July Fireworks, Harrison Township, MI.*

The safety zone listed in 33 CFR 165.941(a)(46) will be enforced from 10:00 p.m. to 10:30 p.m. on July 4, 2013. In the case of inclement weather on July 4, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 5, 2013.

(11) *City of St. Clair Fireworks, St. Clair, MI.*

The safety zone listed in 33 CFR 165.941(a)(31) will be enforced from 10:00 p.m. to 10:30 p.m. on July 4, 2013. In the case of inclement weather on July 4, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 5, 2013.

(12) *Port Austin Fireworks, Port Austin, MI.*

The safety zone listed in 33 CFR 165.941(a)(33) will be enforced from 10:00 p.m. to 10:30 p.m. on July 4, 2013. In the case of inclement weather on July 4, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 5, 2013.

(13) *Trenton Rotary Roar on the River Fireworks, Trenton, MI.*

The safety zone listed in 33 CFR 165.941(a)(9) will be enforced from 10:00 p.m. until 11:00 p.m. on July 19, 2013. In the case of inclement weather on July 19, 2013, this safety zone will be enforced from 10:00 p.m. until 11:00 p.m. on July 20, 2013.

(14) *Detroit International Jazz Festival Fireworks, Detroit, MI.*

The safety zone listed in 33 CFR 165.941(a)(12) will be enforced from 10:00 p.m. to 11:59 p.m. on August 31, 2013. In the case of inclement weather on August 31, 2013, this safety zone will be enforced from 10:00 p.m. to 11:59 p.m. on September 1, 2013. In the case of inclement weather on September 1, 2013, this safety zone will be enforced from 10:00 p.m. to 11:59 p.m. on September 2, 2013.

(15) *Tawas City 4th of July Fireworks, Tawas City, MI.*

The safety zone listed in 33 CFR 165.941(a)(47) will be enforced from 10:00 p.m. to 11:00 p.m. on July 4, 2013. In the case of inclement weather on July 4, 2013, this regulation will be enforced from 10:00 p.m. to 11:00 p.m. on July 5, 2013.

(16) *Bay City Fireworks Festival, Bay City, MI.*

The safety zone listed in 33 CFR 165.941(a)(53) will be enforced from 10:05 p.m. to 10:55 p.m. on July 4, 5, and 6 2013. In the case of inclement weather on July 6, 2013, this safety zone will be enforced from 10:05 p.m. to 10:55 p.m. on July 7, 2013.

(17) *Roostertail Fireworks, Detroit, MI.*

The safety zone listed in 33 CFR 165.941(a)(1) will be enforced from 10:00 p.m. to 10:30 p.m. on June 26, 2013.

(18) *Huron Riverfest Fireworks, Huron, OH.*

The safety zone listed in 33 CFR 165.941(a)(23) will be enforced from 10:15 p.m. until 10:30 p.m. on July 12, 2013.

(19) *Red, White and Blues Bang Fireworks, Huron, OH.*

The safety zone listed in 33 CFR 165.941(a)(22) will be enforced from 10:15 p.m. until 10:30 p.m. on July 6, 2013.

(20) *Put-In-Bay Chamber of Commerce Fireworks, Put-In-Bay, OH.*

The safety zone listed in 33 CFR 165.941(a)(57) will be enforced from 9:30 p.m. until 9:45 p.m. on June 29, 2013.

(21) *Perrysburg/Maumee 4th of July Fireworks, Perrysburg, OH.*

The safety zone listed in 33 CFR 165.941(a)(19) will be enforced from 10:30 p.m. to 10:30 p.m. on July 3, 2013.

(22) *Grosse Ile Yacht Club Fireworks, Grosse Ile, MI.*

The safety zone listed in 33 CFR 165.941(a)(44) will be enforced from 8:45 p.m. to 10:45 p.m. on July 5, 2013.

(23) *Trenton Fireworks, Trenton, MI.*

The safety zone listed in 33 CFR 165.941(a)(45) will be enforced from 10:00 p.m. to 10:30 p.m. on July 4, 2013. In the case of inclement weather on July 4, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 5, 2013.

(24) *Grosse Pointe Yacht Club 4th of July Fireworks, Grosse Pointe Shores, MI.* The safety zone listed in 33 CFR 165.941(a)(41) will be enforced from 10:00 p.m. to 10:30 p.m. on July 4, 2013. In the case of inclement weather on July 4, 2013, this safety zone will be enforced from 10:00 p.m. to 10:30 p.m. on July 5, 2013.

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during the enforcement period is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Detroit or his designated representative. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via Local Notice to Mariners and VHF radio broadcasts that the regulation is in effect.

This document is issued under authority of 33 CFR 165.941 and 5 U.S.C. 552(a). If the Captain of the Port determines that any of these safety zones need not be enforced for the full duration stated in this notice, he or she may suspend such enforcement and notify the public of the suspension via a Broadcast Notice to Mariners.

Dated: June 19, 2013.

J. E. Ogden,

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

[FR Doc. 2013–16390 Filed 7–8–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 177

[Docket No. USCG–2013–0216]

RIN 1625–AC01

Regulated Navigation Areas; Bars Along the Coasts of Oregon and Washington

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending its regulations by removing the wave height and surface current provisions and regulated boating areas for bar crossing locations along the coasts of Oregon and Washington because they conflict with more recently promulgated wave height provisions and regulated boating areas for the same bar crossings. This amendment is necessary in order to remove confusion as to which safety requirements apply to recreational vessels, uninspected passenger vessels, small passenger vessels, and commercial fishing vessels when operating within the regulated navigation areas.

DATES: This interim rule is effective August 8, 2013. Comments and related material must reach the Docket Management Facility on or before September 9, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0216 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* 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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, email or call Mr. Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG–NAV–3), email *Burt.A.Lahn@uscg.mil,* telephone 202–372–1526. 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:

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I. 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.

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0216), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comments online, go to *http://www.regulations.gov* and insert ''USCG–2013–0216'' in the ''Search'' box. Locate this document in the search results, click on ''Submit a Comment,'' and follow the instructions to submit your comments. 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 them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this rule based on your comments.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* and insert ''USCG–2013–0216'' in the ''Search'' box and locate this document in the search results. Open the docket folder and use the filters on the left side of the page to view public comments or other types of documents. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. 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).

D. 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**. In your request, 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**.

II. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
NTSB National Transportation Safety Board
RNA Regulated Navigation Area
U.S.C. United States Code
§ Section

III. Regulatory History & Information

The bars along the coasts of Oregon and Washington are a maritime operating environment unique to the Pacific Northwest. The bars can and very often do become extremely hazardous for maritime traffic. On February 12, 2009, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (74 FR 7022) that proposed to establish Regulated Navigation Areas (RNAs) in 33 CFR 165.1325 for bars along the coasts of Oregon and Washington. The proposals in the NPRM were designed to help ensure the safety of persons and vessels operating on or in the vicinity of the bars. The Coast Guard subsequently published a final rule in the **Federal Register** on November 17, 2009 (74 FR 59098), adopting most of the NPRM's proposals.

Certain provisions in the final rule superseded other existing regulatory provisions. Specifically, 33 CFR 165.1325(a) sets forth the specific locations for the RNAs that cover the bars along the Oregon and Washington coasts, and supersedes the regulated boating areas in 33 CFR 177.08. Additionally, 33 CFR 165.1325(b)(13) defines the term *unsafe condition* to include certain wave height conditions, and supersedes the unsafe wave height formula and surface current provisions in 33 CFR 177.07(f). The purpose of this interim rule is to remove those superseded provisions from the CFR.

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

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because that procedure would be contrary to the public interest. Failure to amend 33 CFR part 177 will result in confusion as to which safety requirements apply to recreational and small commercial vessels when operating in certain bar crossing locations along the coasts of Oregon and Washington. This rulemaking is necessary to remove the conflicting provisions under 33 CFR 177.07(f) and 177.08 that have been superseded by 33 CFR 165.1325 and to eliminate confusion regarding which requirements apply specific to the bars along the coasts of Oregon and Washington. Delaying this action in order to publish an NPRM would be contrary to the public interest, as further delay would perpetuate confusion.

In addition, as discussed in the aforementioned 2009 NPRM, the Coast Guard determined that the wave height and surface current provisions in 33 CFR 177.07(f), and the regulated boating areas in 33 CFR 177.08, did not provide a sufficient measure of safety for persons and vessels operating in those areas. In addition, multiple Coast Guard and National Transportation Safety Board (NTSB) casualty investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to enhance the safety of the persons and vessels operating on and in the bars' vicinity. Thus, continuing to keep these regulations in effect while publishing an NPRM would also be contrary to the public interest in making boating operations as safe as possible.

IV. Basis and Purpose

Under 46 U.S.C. 4302, the Coast Guard is authorized to establish regulations to promulgate minimum safety standards and procedures for recreational vessels. Under 46 U.S.C. 4105(a), uninspected passenger vessels are also subject to Chapter 43 of Title 46, U.S. Code.

This rulemaking is necessary in order to remove the wave height and surface current provisions under 33 CFR 177.07(f) and the geographic coordinates in 33 CFR 177.08 that have been superseded by 33 CFR 165.1325, to eliminate confusion regarding which provisions apply specific to the bars along the coasts of Oregon and Washington. The regulations in 33 CFR 165.1325 establish clear procedures for restricting and/or closing the bars as well as mandating additional safety requirements for recreational and uninspected commercial vessels operating on or in the vicinity of the bars, when certain conditions exist. The RNAs established in 33 CFR 165.1325 help to expedite bar restrictions and closures and include a mariner notification process that helps keep vessels away from hazardous bars. The RNAs also require the use and/or making ready of safety equipment, as well as additional reporting requirements when certain conditions exist, which help safeguard the persons and vessels that operate on or in the vicinity of hazardous bars.

V. Discussion of the Interim Rule

Certain provisions of 33 CFR part 177, governing maritime traffic operating on and in the vicinity of the bars along the coasts of Oregon and Washington, provide insufficient safety measures for the persons and vessels that operate in those areas. As discussed in the February 12, 2009 NPRM (74 FR 7022), multiple Coast Guard and NTSB casualty investigations indicated a need for additional regulations to mitigate the risks associated with the bars and to enhance the safety of the persons and vessels operating on and in the bars' vicinity. To fulfill this need, in 2009, the Coast Guard established the RNAs in 33 CFR 165.1325.

The provisions in 33 CFR 165.1325 establish an increased measure of safety and supersede the existing provisions in 33 CFR 177.07(f) and 177.08. Accordingly, the Coast Guard, through this interim rule, removes the wave height provisions in 33 CFR 177.07(f)(1) and (2), the surface current provision in 33 CFR 177.07(f)(3), and the regulated boating areas in 33 CFR 177.08.

VI. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This interim rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the interim rule has not been reviewed by the Office of Management and Budget.

The Coast Guard does not expect any economic impact as a result of this interim rule because the rule is only removing two criteria for unsafe conditions in 33 CFR part 177 that have been superseded by 33 CFR 165.1325.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a

substantial number of small entities. 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 does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impact on small entities.

The Coast Guard does not expect any economic impact as a result of this interim rule because the rule is only removing certain provisions of 33 CFR part 177 that have been superseded by 33 CFR 165.1325. The Coast Guard anticipates this interim rule will have no impacts, hence, no costs to the affected population, including any small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. 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 so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Burt Lahn, U.S. Coast Guard Office of Navigation Standards (CG–NAV–3), email *Burt.A.Lahn@uscg.mil,* telephone 202–372–1526. 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.

D. 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).

E. 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 have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132. Our analysis is explained below.

Under 46 U.S.C. 4306, Federal regulations promulgated under the authority of 46 U.S.C. 4302 preempt State law unless the State law is identical to a Federal regulation or a State is specifically provided an exemption to those regulations, or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. As noted above, this interim rule simply removes superseded regulations regarding wave height and surface current provisions, and certain regulated boating areas from 33 CFR part 177. Additionally, there are no existing State laws that are identical to these Federal regulations, nor have the States been provided an exemption to those regulations or permitted to regulate marine safety articles. Therefore, the rule is consistent with the principles of federalism and preemption requirements in Executive Order 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with implications and preemptive effect, Executive Order 13132 specifically directs agencies to consult with State and local governments during the rulemaking process.

Therefore, the Coast Guard invites affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this interim rule. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document: (1) The extent of the Coast Guard's consultation with State and local officials who submit comments to this proposed rule; (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon; and (3) a statement of the extent to which the concerns of State and local officials have been met. We will also report to the Office of Management and Budget any written communications with the States.

F. 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. This rule will not result in such expenditure.

G. 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.

H. 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.

I. 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.

J. 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.

K. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant

energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

M. 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 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 is categorically excluded, under section 2.B.2, Figure 2–1, paragraph 34(g), of the Instruction because it involves regulations establishing, disestablishing, or changing RNAs. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 177

Marine safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 177 as follows:

Title 33—Navigation and Navigable Waters

PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

■ 1. The authority citation for part 177 continues to read as follows:

Authority: 46 U.S.C. 4302, 4311; Pub. L. 103–206, 107 Stat. 2439.

§ 177.04 [Amended]

■ 2. In § 177.04(a), remove the text ''§ 177.07(g)'' and add, in its place, the text ''§ 177.07(f)''.

§ 177.07 [Amended]

■ 3. In § 177.07, remove paragraph (f) and redesignate paragraph (g) as new paragraph (f).

§ 177.08 [Removed]

■ 4. Remove § 177.08.

§ 177.09 [Redesignated as § 177.08]

■ 5. Redesignate § 177.09 as § 177.08.

Dated: June 28, 2013.

Dana A. Goward,

Director, Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2013–16248 Filed 7–8–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2009–0710; FRL–9831–1]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Interstate Transport of Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a portion of a State Implementation Plan (SIP) submittal from the State of New Mexico to address Clean Air Act (CAA or Act) requirements that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS). EPA has determined that the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 2006 24-hour $PM_{2.5}$ NAAQS (2006 $PM_{2.5}$ NAAQS) in any other state as required by the Act.

DATES: This final rule is effective on August 8, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2009–0710. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Young, Air Planning Section (6PD–L), U.S. EPA Region 6, 214–665–6645, *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. Background
II. Final Action
III. Statutory and Executive Order Reviews

I. Background

The background for today's action is discussed in detail in our March 12, 2013 proposal (78 FR 15664). In that notice, we proposed to approve a portion of a SIP submittal dated June 12, 2009, from the State of New Mexico to address CAA section 110(a)(2)(D)(i)(I) requirements that prohibit air emissions which will contribute significantly to nonattainment or interfere with maintenance in any other state for the 2006 $PM_{2.5}$ NAAQS. Specifically, we proposed to determine that the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from significantly contributing to nonattainment or interfering with maintenance of the 2006 $PM_{2.5}$ NAAQS. We received one comment from a citizen supporting our proposal. The comment letter is available for review in the docket for this rulemaking. We did not receive any adverse comments regarding our proposal.

II. Final Action

We are approving a portion of a SIP submittal for the State of New Mexico submitted by the Governor on June 12, 2009, to address interstate transport for the 2006 $PM_{2.5}$ NAAQS. Based on EPA's evaluation of the State's technical analysis addressing the requirements of CAA section 110(a)(2)(D)(i) for the 2006 $PM_{2.5}$ NAAQS, with EPA's additional analysis and technical information, we approve the portion of the June 12, 2009 SIP submittal determining the existing SIP for New Mexico contains adequate provisions to prohibit air emissions from contributing significantly to nonattainment or interfering with maintenance of the 2006 $PM_{2.5}$ NAAQS in any other state as required by CAA section 110(a)(2)(D)(i)(I). This action is being taken under section 110 of the Act.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 9, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposed of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 25, 2013.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart GG—New Mexico

■ 2. The second table in § 52.1620(e) entitled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' is amended by revising the entry for ''Infrastructure for 2006 $PM_{2.5}$ and Interstate Transport regarding noninterference with other states' programs for PSD for the 2006 $PM_{2.5}$ NAAQS'' to read as follows:

§ 52.1620 Identification of plan

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* *	*	*	* *	*
Infrastructure for 2006 $PM_{2.5}$ NAAQS.	Statewide, except for Bernalillo County and Indian country.	6/12/2009	7/9/2013 [Insert FR page number where document begins].	1/22/2013, (78 FR 4337): Approval for 110(a)(2)(A), (B), (C), (D)(i)(II) (PSD portion), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). 7/9/2013, ([Insert FR page number where document begins]): Approval for 110(a)(2)(D)(i)(I).
* *	*	*	*	* * *

[FR Doc. 2013–16345 Filed 7–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0190; FRL–9830–8]

Notice of Extension of Deadline to Commence Construction Under Clean Air Act Prevention of Significant Deterioration Permit Issued to Avenal Power Center, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This notice announces that the U.S. Environmental Protection Agency (''EPA'') has extended the Prevention of Significant Deterioration (''PSD'') permit deadline for commencing construction for a final Clean Air Act PSD permit that authorizes Avenal Power Center, LLC (''APC'') to construct the Avenal Energy Project (''AEP''). The AEP is to be located in Kings County, California.

DATES: EPA's PSD permit for the AEP became effective on August 18, 2011, and included a deadline for commencing construction of February 18, 2013. Prior to February 18, 2013, APC requested an 18-month extension of the deadline for commencing construction under the PSD permit for the AEP. EPA has granted such an extension until August 18, 2014. Pursuant to section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this extension decision may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit by September 9, 2013.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2013–0190 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at the following address: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. See **SUPPLEMENTARY INFORMATION** for more information about how to make an appointment to view these hard copy documents during normal business hours at EPA Region IX's office.

FOR FURTHER INFORMATION CONTACT: Shirley Rivera, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, CA 94105, 415–972–3966, *rivera.shirley@epa.gov*.

SUPPLEMENTARY INFORMATION: The AEP, proposed by APC, is a new 600-megawatt natural gas-fired combined-cycle power plant that will be located in Kings County, California. The PSD permit decision issued by EPA for the AEP became effective on August 18, 2011 as published in the **Federal Register** on September 9, 2011 (76 FR 55799). In November 2011, the United States Court of Appeals for the Ninth Circuit received petitions for review of EPA's PSD permit decision for the AEP; this Court of Appeals proceeding is pending. In letters dated December 19, 2012 and February 15, 2013, APC requested that EPA provide an 18-month extension of the deadline for commencing construction in the PSD permit for the AEP. Pursuant to 40 CFR Part 52.21(r), in a response to APC dated June 26, 2013, EPA Region 9 determined that a satisfactory showing justifying the extension had been made, and EPA extended the deadline for commencing construction in the PSD permit for AEP for 18 months, so that the PSD permit will become invalid if construction of the AEP is not commenced by August 18, 2014.

The docket for this action includes, among other documents, EPA's analysis supporting this action. In addition to the electronic docket for this action, hard copy versions of the docket materials are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne St., San Francisco, CA 94105. To arrange for viewing of these documents at EPA Region IX's office, call Shirley Rivera at (415) 972–3966. Due to building security procedures, visitors should call at least 48 hours in advance to arrange a visit.

Dated: June 26, 2013.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. 2013–16334 Filed 7–8–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 11–42; DA 13–1441]

Lifeline and Link Up Modernization and Reform

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order, the Wireline Competition Bureau (Bureau) underscores certain compliance requirements that are contained in the *Lifeline Reform Order* and its accompanying rules. The Bureau codifies the Commission's requirement that eligible telecommunications carriers (ETCs) verify a Lifeline subscriber's eligibility for Lifeline service before activating such service, pursuant to the authority delegated in the *Lifeline Reform Order.*

DATES: Effective August 8, 2013.

FOR FURTHER INFORMATION CONTACT: Radhika Karmarkar, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau's Order in WC Docket No. 11–42; DA 13–1441, released on June 25, 2013. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at: *http://www.fcc.gov/document/order-codifying-requirement-verify-lifeline-subscriber-eligibility.*

I. Introduction

1. In this Order, the Wireline Competition Bureau (Bureau) underscores certain compliance requirements that are contained in the *Lifeline Reform Order,* 77 FR 12952, March 2, 2012, and its accompanying rules. The Bureau codifies the Commission's requirement that eligible telecommunications carriers (ETCs) verify a Lifeline subscriber's eligibility for Lifeline service before activating such service, pursuant to the authority delegated in the *Lifeline Reform Order.*

2. Despite the directives provided in the *Lifeline Reform Order,* some ETCs may be activating phones that they represent enable use of Lifeline-supported service for consumers prior to fully verifying the eligibility of such consumers. For this reason, the Bureau reminds ETCs that they must verify the eligibility of a low-income consumer prior to providing Lifeline service to that consumer, and may not provide an activated device intended to enable access to Lifeline service to a consumer until that consumer's eligibility is fully verified and all other necessary enrollment steps are completed. We take this action in pursuit of the Commission's goal to combat any and all forms of waste, fraud, and abuse.

II. Discussion

3. In the *Lifeline Reform Order,* the Commission adopted several rules to ensure the eligibility of low-income consumers for Lifeline service. Specifically, the Commission promulgated § 54.410(a), which requires ETCs to ''implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.'' Similarly, § 54.416(a)(1) requires an officer of each ETC to ''certify that the carrier has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services.'' As discussed below, these rules, read in conjunction with the *Lifeline Reform Order* and other Commission rules, make clear that the ETC must determine whether a Lifeline subscriber is eligible to receive Lifeline service, and that the ETC must have processes and policies in place to make the eligibility determination *prior* to activating service for that consumer.

4. Section 54.410(b) and (c) of the Commission's rules makes clear that ETCs must make this eligibility determination for ''prospective subscriber[s].'' To give meaning to the distinct term ''Lifeline subscribers'' in § 54.410(a), ''prospective subscriber[s]'' in § 54.410(b) and (c) must be understood to require an ETC to determine eligibility for consumers that have not yet had Lifeline service activated, but are merely seeking to do so by enrolling in the ETC's Lifeline offering. Similarly, when an ETC holds itself out as offering Lifeline service, as required by § 54.405(c), a subscriber seeking to enroll in Lifeline service with that ETC would reasonably consider him/herself to be a ''Lifeline subscriber'' from the moment that, for example, the certification form is completed and the handset is activated for voice telephony service.

5. The framework for determining eligibility and enrolling consumers adopted in the *Lifeline Reform Order* also demonstrates that an ETC must determine eligibility before service activation. The Commission stated in the *Lifeline Reform Order* that ETCs must make the required determination of eligibility ''*prior* to enrolling a new subscriber in Lifeline.'' The enrollment process involves consumers signing up for service and making the required certifications via a certification form. Prior Commission forbearance conditions, which formed part of the basis for the enrollment rules adopted in the *Lifeline Reform Order,* prohibited ETCs from activating service before obtaining the required consumer certifications. Against that backdrop, the *Lifeline Reform Order* should be understood as imposing on all ETCs the requirement that they may not activate Lifeline service until completing the entire enrollment process. Because the determination of eligibility must be made before the enrollment process is completed, it also must occur before the ETC may activate any phone that the ETC indicates will be used for Lifeline service. We also take this opportunity to reiterate the Commission's rule that Lifeline is a ''non-transferable retail service offering,'' a fact that must be disclosed to the consumer and included on the certification form. We note that, pursuant to the *Lifeline Reform Order,* a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

6. Pursuant to §§ 54.410(a) and 54.416(a)(1) of the Commission's rules, an ETC must have processes and policies in place to make the eligibility determination prior to activating Lifeline service for a consumer. An ETC therefore may not provide a service that it represents to be Lifeline service, even on an interim basis while the consumer's application is being processed, before verifying eligibility. And in particular, an ETC may not provide an activated handset to a consumer whose eligibility has not been fully verified.

7. Pursuant to the authority delegated to the Bureau in paragraph 507 of the *Lifeline Reform Order,* we codify the requirement described above by amending § 54.410(a) of the Commission's.

III. Procedural Matters

A. Paperwork Reduction Act

8. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Certification

9. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

10. Underscoring these compliance requirements does not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to the *Lifeline Reform Order.* Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to SBREFA. In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

C. Congressional Review Act

11. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. Ordering Clauses

12. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 5(c), 10, 201 through 206, 214, 218 through 220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 155(c), 160, 201 through 206, 214, 218 through 220, 251, 252, 254, 256, 303(r), 332, 403, 1302, §§ 0.91, 0.291, 1.1, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.291, 1.1, 1.427, and the delegation of authority in paragraph 507 of FCC 12–11, *this order is adopted.*

13. *It is further ordered* that part 54 of the Commission's rules, 47 CFR part 54, IS *amended* as set forth below, and such rule amendments shall be effective August 8, 2013. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Amy Bender,

Deputy Chief, Telecommunications Access Policy Division Wireline Competition Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: Sections 1, 4(i), 5, 201, 205, 214, 219, 220, 254, 303(r), and 403 of the Communications Act of 1934, as amended, and section 706 of the Communications Act of 1996, as amended; 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.410 by revising paragraph (a) to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. An eligible telecommunications carrier may not provide a consumer with an activated device that it represents enables use of Lifeline-supported service, nor may it activate service that it represents to be Lifeline service, unless and until it has:

(1) Confirmed that the consumer is a qualifying low-income consumer pursuant to § 54.409, and;

(2) Completed the eligibility determination and certification required by this section and §§ 54.404 through 54.405, and completed any other necessary enrollment steps.

* * * * *

[FR Doc. 2013–16490 Filed 7–8–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0004; 4500030113]

RIN 1018–AZ26

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Six West Texas Aquatic Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, designate critical habitat for the following six west Texas aquatic invertebrate species under the Endangered Species Act of 1973, as amended: Phantom springsnail *(Pyrgulopsis texana),* Phantom tryonia *(Tryonia cheatumi),* diminutive amphipod *(Gammarus hyalleloides),* Diamond tryonia *(Pseudotryonia adamantina),* Gonzales tryonia *(Tryonia circumstriata),* and Pecos amphipod *(Gammarus pecos).* The effect of this regulation is to conserve critical habitat for the six west Texas aquatic invertebrates under the Act.

DATES: This rule becomes effective August 8, 2013.

ADDRESSES: This final rule and other supplementary information are available on the Internet at *http://www.regulations.gov* (Docket No. FWS–R2–ES–2013–0004) and also at *http://www.fws.gov/southwest/es/AustinTexas/.* These documents are also available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974.

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this critical habitat designation and are available on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0004, and from the Austin Ecological Services Field 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 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **ADDRESSES**). 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

This document consists of final rules to designate critical habitat designations for six west Texas aquatic invertebrate species. The species are: Phantom springsnail *(Pyrgulopsis texana),* Phantom tryonia *(Tryonia cheatumi),* diminutive amphipod *(Gammarus hyalleloides),* Diamond tryonia

(Pseudotryonia adamantina), Gonzales tryonia *(Tryonia circumstriata),* and Pecos amphipod *(Gammarus pecos).* The current range for the first three species is limited to spring outflows in the San Solomon Springs system near Balmorhea in Reeves and Jeff Davis Counties, Texas. The current range of the latter three species is restricted to spring outflow areas within the Diamond Y Spring system north of Fort Stockton in Pecos County, Texas.

Why we need to publish a rule. Under the Endangered Species Act (Act), any species that is determined to be a threatened or endangered 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, the U.S. Fish and Wildlife Service (Service), published final rules listing the six west Texas aquatic invertebrates as endangered elsewhere in today's **Federal Register**. On August 16, 2012, we published in the **Federal Register** a proposed critical habitat designation for these species (77 FR 49602). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data 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. 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 these species.

These rules will designate critical habitat for all six of these species listed as endangered under the Act. Under the Endangered Species Act, we designate specific areas as critical habitat to foster conservation of listed species. Future actions funded, permitted, or otherwise carried out by Federal agencies will be reviewed to ensure they do not adversely modify critical habitat. Critical habitat does not affect private actions on private lands. Table 1 identifies the areas in Texas being designated as critical habitat for Phantom springsnail, Phantom tryonia, and diminutive amphipod.

TABLE 1—LOCATION, LAND OWNERSHIP, AND SIZE OF AREAS DESIGNATED AS CRITICAL HABITAT FOR PHANTOM SPRINGSNAIL, PHANTOM TRYONIA, AND DIMINUTIVE AMPHIPOD

Critical habitat unit	Land ownership by type	Size of unit in hectares (Acres)
San Solomon Spring, Reeves County	State–Texas Parks and Wildlife Department	1.8 (4.4)
Giffin Spring, Reeves County	Private	0.7 (1.7)
East Sandia Spring, Reeves County	Private–The Nature Conservancy	1.2 (3.0)
Phantom Lake Spring, Jeff Davis County	Federal–Bureau of Reclamation	0.02 (0.05)
Total		3.7 (9.2)

Note: Area sizes may not sum due to rounding.

Table 2 identifies the areas in Texas being designated as critical habitat for Diamond tryonia, Gonzales tryonia, and Pecos amphipod.

TABLE 2—LOCATION, LAND OWNERSHIP, AND SIZE OF AREAS DESIGNATED AS CRITICAL HABITAT FOR DIAMOND TRYONIA, GONZALES TRYONIA, AND PECOS AMPHIPOD

Critical habitat unit	Land ownership by type	Size of unit in hectares (acres)
Diamond Y Spring System, Pecos County	Private—The Nature Conservancy	178.6 (441.4)
Total		178.6 (441.4)

We prepared an economic analysis. To allow for consideration of the economic impacts of the final designations of critical habitat, we prepared an economic analysis of the final designations of critical habitat. We found the incremental administrative economic impacts related to consultations on the six West Texas invertebrates and their critical habitat are expected to amount to an estimated $41,000 over 20 years ($3,600 on an annualized basis), assuming a discount rate of seven percent.

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 received comments from four knowledgeable individuals with scientific expertise to review our technical assumptions, 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 during two comment periods.

Previous Federal Actions

Please see the proposed listing and critical habitat designations published on August 16, 2012 (77 FR 49602), for a complete discussion of the previous Federal actions for these species.

We proposed all six species be listed as endangered with critical habitat on August 16, 2012 (77 FR 49602). We also reopened the public comment on the proposed rules on February 5, 2013 (78 FR 8096).

Summary of Comments and Recommendations

In the proposed rules published on August 16, 2012 (77 FR 49602), we requested that all interested parties submit written comments on the proposals by October 15, 2012. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on

the proposal. We reopened the comment period on February 5, 2013 (78 FR 8096), for these proposed rules and to accept additional public comment on the draft economic analysis for the proposed designation of critical habitat. This second comment period closed on March 22, 2013. We received a request for a public hearing, and one was held on February 22, 2013, at Balmorhea State Park in Toyahvale, Texas. Newspaper notices inviting general public comment were published in the *Alpine Avalanche* and *Fort Stockton Pioneer* newspapers on February 14, 2013.

During the comment period for the proposed rule, we received 27 comments addressing the proposed listing and critical habitat for the west Texas invertebrates. During the February 22, 2013, public hearing, one individual made a comment on the proposed rules. All substantive information provided during the comment periods has either been incorporated directly into our final determinations or addressed below in our response to comments. Elsewhere in today's **Federal Register**, we have published a final rule that addresses additional comments on the listing determination for these species.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from five knowledgeable individuals with scientific expertise that included familiarity with the species or their habitats, biological needs, and threats. We received comments from four peer reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Information received from peer reviewers has been incorporated into our final rules, and comments are addressed in our response to comments below.

(1) Comment: The common (or vernacular) names applied to the four species of snails are not in accord with the ''standardized'' English names for North American mollusks as provided in Turgeon *et al.* (1988, 1998).

Our Response: We agree and have revised the common names of the four snails throughout the final rules. See ''Summary of Changes from Proposed Rule'' sections of the final rules for a list of the changes to the common names.

State Agencies

We received a number of comments from Texas State agencies, including the Texas Governor's Office, the Texas Parks and Wildlife Department, the Texas Comptroller's Office, the Texas Water Development Board, the Texas Commission on Environmental Quality, the Texas Land Commission, and the Texas Department of Agriculture.

(2) Comment: The Texas Parks and Wildlife Department, while indicating they strongly encourage the use of incentive-based conservation programs for private land stewardship in Texas, indicated they had no additional information beyond what we referenced in the proposed rule and agreed that the most significant threat to the species' continued survival is the potential failure of spring flow due to unmanaged groundwater pumping thresholds, which do not consider surface flow and wildlife needs, and prolonged drought.

Our Response: We concur with the comments and information provided.

(3) Comment: The Texas Governor's office was concerned that our proposal is largely based on conflicting reports, inconclusive data, hypothetical scenarios, various assumptions and vast speculation about species populations, water quantity and quality, the effect of existing regulatory mechanisms and other potential threats. Such information fails to provide any sound scientific foundation on which to justify the listing and critical habitat designation of these species.

Our Response: Under the standards of the Act, we are to base our determinations of species status on the best available scientific information. Oftentimes, scientific data are limited, studies are conflicting, or results are seemingly inconclusive. Our review of the best available scientific information, including both published publications and unpublished scientific reports, supports our determinations that these species meet the definition of endangered species under the Act. As such we are finalizing critical habitat designations for these species as well.

(4) Comment: One State agency and others commented that the areas proposed to be designated as critical habitat are already under Federal protection due to the presence of other listed species and private conservation protection by The Nature Conservancy; therefore, no additional restrictions on those areas are warranted.

Our Response: It is true that all of the areas where these six species occur are inhabited by other species already protected under the Act, and these listed species provide some ancillary conservation to the invertebrate species. However, the presence of other listed species has not abated the primary threat to these species from the loss of habitat due to declining spring flows. The Nature Conservancy does provide significant conservation efforts for the surface habitat of these species at Diamond Y Preserve and Sandia Springs Preserve, however, the conservation of the lands around the springs does not alleviate the threats related to groundwater and spring flow maintenance for the aquatic habitats upon which the species depend. In addition, the Act requires us to designate critical habitat for listed species if it is prudent and determinable, regardless of whether there are other species already protected in an area. We found that critical habitat is prudent and determinable for these species.

(5) Comment: A State agency commented that the use of different discount rates over the same time period should result in a range of estimated costs of critical habitat designation. The commenter notes that the costs presented at discount rates of seven and three percent in Exhibit 2–4 on page 2–10 of the Draft Economic Analysis were almost identical. Because of this, the commenter was unable to replicate the estimate costs from the information presented.

Our Response: The range of estimated costs presented in Exhibit 2–4 on page 2–10 of the Draft Economic Analysis was rounded to one significant digit, as stated in the notes to Exhibit 2–4. As a result, estimated costs discounted at a three percent discount rate appear to be similar to the estimated costs discounted at a seven percent discount rate. In the Final Economic Analysis, estimated costs are rounded to two significant figures to provide further clarity.

(6) Comment: Two State agencies and a number of others were concerned about the impacts of listing these species and designating critical habitat on private property rights, oil and gas development, and agricultural activities.

Our Response: Although the Act does not allow us to consider the economic impacts of our listing decisions, we did consider the potential economic impacts regarding the designation of critical habitat. Critical habitat only directly affects actions funded, permitted, or carried out by a Federal agency, and very limited Federal activities could affect the habitat in these areas. As a result, we found only extremely small potential indirect effects from the proposed designation of critical habitat. For critical habitat, our economic analysis found the incremental administrative economic impacts related to consultations on the critical habitat of the six west Texas

invertebrates are expected to amount to an estimated $41,000 over 20 years ($3,600 on an annualized basis), assuming a discount rate of seven percent.

In addition, at this time we do not anticipate noticeable impacts to private property rights, oil and gas development, or agricultural activities from either the listing or the designation of critical habitat for these species. Other listed species have been in these areas for more than 30 years with very few, if any, conflicts with economic development. However, if future conflicts arise we will work closely with the potentially affected parties to find cooperative solutions for conservation of these species while striving to minimize potential effects on economic activities.

Federal Agencies

(7) Comment: The Federal landowner of the area around Phantom Lake Spring we consider withdrawing the proposed critical habitat at Phantom in favor of a conservation agreement and strategy to implement a management plan for the species.

Our Response: The only opportunity for withdrawing the area around Phantom Lake Spring from critical habitat would be if we were to exclude the area under section 4(b)(2) of the Act. The Secretary of Interior has discretion to exclude proposed areas from critical habitat if she finds the benefits of excluding the area outweigh the benefits of including the area. Critical habitat most clearly adds conservation benefits in cases where there is a Federal action subject to a section 7 consultation. This is always the case on Federal lands. Federal agencies have an independent obligation under section 7(a)(2) of the Act to avoid jeopardy to listed species and avoid adverse modification of their critical habitat providing potential benefits to the species. In addition, we expect that ongoing conservation efforts in this area will continue with or without critical habitat designation thereby suggesting limited benefits of excluding the area from critical habitat. Furthermore, a conservation agreement or updated management plan was not produced for us to consider a possible exclusion of this area. Therefore, we considered, but chose not to exclude Federal lands at Phantom Lake Spring from the final designation of critical habitat.

Other Public Comments

(8) Comment: One commenter expressed several concerns that we did not demonstrate the required determinations for the critical habitat designation at Diamond Y Spring. For example, the commenter stated that the designation of critical habitat is not prudent because there are no benefits to the species. Also, the entire proposed critical habitat area does not contain the primary constituent elements, and we did not show that they require special management. Finally, the commenter questioned whether the occurrence of the species is consistent with the proposed designation of more than 440 acres at Diamond Y Spring. For example, the proposal says the Diamond Y Spring snail (now called Diamond tryonia) is limited to the first 50 m of the outflow channel.

Our Response: We provided our assessments of prudency and determinability of the critical habitat designations in both the proposed and final rules. Critical habitat designation is prudent because it provides some limited benefits to the species. Specific benefits include: (1) Triggering consultations under section 7 of the Act; (2) focusing conservation activities; (3) providing educational benefits; and (4) preventing inadvertent harm to the species. While we realize these benefits are limited due to lack of Federal activities in the area and the existing knowledge about and conservation efforts for the species, we make a prudent finding if designation would result in any benefits to the species. We found some benefits to the species from critical habitat under the three reasons listed above.

The Diamond Y Spring unit contains the physical and biological features of critical habitat and is within the geographical area occupied by all three Diamond Y species. The critical habitat boundaries of this unit were extended laterally beyond the mapped spring outflow channels to incorporate any and all small springs and seeps that may not be mapped or surveyed but would contain the physical or biological features of critical habitat. This situation is different than the other critical habitat units designated within this rule for the San Solomon Spring species. Those habitats are well-defined and exclusively contained within the confined spring outflow channels. At Diamond Y Spring, in contrast, the spring outlets are more diffuse and can be dependent on climatic conditions where surface water may expand during wetter periods with higher groundwater levels. Under these conditions, the occupied habitat containing the physical and biological features is present outside of the defined spring outflow channels. The physical and biological features related to the water and physical environment of the springs require management (such as managing groundwater pumping, preventing contamination, preventing alterations to spring channels) to ensure the habitat continues to support the species.

Although we did closely define the confirmed distribution of the species primarily to the spring outflows, we recognize that this distribution information is based on limited data and the species may also occur in small spring seeps, some of which may not be mapped or surveyed but occur within the lateral areas included within the Diamond Y Spring critical habitat unit.

(9) Comment: The proposed critical habitat rule indicated there were no ''developed areas'' within the Diamond Y Spring critical habitat unit. However, there are existing oil and gas operations within the proposed area that should be considered developed areas and not included in the critical habitat designation.

Our Response: We concur and have revised the final rule to mention that developed areas, such as those used by existing oil and gas operations (e.g., roads and well pad sites) do not contain the physical and biological features and, therefore, are not considered critical habitat even though they may occur within the critical habitat unit boundaries.

Summary of Changes From Proposed Rule

One important change we made in these final rules is the revision to the common names of the four species of snails to conform to scientifically accepted nomenclature (Turgeon *et al.* 1998, pp. 75–76). These changes were suggested by a peer reviewer of the proposed rule. Table 1 lists the names used in the proposed rules and the revised names used in the final rules. We have used the revised names of all the snails throughout these final rules. No changes were made to the scientific names.

TABLE 3—REVISED COMMON NAMES FOR THE SIX WEST TEXAS INVERTEBRATES

Scientific name	Common name used in proposed rules	Revised common name used in final rules
Pyrgulopsis texana	Phantom Cave snail	Phantom springsnail.
Tryonia cheatumi	Phantom springsnail	Phantom tryonia.
Gammarus hyalleloides	diminutive amphipod	No change.
Pseudotryonia adamantina	Diamond Y Spring snail	Diamond tryonia.
Tryonia circumstriata	Gonzales springsnail	Gonzales tryonia.
Gammarus pecos	Pecos amphipod	No change.

Other minor changes were made in the **SUPPLEMENTARY INFORMATION** section of these final rules to correct and update discussions of issues raised by peer and public commenters. No changes were made to the 50 CFR part 17 section of the rules.

Species Background

We intend to discuss below only those topics directly relevant to the critical habitat designation for the six west Texas aquatic invertebrates. Additional background information on the biology and ecology of these species can be found in the final rule listing these species as endangered available at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2012–0029.

Critical Habitat

Prudency Determination

Section 4 of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be an endangered species or a threatened species. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

We have no indication that the six species of west Texas invertebrates are threatened by collection, and the degree of threats to the species are not likely to increase if critical habitat were designated. These species are not targets of collection, and the areas identified for designation either have restricted public access or are already readily open to the public (i.e., Balmorhea State Park). None of the threats identified to the species are associated with human access to the sites, with the possible exception of the potential for introducing nonnative species at San Solomon Spring in Balmorhea State Park. This threat, or any other identified threat, is not expected to increase as a result of critical habitat designation because the San Solomon Spring swimming pool is already heavily visited, Balmorhea State Park takes proactive measures to prevent introduction of nonnative species, and the designation of critical habitat will not change the situation.

In the absence of finding that the designation of critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the six west Texas invertebrates include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur, because, for example, Federal agencies were not aware of the potential impacts of an action on the species; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to any of the six species and may provide some measure of benefit, we find that designation of critical habitat is prudent for the Phantom springsnail, Phantom tryonia, diminutive amphipod, Diamond tryonia, Gonzales tryonia, and Pecos amphipod.

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 resources 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 geographic 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 and 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 the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, 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 geographic 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 geographic 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 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. 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 ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. 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 available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, 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 sections 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 geographic 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, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod from studies of the species' habitat, ecology, and life history as described below. We have determined that the following physical or biological features are essential for the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod.

Space for Individual and Population Growth and for Normal Behavior

The aquatic environment associated with spring outflow channels and marshes provide the habitat for Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod growth and normal behavior. The areas must contain permanent flowing water to provide for the biological needs of the species. Each of the species completes all of their life-history functions in the water and cannot exist for any time outside of the aquatic environment.

Several habitat parameters of springs, such as temperature, dissolved carbon dioxide, dissolved oxygen, conductivity, substrate type, and water depth have been shown to influence the distribution and abundance of other related species of springsnails (O'Brien and Blinn 1999, pp. 231–232; Mladenka and Minshall 2001, pp. 209–211; Malcom *et al.* 2005, p. 75; Martinez and Thome 2006, pp. 12–15; Lysne *et al.* 2007, p. 650). Dissolved salts such as calcium carbonate may also be important factors because they are essential for shell formation for the snails (Pennak 1989, p. 552). Salinity levels are also relevant, particularly at Diamond Y Spring because elevated salinity levels (3 to 6 parts per thousand (Hubbs 2001, p. 314) of dissolved salts) may prevent other more freshwater-

adapted species from competing with the native species adapted to higher salinity levels.

The six invertebrates inhabit springs and spring-fed aquatic habitats with low variability in water temperatures. For example, Hubbs (2001, pp. 311–312, 314–315) reported that the spring outflow temperatures had very low variability with average readings of 20 degrees Celsius (°C) (68 degrees Fahrenheit (°F)) at Diamond Y Spring and 19 °C (66 °F) at East Sandia Spring with a range between 11 and 25 °C (52 to 77 °F). Spring measurements from 2001 to 2003 at the four springs in the San Solomon Spring complex found water temperatures ranging from 17 to 27 °C (63 to 81 °F) (Texas Water Development Board 2005, p. 38). Proximity to spring vents, where water emerges from the ground, plays a key role in the life history of the six west Texas aquatic invertebrates. For example, many springsnail species exhibit decreased abundance farther away from spring vents, presumably due to their need for stable water chemistry (Hershler 1994, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14).

The six west Texas aquatic invertebrates are sensitive to water contamination. Hydrobiid snails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Taylor (1985, p. 15) suggested that an unidentified groundwater pollutant may have been responsible for reductions in abundance of Diamond tryonia in the headspring and outflow of Diamond Y Spring, although no follow-up studies have been conducted to investigate the presumption. Additionally, amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are considered very sensitive to habitat degradation (Covich and Thorpe 1991, pp. 676–677).

All six species are most commonly found in flowing water, presumably where dissolved oxygen levels are higher. The species are often found in moderate flowing water along the spring outflow margins rather than in central channels. Water depths where the species occur are generally very shallow, usually less than 1 m (3 ft) deep. An exception to this is the bottom of the San Solomon Spring pool where, because of the construction of the swimming pool, water depths are much greater, exceeding 5 m (15 ft). In San Solomon, Giffin, and Phantom Lake Springs, the habitats for the species are limited to the spring outflow channels because past alteration of the system (building of ditches) has eliminated any small spring openings. However, at Diamond Y Spring (and to a limited extent, East Sandia Spring) the spring outflows have not been severely modified so that small springs, seeps, and marshes still provide diffuse shallow flowing water habitat associated with emergent bulrush and saltgrass (Taylor 1987, p. 38; Echelle *et al.* 2001, p. 5). While these areas are more difficult to map, measure, and survey, these small springs and seeps are important habitat for the three invertebrate species at Diamond Y Spring as long as they provide flowing water.

Therefore, based on the information above, we identify permanent, flowing, unpolluted water (free from contamination) within natural temperature variations, emerging from the ground and flowing on the surface, to be a physical or biological feature necessary for these species.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Invertebrates in small spring ecosystems depend on food from two sources: that which grows in or on the substrate (aquatic and attached plants and algae) and that which falls or is blown into the system (primarily leaves). Water is also the medium necessary to provide the algae, detritus (dead or partially decayed plant materials or animals), bacteria, and submergent vegetation on which all six species depend as a food resource. Abundant sunlight is necessary to promote the growth of algae upon which all six west Texas aquatic invertebrates feed.

All four snails are presumably fine-particle feeders on detritus (organic material from decomposing organisms) and periphyton (mixture of algae and other microbes attached to submerged surfaces) associated with the substrates (mud, rocks, and vegetation) (Allan 1995, p. 83; Hershler and Sada 2002, p. 256; Lysne *et al.* 2007, p. 649). Dundee and Dundee (1969, p. 207) found diatoms (a group of single-celled algae) to be the primary component in the digestive tract of the Phantom springsnail and Phantom tryonia, indicating diatoms are a primary food source. Spring ecosystems occupied by these snail species must support the periphyton upon which springsnails graze. Additionally, submergent vegetation contributes the necessary nutrients, detritus, and bacteria on which these species forage.

Amphipods are omnivorous, feeding on algae, submergent vegetation, and decaying organic matter (Smith 2001, p. 572). Both species of amphipod are often found in beds of submerged aquatic plants (Cole 1976, p. 80), indicating that they probably feed on a surface film of algae, diatoms, bacteria, and fungi (Smith 2001, p. 572). Young amphipods depend on microbial foods, such as algae and bacteria, associated with aquatic plants (Covich and Thorp 1991, p. 677).

Therefore, based on the information above, we identify the presence of abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage to be a physical or biological feature for these species.

Sites for Cover or Shelter and for Breeding, Reproduction, or Rearing (or Development) of Offspring

The six west Texas aquatic invertebrates occur across a wide range of substrate types. The Phantom springsnail is most commonly attached to hard surfaces, especially large algae-covered rocks, submerged vegetation, or even concrete walls of the irrigation ditches, and found in areas of higher water velocities (Bradstreet 2011, pp. 73, 91). The other springsnails may also be attached to hard surfaces but will also often be found in the softer substrate at the margins of the stream flows. Suitable substrates for egg laying by the snails are typically firm, characterized by cobble, gravel, sand, woody debris, and aquatic vegetation. These substrates increase productivity by providing suitable egg-laying sites for the snails.

The amphipods, in the absence of predatory fishes, will swim over any open substrate on the channel bottom, but in circumstances where fishes are abundant they may be found in greater abundance underneath large rocks, embedded in gravels, or associated with submerged vegetation. Amphipods do not lay eggs upon a surface; instead, the eggs are held within a marsupium (brood pouch) within the female's exoskeleton.

Therefore, based on the information above, we identify substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators to be a physical or biological feature for these species.

Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

The Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod have a very restricted geographic distribution. Endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from both random and nonrandom catastrophic natural or human-caused events. Therefore, it is essential to maintain the spring systems in which they are currently found and upon which these species depend. Adequate spring sites, free of inappropriate disturbance, must exist to promote population expansion and viability. This means protection from disturbance caused by water depletion, water contamination, springhead alteration, or nonnative species. These species must, at a minimum, sustain their current distributions if ecological representation of these species is to be ensured.

As discussed in the final listing rule, introduced species are a moderate threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7), including the six west Texas aquatic invertebrates. The red-rim melania already competes with all six species where they occur, and the quilted melania has been introduced into habitats occupied by the San Solomon Spring species. Feral hogs cause local spring channel destruction within the Diamond Y Spring system. Because the distribution of the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod is so limited, and their habitat so restricted, introduction of additional nonnative species into their habitat could be devastating.

Therefore, based on the information above, we identify either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels to be a physical or biological feature necessary for these species.

Primary Constituent Elements

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of 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 species' life-history processes, we determine that the primary constituent elements specific to the Phantom springsnail, Phantom tryonia, diminutive amphipod, Diamond tryonia, Gonzales tryonia, and Pecos amphipod are springs and spring-fed aquatic systems that contain:

a. Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

b. Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

c. Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators;

d. Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

e. Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

With this designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species. All units and subunits designated as critical habitat are currently occupied by the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod and contain the primary constituent elements sufficient to support the life history needs of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic 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. The features essential to the conservation of the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod may require special management considerations or protection to reduce threats, such as reducing or eliminating water in suitable or occupied habitat through drought or groundwater pumping; introducing pollutants to levels unsuitable for the species; and introducing nonnative species into the inhabited spring systems such that suitable habitat is reduced or eliminated. Special management considerations or protection are required within critical habitat areas to address these threats (for more information on the threats see Summary of Factors Affecting the Species in the final listing rules available at *http://www.regulations.gov,* Docket No. FWS–R2–ES–2012–0029). Management activities that could ameliorate these threats include management of groundwater levels to ensure the springs remain flowing (all spring sites), managing oil and gas activities to eliminate the threat of groundwater or surface water contamination (Diamond Y Spring), maintaining the pump within Phantom Lake Spring to ensure consistent flow, managing existing nonnative species, red-rim melania, quilted melania, and feral hogs (San Solomon, Giffin, Phantom Lake, and Diamond Y Springs), and preventing the introduction of additional nonnative species (all spring sites).

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. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not designating any areas outside the geographic area occupied by the species because none of the historically occupied areas (or those that may have been occupied) was found to be essential for the conservation of the species (see discussion below).

We relied on information from knowledgeable biologists and recommendations contained in state wildlife resource reports (Dundee and Dundee 1969, entire; Cole and Bousfield 1970, entire; Cole 1976, entire; Cole 1985, entire; Taylor 1985, entire; Henry

1992, entire; Bowles and Arsuffi 1993, entire; Seidel *et al.* 2009, entire; Hershler *et al.* 2010, entire; Ladd 2010, entire; Allan 2011, entire; Bradstreet 2011, entire; Hershler 2011, p. 1) in making this determination. We also reviewed the available literature pertaining to habitat requirements, historic localities, and current localities for these species. This includes regional geographic information system (GIS) coverages.

Areas Occupied at the Time of Listing

For the purpose of designating critical habitat for the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod, we defined the occupied area based on the most recent surveys available, which includes the Diamond Y and San Solomon Spring systems. We then evaluated whether these areas contain the primary constituent elements for the species and whether they require special management considerations or protection. Next we considered areas historically occupied, but not currently occupied. While the west Texas aquatic invertebrates may have inhabited other springs in the area (such as Saragosa and Toyah Springs, for the San Solomon Spring species, and Leon and Comanche Springs for the Diamond Y Spring species), we only have confirmation that the Diamond tryonia and Gonzales tryonia occurred in Comanche Spring at some point in the past. We evaluated these areas to determine whether they were essential for the conservation of the species.

To determine if currently occupied areas contain the primary constituent elements, we assessed the life-history components of the species as they relate to habitat. All of the west Texas aquatic invertebrate species require unpolluted spring water in the springheads and spring outflows; periphyton and decaying organic material for food; a combination of soft and hard substrates for maturation, feeding, egg laying by snails, and escape from predators; and absence of nonnative predators and competitors (see discussion on *Physical or Biological Features*).

Areas Unoccupied at the Time of Listing

To determine if the sites that may have been historically occupied by the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod are essential for their conservation, we considered: (1) The importance of the site to the overall status of the species to prevent extinction and contribute to future recovery of each species; (2) whether the area could be restored to contain the necessary physical or biological features to support the species; and (3) whether a population of the species could be reestablished at the site.

The Phantom springsnail, Phantom tryonia, and diminutive amphipod occur in the San Solomon Spring system, which includes San Solomon Spring, Giffin Spring, East Sandia Spring, and Phantom Spring. These species may have occurred in other springs within the system, including Saragosa, Toyah, and West Sandia Springs. These springs now lack water flow and the physical or biological features necessary to support the San Solomon Spring system invertebrates—mainly the lack of flowing water. We do not foresee these features being restorable to the point where populations of the Phantom springsnail, Phantom tryonia, and diminutive amphipod could be reestablished. These springs are not restorable because we do not foresee an opportunity for groundwater levels to rise sufficiently in the future to restore permanent spring flows because the supporting aquifers are of ancient origin and do not receive substantial modern recharge. Therefore, even if current pumping activities were to be managed for the benefit of spring flows, it is doubtful that aquifer levels would rise sufficiently to provide restoration of permanent aquatic habitat at these sites. For these reasons, we are not designating Saragosa Spring, Toyah Spring, or West Sandia Spring or any other unoccupied areas as critical habitat for the San Solomon Spring system invertebrates.

The Diamond tryonia, Gonzales tryonia, and Pecos amphipod occur in the Diamond Y Spring system. The Diamond tryonia and Gonzales tryonia historically occurred at Comanche Spring, and the Pecos amphipod may have occurred there as well. All three species may have occurred at Leon Spring. Both Comanche Spring and Leon Spring, which have aquifer sources that may be different or more localized than that of Diamond Y Spring, are dry or nearly so and have been altered to such a degree that they no longer contain the physical or biological features necessary to support the Diamond Y Spring invertebrates—mainly the lack of flowing water. Natural flow conditions from these springs do not appear to be restorable to the point where populations of the Diamond tryonia, Gonzales tryonia, and Pecos amphipod could be reestablished. For these reasons, we are not designating Leon Spring or Comanche Spring as critical habitat for the Diamond Y Spring invertebrates.

Mapping

For the areas we are designating as critical habitat, we plotted the known occurrences of the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod in springheads and spring outflows 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. We drew the boundaries around the water features that make up the critical habitat in each area. Other than at San Solomon Spring and some well pads at Diamond Y Spring, no known developed areas such as buildings, paved areas, and other structures that lack the physical or biological features for the springsnail are within the critical habitat areas.

When determining critical habitat boundaries, we intended to avoid including developed areas such as lands covered by buildings, pavement, and other structures including oil and gas well pads because such lands lack physical or biological features for the species. 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 within Balmorhea State Park at San Solomon Spring or at Diamond Y Spring. Any such lands left inside critical habitat boundaries shown on the maps of these rules (such as the asphalt and concrete-paved dry surfaces in Balmorhea State Park or oil and gas well pads at Diamond Y Spring) have been excluded by text in these final rules and are not designated as critical habitat. Therefore, a Federal action involving these lands would 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.

Summary

We are designating critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species. Critical habitat units are designated based on sufficient elements of physical or biological features being present to

support the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod life-history processes. Some units contain all of the identified elements of physical or biological features and support multiple life-history processes. Some segments contain only some elements of the physical or biological features necessary to support the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod particular use of that habitat.

Critical Habitat Designation

We are designating four areas as critical habitat for the Phantom springsnail, Phantom tryonia, and diminutive amphipod. We are designating one area as critical habitat for the Diamond tryonia, Gonzales tryonia, and Pecos amphipod. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the species. The five areas we are designating as critical habitat are: (1) San Solomon Spring; (2) Giffin Spring; (3) East Sandia Spring; (4) Phantom Lake Spring; and (5) the Diamond Y Spring System. Phantom springsnail, Phantom tryonia, and diminutive amphipod all occur in the first 4 units and they are listed in Table 4. Diamond tryonia, Gonzales tryonia, and Pecos amphipod occur in the Diamond Y Spring Unit, and it is listed in Table 5.

TABLE 4—DESIGNATED CRITICAL HABITAT UNITS FOR PHANTOM SPRINGSNAIL, PHANTOM TRYONIA, AND DIMINUTIVE AMPHIPOD

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in hectares (acres)
San Solomon Spring	State—Texas Parks and Wildlife Department	1.8 (4.4)
Giffin Spring	Private	0.7 (1.7)
East Sandia Spring	Private—The Nature Conservancy	1.2 (3.0)
Phantom Lake Spring	Federal—Bureau of Reclamation	0.02 (0.05)
Total		3.7 (9.2)

Note: Area sizes may not sum due to rounding.

TABLE 5—DESIGNATED CRITICAL HABITAT UNIT FOR DIAMOND TRYONIA, GONZALES TRYONIA, AND PECOS AMPHIPOD

[Area estimate reflects all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in hectares (acres)
Diamond Y Spring System	Private—The Nature Conservancy	178.6 (441.4)
Total		178.6 (441.4)

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat below.

San Solomon Spring Unit

The San Solomon Spring Unit consists of 1.8 ha (4.4 ac) that is currently occupied by the Phantom springsnail, Phantom tryonia, and diminutive amphipod and contains all of the features essential to the conservation of these species. It is located in Reeves County, near Balmorhea, Texas. San Solomon Spring provides the water for the large swimming pool at Balmorhea State Park, which is owned and managed by the Texas Parks and Wildlife Department. The designation includes all springs, seeps, and outflows of San Solomon Spring, including the part of the concrete-lined pool that has a natural substrate bottom and irrigation ditch, and two constructed ciénegas. While the ditches do not provide all of the physical or biological features (such as submerged vegetation), there are sufficient features (including natural substrates on the ditch bottoms) to provide for the life-history processes of the species. Habitat in this unit is threatened by future declining spring flows due to drought or groundwater withdrawals, the presence of nonnative snails, and the introduction of other nonnative species. Therefore, the physical or biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Giffin Spring Unit

The Giffin Spring Unit consists of 0.7 ha (1.7 ac) that is currently occupied by the Phantom springsnail, Phantom tryonia, and diminutive amphipod and contains all of the features essential to the conservation of these species. It is located on private property in Reeves County, near Balmorhea, Texas, and its waters are captured in irrigation earthen channels for agricultural use. The designation includes all springs, seeps, sinkholes, and outflows of Giffin Spring. The unit contains most all of the identified physical or biological features essential to the conservation of the species. Habitat in this unit is threatened by declining spring flows due to drought or groundwater withdrawals, the presence of nonnative snails, the introduction of other nonnative species, and further modification of spring outflow channels. Therefore, the physical or biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

East Sandia Spring Unit

East Sandia Spring consists of 1.2 ha (3.0 ac) that is currently occupied by the Phantom springsnail, Phantom tryonia, and diminutive amphipod and contains all of the features essential to the conservation of these species. This unit is included within a preserve owned and managed by The Nature Conservancy (Karges 2003, p. 145) in Reeves County just east of Balmorhea, Texas. The designation includes the springhead itself and surrounding seeps and outflows. The unit contains all of the identified physical or biological

features essential to the conservation of the species. Habitat in this unit is threatened by declining spring flows due to drought or groundwater withdrawals, the introduction of nonnative species, and modification of spring outflow channels. Therefore, the physical or biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Phantom Lake Spring Unit

Phantom Lake Spring consists of a small pool about 0.02 ha (0.05 ac) in size that is currently occupied by the Phantom springsnail, Phantom tryonia, and diminutive amphipod and contains the features essential to the conservation of these species. Phantom Lake Spring is owned by the U.S. Bureau of Reclamation about 6 km (4 mi) west of Balmorhea State Park in Jeff Davis County, Texas. The designation includes only the springhead pool. The physical or biological features of the habitat at Phantom Lake Spring have been maintained since 2000 by a pumping system and subsequent reconstruction of the spring pool. Although artificially maintained, the site continues to provide sufficient physical or biological features to provide for all the life-history processes of the three invertebrate species. Habitat in this unit is threatened by future declining spring flows due to drought or groundwater withdrawals, the presence of nonnative snails, and the introduction of other nonnative species. Therefore, the physical or biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Diamond Y Spring Unit

Diamond Y Spring Unit consists of 178.6 ha (441.4 ac) that is currently occupied by the Diamond tryonia, Gonzales tryonia, and Pecos amphipod and contains all of the features essential to the conservation of these species. Diamond Y Spring and surrounding lands are owned and managed by The Nature Conservancy. The final designation includes the Diamond Y Spring and approximately 6.8 km (4.2 mi) of its outflow, including both upper and lower watercourses, ending at approximately 0.8 km (0.5 mi) downstream of the State Highway 18 bridge crossing. Also included in this unit is approximately 0.8 km (0.5 mi) of Leon Creek upstream of the confluence with Diamond Y Draw. The boundaries of this unit extend out laterally beyond the mapped spring outflow channels to incorporate any and all small springs and seeps that may not be mapped or surveyed but are expected to contain the species and the necessary physical or biological features. The unit contains all of the identified physical or biological features. Habitat in this unit is threatened by declining spring flows due to drought or groundwater withdrawals, subsurface drilling and other oil and gas activities that could contaminate surface drainage or aquifer water, the presence of nonnative snails and feral hogs, the introduction of other nonnative species, and modification of spring outflow channels. Therefore, the physical or biological features in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

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 that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed 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, or 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 Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod. As discussed above, the role of critical habitat is to support the 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 Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod. These activities include, but are not limited to:

(1) Actions that would reduce the quantity of water flow within the spring systems designated as critical habitat.

(2) Actions that would contaminate or cause significant degradation of water quality within the spring systems designated as critical habitat, including surface drainage water or aquifer water quality.

(3) Actions that would modify the springheads or outflow channels within the spring systems designated as critical habitat.

(4) Actions that would reduce or alter the availability of aquatic substrates within the spring systems that are designated as critical habitat.

(5) Actions that would reduce the occurrence of native aquatic periphyton within the spring systems designated as critical habitat.

(6) Actions that would introduce, promote, or maintain nonnative predators and competitors within the spring systems designated as critical habitat.

Exemptions

Application of Section 4(a)(3) of the Act

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 on some Department of Defense lands. There are no Department of Defense lands within or near the critical habitat designation, so section 4(a)(3)(B)(i) of the Act does not apply.

Exclusions

Application of 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 she 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 her discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on 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 an analysis of the economic impacts of the proposed critical habitat designation and related factors. Potential land use sectors that may be affected by critical habitat designation include oil and gas development near the Diamond Y Spring system and agriculture (irrigated lands using groundwater withdrawals) at both spring systems. We also consider any social impacts that might occur because of the designation.

We anticipate conducting approximately 7 formal, 15 informal, and 3 technical assistance consultations considering the designation, for a total of 25 consultations, over the next 20 years. Assuming the consultations are equally likely to occur in any year, this results in fewer than two consultations a year. As a result of our analysis of probable economic impacts, we found only small incremental impacts related to the administrative costs of these consultations from the designation of critical habitat. In total, economic impacts are expected to amount to an estimated $41,000 over 20 years ($3,600 on an annualized basis), assuming a discount rate of seven percent. Based on our consultation history, we estimate that most consultations are not likely to involve a third party, and therefore, fewer than two small entities, if any, could be affected each year. The probable incremental cost per entity per year is likely to range from $260 to $2,100. Therefore, after considering the economic impact of these designations of critical habitat, we are not excluding any critical habitat areas based on economic impacts.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense or Department of Homeland Security where a national security impact might exist. In preparing this rule, we have determined that the lands within the designation of critical habitat for the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary has not exerted her discretion to exclude any areas from the final

designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any habitat conservation plans or other management plans for the area, or whether any conservation partnerships would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation. We are not excluding any areas from the critical habitat designation under section 4(b)(2) of the Act.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget 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 (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency must 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 (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. In this final rule, we are certifying that the critical habitat designation for the six west Texas aquatic invertebrates will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

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; as well as small businesses. 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 on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the 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.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities. We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

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 six west Texas aquatic invertebrates. 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 on small entities 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 economic effects on small business entities resulting from conservation actions related to the designation of critical habitat for the six west Texas aquatic invertebrates. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapter 2 of the analysis and evaluates the potential for economic impacts. The analysis anticipated the Service will conduct approximately 7 formal, 15 informal, and 3 technical assistance consultations considering the designation, for a total of 25 consultations, over the next 20 years. Assuming the consultations are equally likely to occur in any year, this total results in fewer than two consultations a year. Based on the consultation history, most consultations are unlikely to involve a third party. Therefore, fewer than two small entities, if any, could be affected each year. The incremental cost per third-party entity of participating in a consultation is likely to range from $260 to $2,100 (see Exhibit B–1 in Appendix B of the Final Economic Analysis). This level of impact does not exceed the thresholds for significant economic effects on a substantial number of small entities.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the six west Texas aquatic invertebrates 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. The Office of Management and Budget 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.

As described in Sections 2.2, 2.5, and A.4 of the final economic analysis, the critical habitat designation for the six invertebrates is anticipated to result in minimal consultations related to natural gas pipelines. We do not anticipate incremental impacts to these projects beyond the administrative costs of addressing the adverse modification standard in section 7 consultation. Given the small number of projects affected, the designation is not anticipated to increase the cost of energy production or distribution in the United States in excess of one percent. Thus, none of the nine threshold levels of impact would be exceeded. As a result, we do not expect the designation of critical habitat to significantly affect energy supplies, distribution, or use due to the small amount of habitat we have designated and the lack of Federal activities that would be affected by the designation. 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 because the land in this designation is either privately owned or owned by U.S. Bureau of Reclamation or the State of Texas. None of these government entities fit the definition of ''small governmental jurisdiction.'' In addition, our final economic analysis, section A.2, found no enforceable duties placed upon State, local, or Tribal governments. Therefore, 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 Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment found this designation of critical habitat for the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod does not pose significant takings implications for lands within or affected by the designation. Similarly, our final economic analysis, section A.3 and described in Chapter 2, concluded that the incremental effects of the designation are limited to additional administrative costs of consultation. Therefore, activities taking place on private property are not likely to be affected, and the critical habitat designation is unlikely to have takings implications.

Federalism

In accordance with Executive Order 13132 (Federalism), these rules do not have significant federalism effects. A federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, these critical habitat designations with appropriate State resource agencies in Texas. We received comments from several State of Texas agencies and have addressed them in

the Summary of Comments and Recommendations section of this rule. The designation of critical habitat in areas currently occupied by the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the 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 local governments in long-range planning (rather than having them 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) would 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 requirements of sections 3(a) and 3(b)(2) of the Order. We have designating critical habitat in accordance with the provisions of the Act. These final rules use standard mapping technology and identify the elements of physical or biological features essential to the conservation of the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

These rules do not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These rules do not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

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 endangered or threatened 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).

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 NEPA in connection with designating critical habitat 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). 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)). The range of the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod does not occur in the Tenth Circuit, so a NEPA analysis was not conducted.

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 within or near the current or historic ranges of the Phantom springsnail, Phantom tryonia, Diamond tryonia, Gonzales tryonia, diminutive amphipod, and Pecos amphipod that contain the features essential for conservation of the species. Therefore, we are not designating critical habitat on tribal lands.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0004 and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Southwest Region of the Service.

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. Amend § 17.95 by:

■ a. In paragraph (f), adding an entry for ''Phantom springsnail *(Pyrgulopsis texana)* and Phantom tryonia *(Tryonia cheatumi)''* followed by an entry for ''Diamond tryonia *(Pseudotryonia adamantina)* and Gonzales tryonia *(Tryonia circumstriata)''* after the entry for ''Three Forks Springsnail *(Pyrgulopsis trivialis)'';* and

■ b. In paragraph (h), adding an entry for ''Diminutive amphipod *(Gammarus hyalleloides)''* and an entry for ''Pecos amphipod *(Gammarus pecos)''* in the same alphabetical order that these species appear in the table at § 17.11(h).

The additions read as follows.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and Snails.*

* * * * *

Phantom springsnail *(Pyrgulopsis texana)* and Phantom tryonia *(Tryonia cheatumi)*

(1) Critical habitat units are depicted for Jeff Davis County and Reeves County, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of Phantom springsnail and Phantom tryonia are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators;

(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

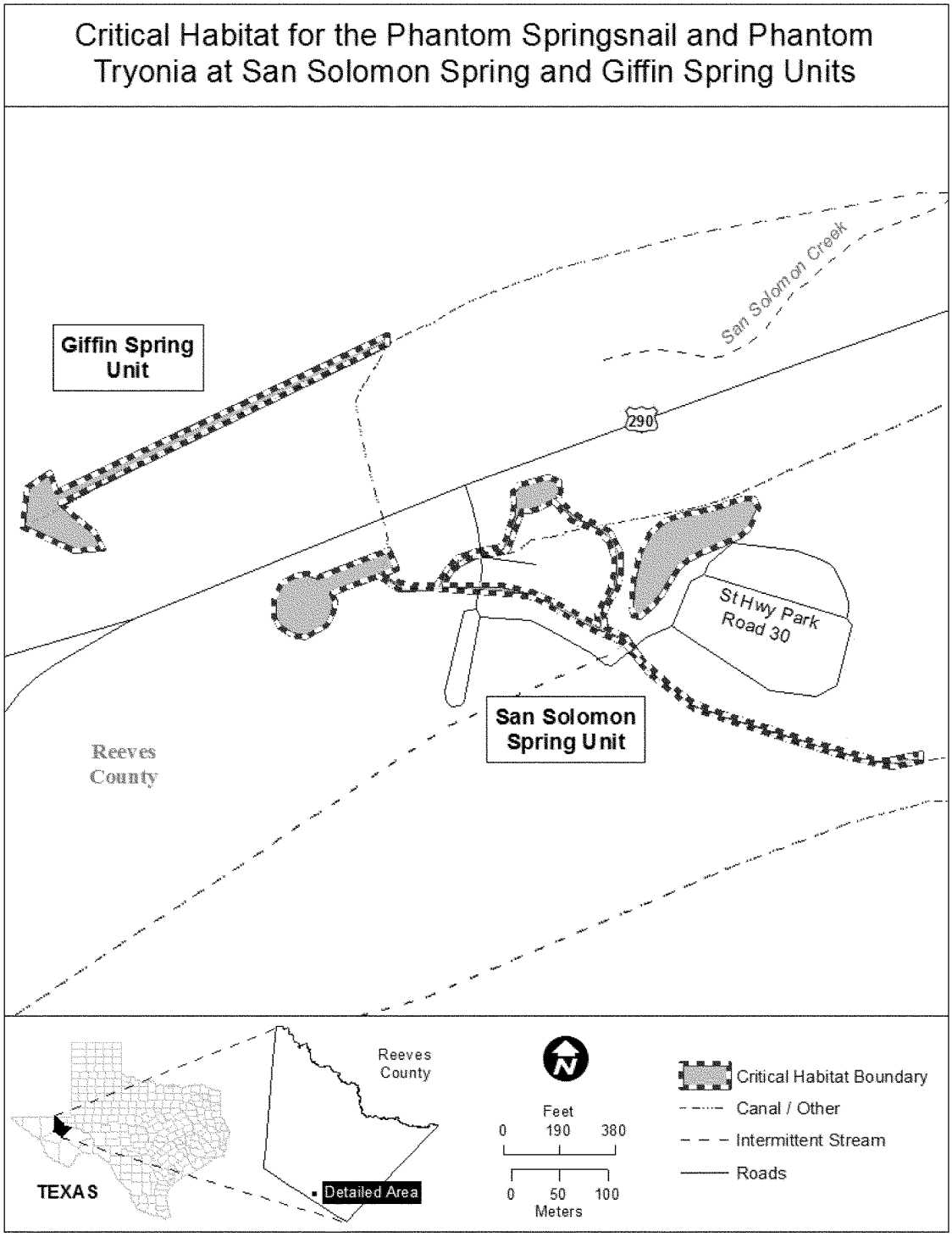
(v) Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, well pads, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on August 8, 2013.

(4) *Critical habitat map units.* 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 maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0004 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.

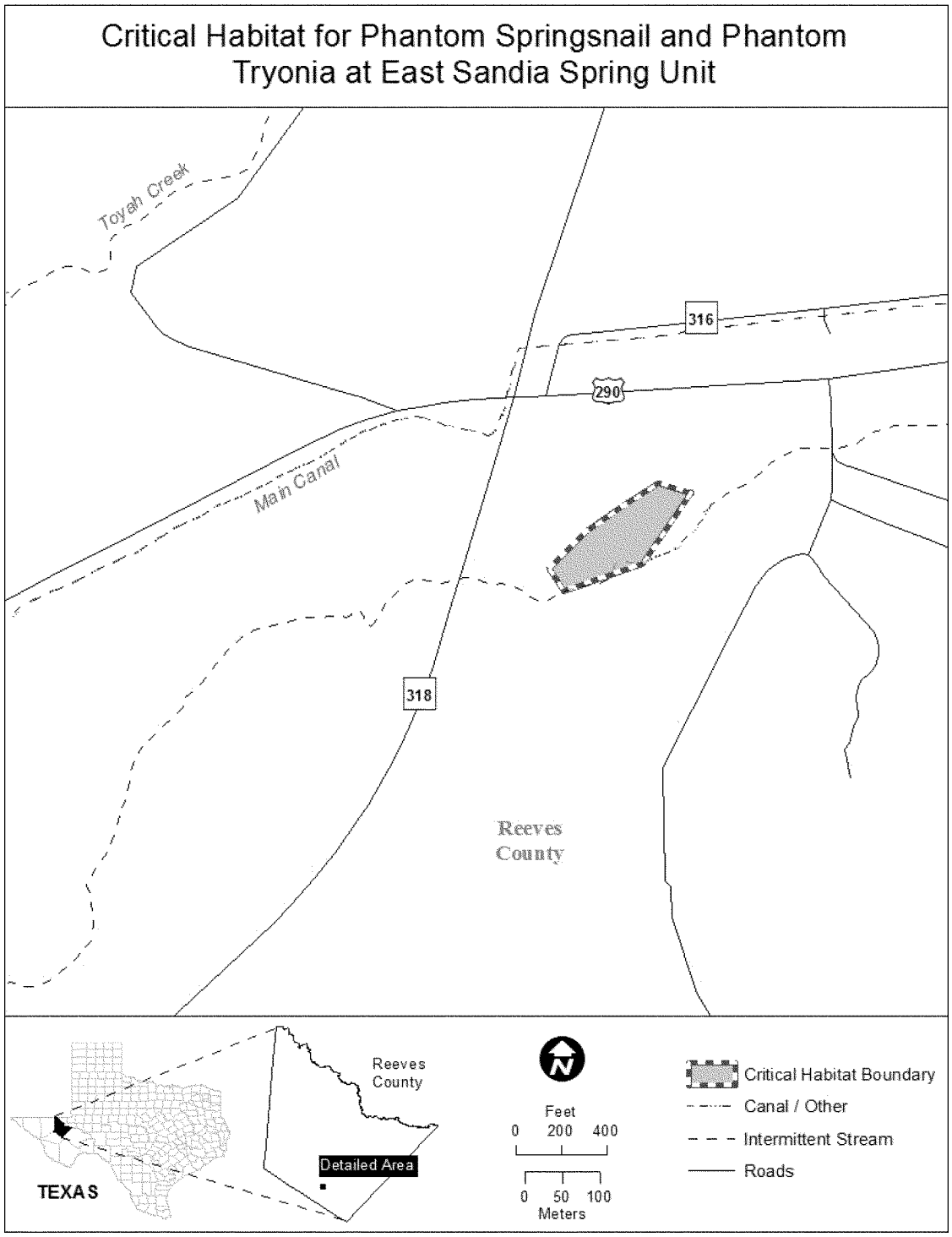
(5) San Solomon Spring Unit, Reeves County, Texas. Map of San Solomon Spring Unit follows:

BILLING CODE 4310–55–P

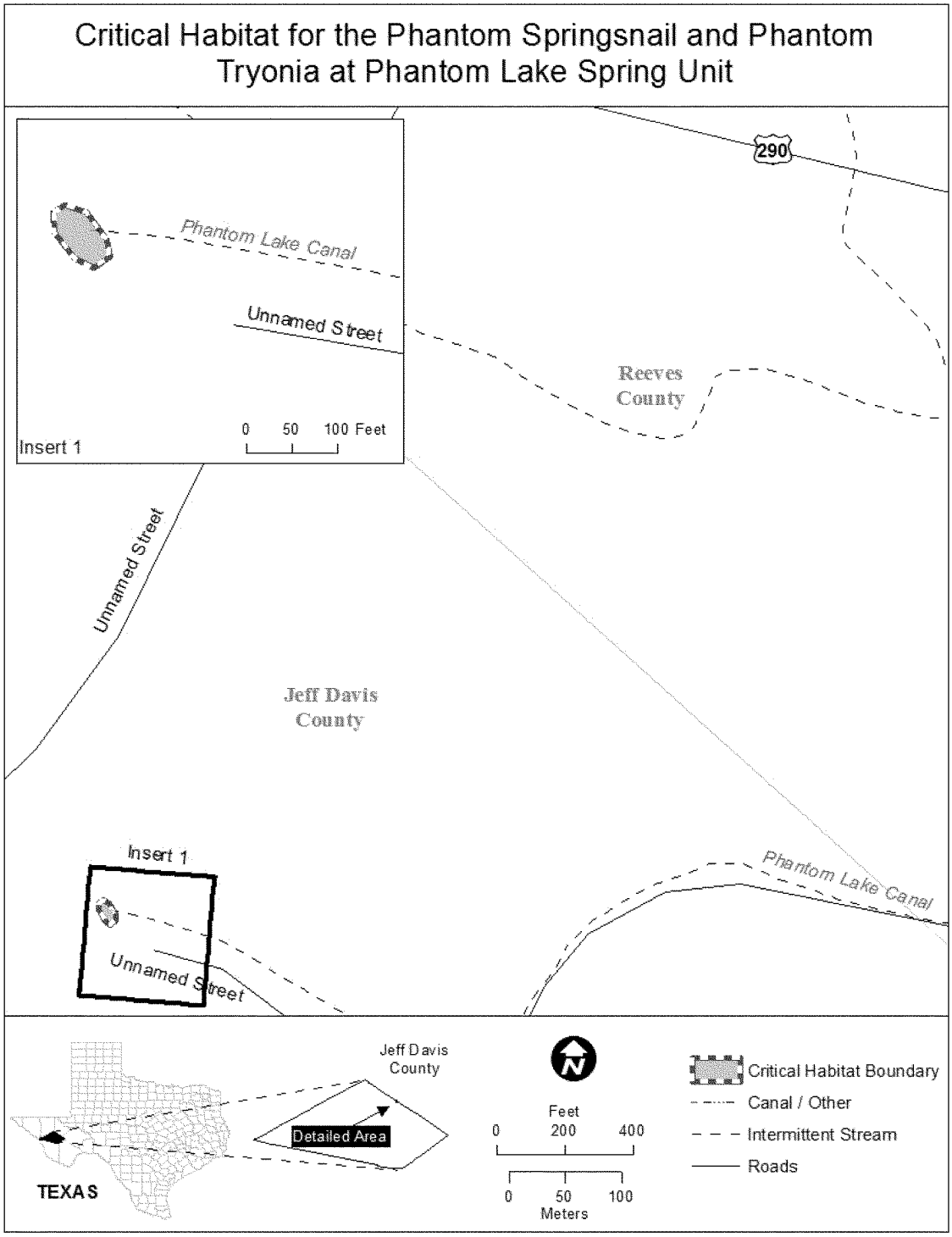


(6) Giffin Spring Unit, Reeves County, Texas. Map of Giffin Spring Unit is provided at paragraph (5) of this entry.

(7) East Sandia Spring Unit, Reeves County, Texas. Map of East Sandia Spring Unit follows:



(8) Phantom Lake Spring Unit, Jeff Davis County, Texas. Map of Phantom Lake Spring Unit follows:



Diamond tryonia (*Pseudotryonia adamantina*) and Gonzales tryonia (*Tryonia circumstriata*)

(1) A critical habitat unit is depicted for Pecos County, Texas, on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of Diamond tryonia and Gonzales tryonia are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, egg laying, maturing, feeding, and escape from predators;

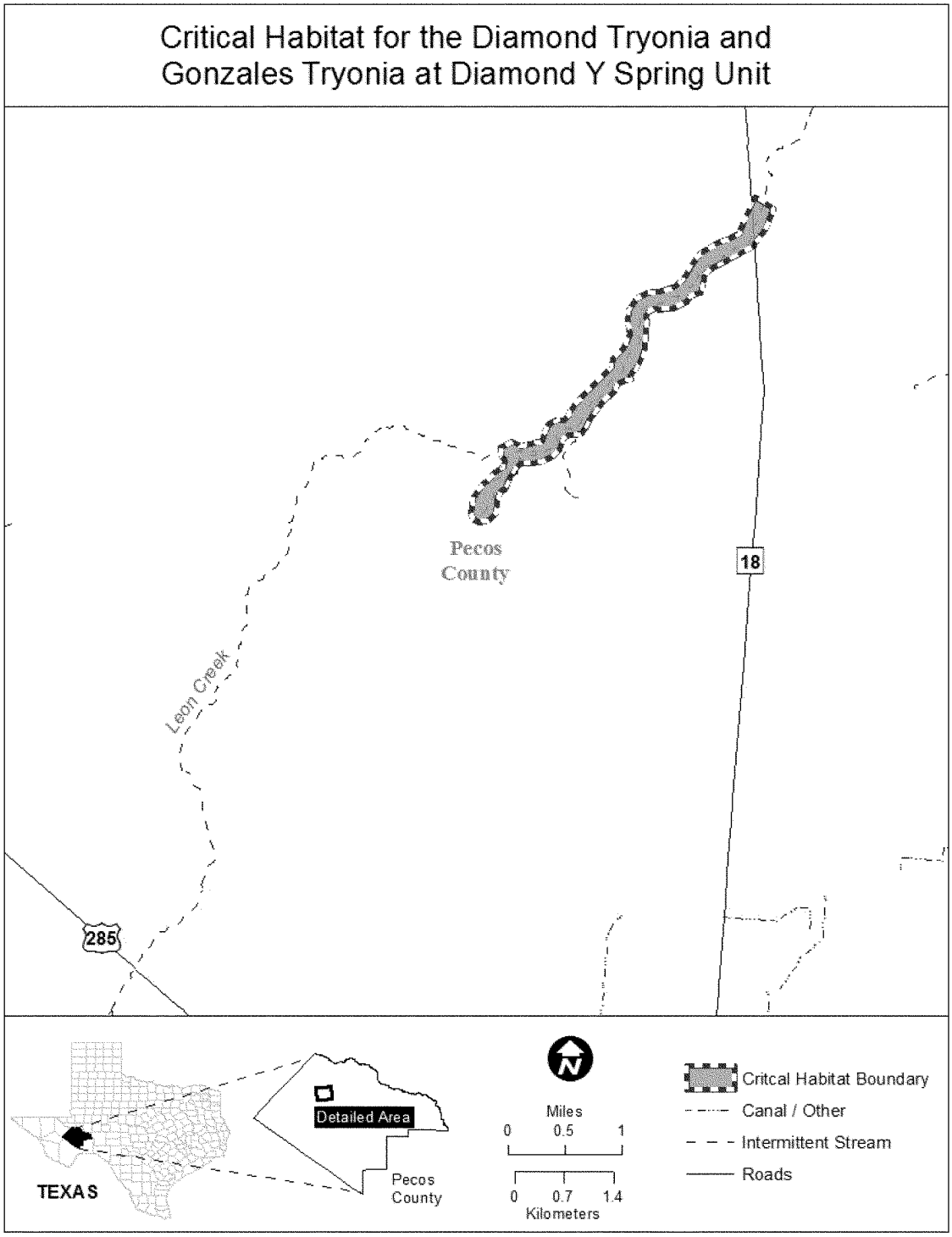
(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

(v) Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

(3) Critical habitat does not include manmade structures (such as buildings, roads, oil and gas well pads, and other paved areas) and the land on which they are located existing within the legal boundaries on August 8, 2013.

(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 maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0004 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) Diamond Y Spring Unit, Pecos County, Texas. Map of Diamond Y Spring Unit follows:



* * * * *

(h) *Crustaceans.*

Diminutive amphipod (*Gammarus hyalleloides*)

(1) Critical habitat units are depicted for Jeff Davis County and Reeves County, Texas, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of diminutive amphipod are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, maturing, feeding, and escape from predators;

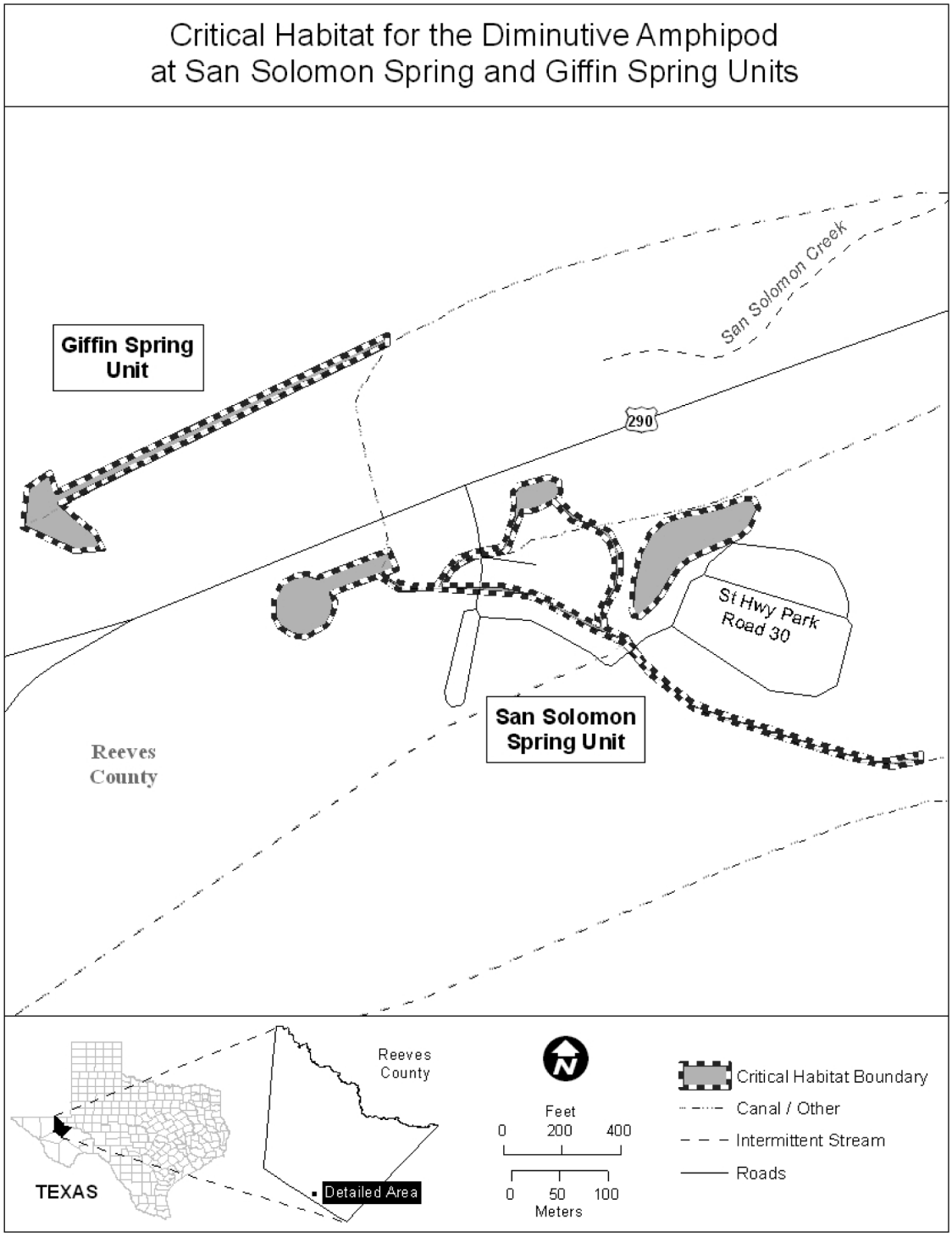
(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

(v) Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, well pads, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on August 8, 2013.

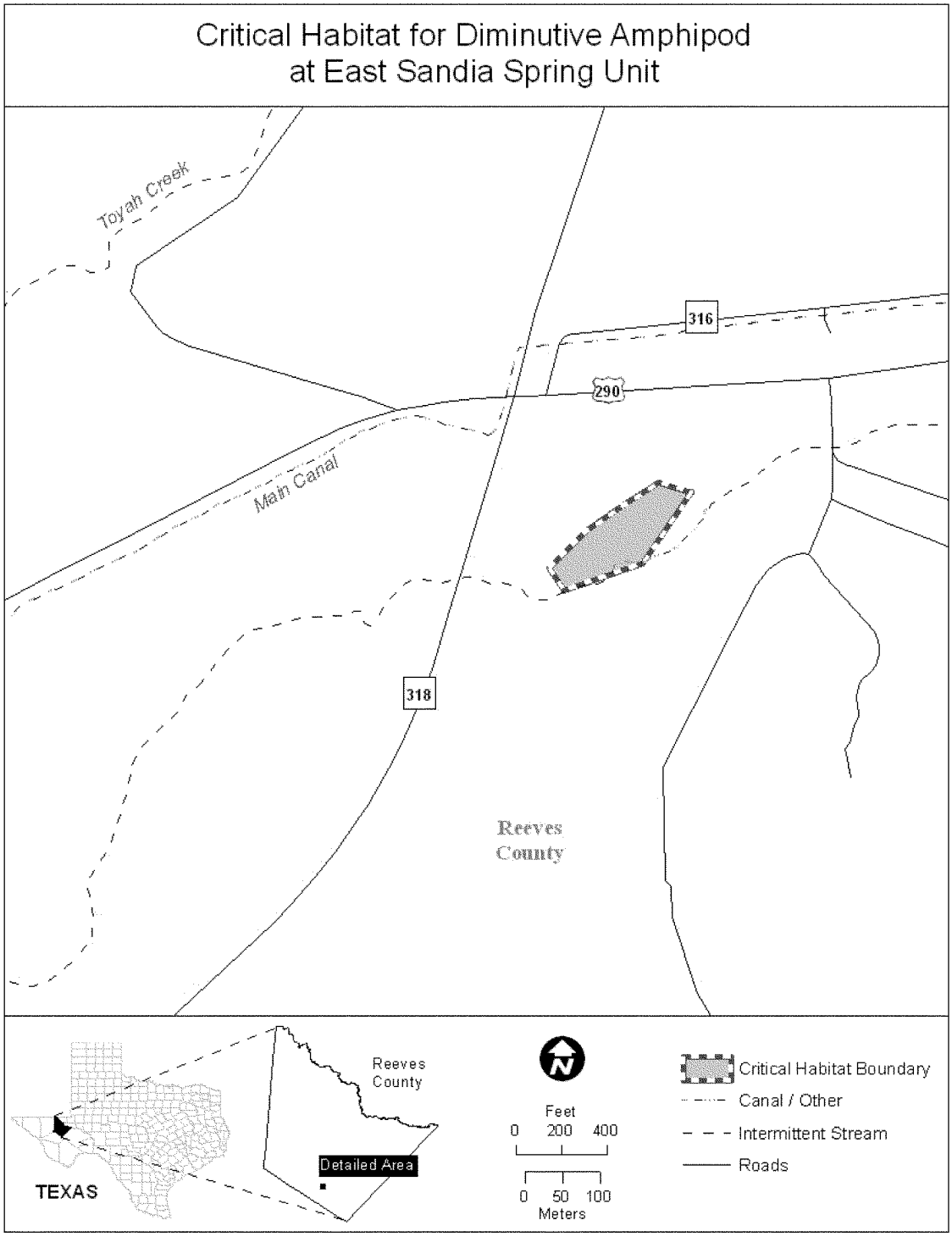
(4) *Critical habitat map units.* Data layers defining map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0004 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) San Solomon Spring Unit, Reeves County, Texas. Map of San Solomon Spring Unit follows:

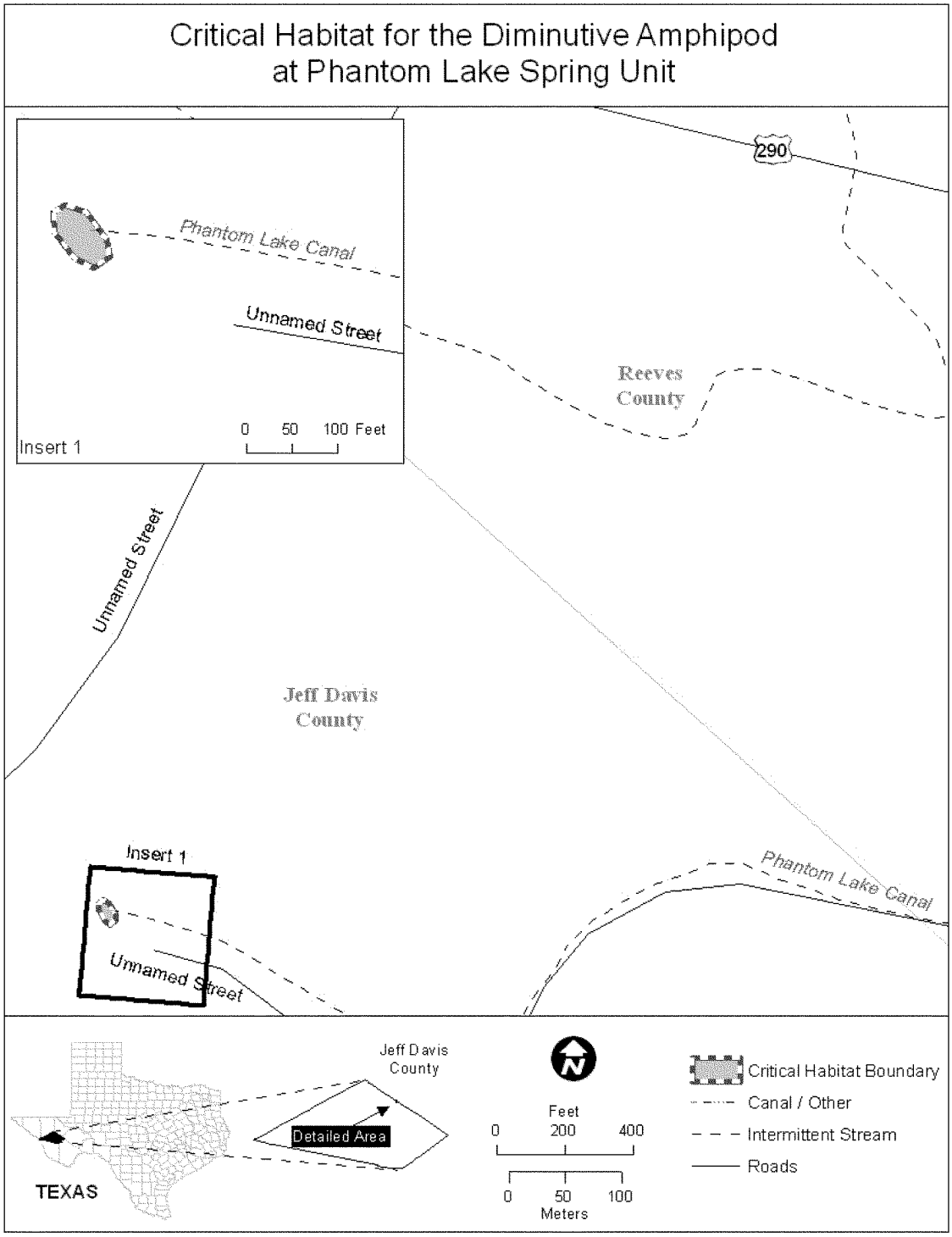


(6) Giffin Spring Unit, Reeves County, Texas. Map of Giffin Spring Unit is provided at paragraph (5) of this entry.

(7) East Sandia Spring Unit, Reeves County, Texas. Map of East Sandia Spring Unit follows:



(8) Phantom Lake Spring Unit, Jeff Davis County, Texas. Map of Phantom Lake Spring Unit follows:



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Pecos amphipod (*Gammarus pecos*)

(1) The critical habitat unit is depicted for Pecos County, Texas, on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of Pecos amphipod are springs and spring-fed aquatic systems that contain:

(i) Permanent, flowing, unpolluted water (free from contamination) emerging from the ground and flowing on the surface;

(ii) Water temperatures that vary between 11 and 27 °C (52 to 81 °F) with natural seasonal and diurnal variations slightly above and below that range;

(iii) Substrates that include cobble, gravel, pebble, sand, silt, and aquatic vegetation, for breeding, maturing, feeding, and escape from predators;

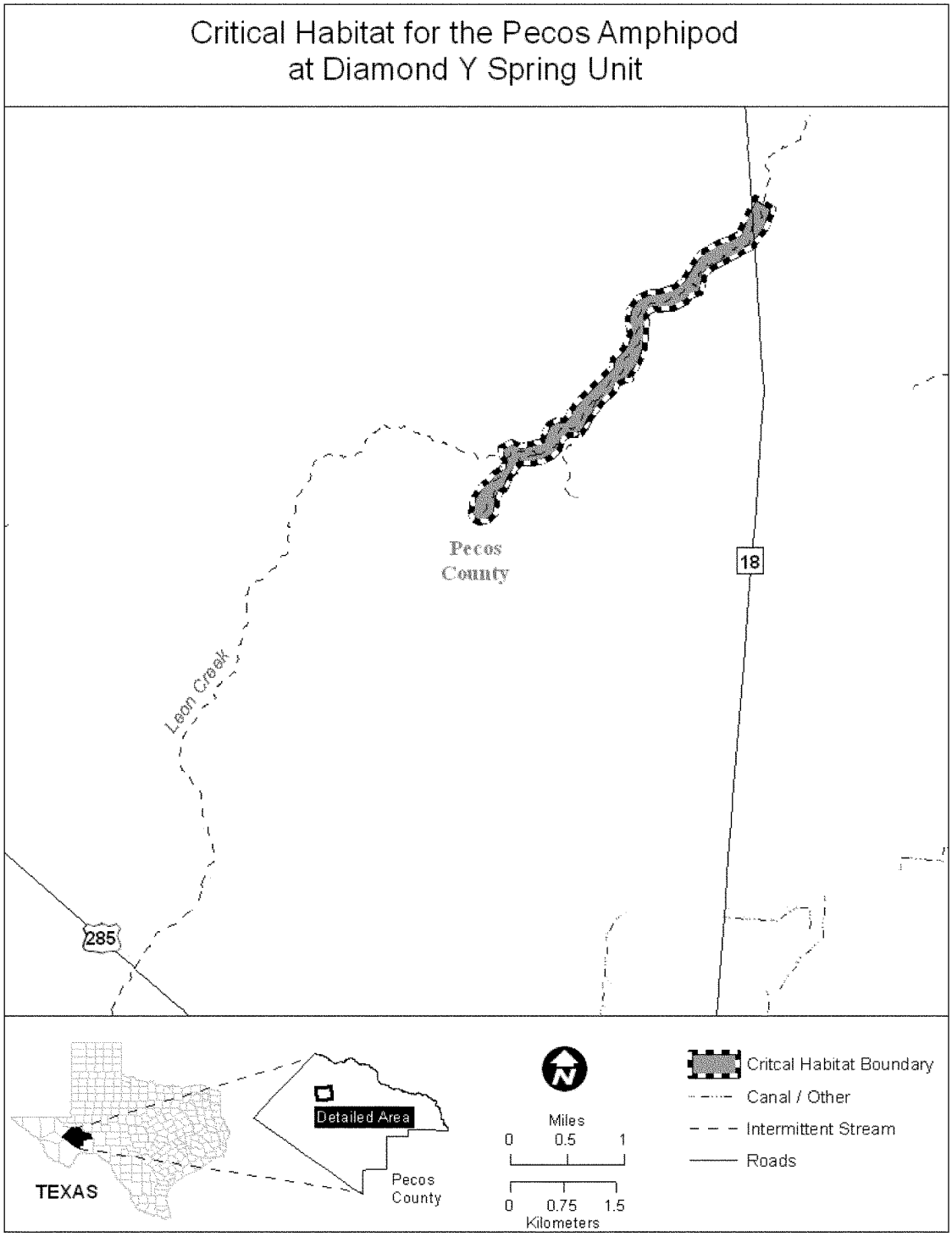
(iv) Abundant food, consisting of algae, bacteria, decaying organic material, and submergent vegetation that contributes the necessary nutrients, detritus, and bacteria on which these species forage; and

(v) Either an absence of nonnative predators and competitors or nonnative predators and competitors at low population levels.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, oil and gas well pads, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. 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 maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0004 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) Diamond Y Spring Unit, Pecos County, Texas. Map of Diamond Y Spring Unit follows:



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Dated: June 26, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–16230 Filed 7–8–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 130221153–3572–02]

RIN 0648–BC78

Enhanced Document Requirements To Support Use of the Dolphin Safe Label on Tuna Products

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise regulations under the Dolphin Protection Consumer Information Act (DPCIA) to enhance the requirements for documentation to support labels on tuna products that represent the product as dolphin-safe. This rule modifies the requirements for the certifications that must accompany the Fisheries Certificate of Origin (FCO); changes storage requirements related to dolphin-safe and non-dolphin-safe tuna on board fishing vessels; modifies the reporting requirements associated with tracking domestic tuna canning and processing operations; and creates other new requirements for processors, other than tuna canners, of tuna product labeled dolphin-safe. This rule is intended to better ensure dolphin-safe labels comply with the requirements of the DPCIA and to ensure that the United States satisfies its obligations as a member of the World Trade Organization (WTO).

DATES: This rule becomes effective on July 13, 2013.

ADDRESSES: Copies of the proposed and final rules for this action are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov,* and are also available from the Acting Director, NMFS Office of International Affairs, Rodney R. McInnis, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. 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 the NMFS Southwest Region (SWR) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: William Jacobson, NMFS SWR, 562–980–4035.

SUPPLEMENTARY INFORMATION: On April 5, 2013, NMFS published a proposed rule in the **Federal Register** (78 FR 20604) to revise regulations at 50 CFR part 216, subpart H, in order to enhance the requirements for documentation to support labels on tuna products that represent the product as dolphin-safe. The proposed rule was open to public comment through May 6, 2013.

Background

Enacted in 1990, the DPCIA (16 U.S.C. 1385) established a dolphin-safe labeling standard for tuna products. The law addressed a Congressional finding that ''consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.'' The DPCIA sets out minimum criteria for when tuna product producers, importers, exporters, distributors, or sellers may label their product dolphin-safe or with any other similar term or symbol suggesting that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins. Specifically, the DPCIA prohibits producers, importers, exporters, distributers, or sellers from labeling as dolphin-safe any tuna product that was harvested: (i) ''On the high seas by a vessel engaged in driftnet fishing;'' (ii) in the eastern tropical Pacific Ocean (ETP) by purse seine vessels with a carrying capacity of 400 short tons or greater unless accompanied by a captain's statement and observer's statement that no dolphins were intentionally encircled during the trip and no dolphins were killed or seriously injured during the set; or (iii) outside the ETP by purse seine vessels, unless the captain certifies that no dolphins were intentionally encircled during the trip (16 U.S.C. 1385(d)(1)). The ETP is defined as the waters of the Pacific Ocean bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America (50 CFR 216.3).

In addition, if the Secretary of Commerce (Secretary) identifies a purse seine fishery that has a regular and significant association between dolphins and tuna similar to the ETP, then tuna products containing tuna harvested in such a fishery may not be labeled dolphin-safe, unless a captain and observer certify that no dolphins were killed or seriously injured in the sets in which the tuna were harvested (16 U.S.C. 1385(d)(1)(B)(i)). Furthermore, if the Secretary identifies any other fishery that has a regular and significant mortality or serious injury of dolphins, then tuna products containing tuna harvested in that fishery may not be labeled dolphin-safe, unless a captain and observer (if NOAA Fisheries determines that an observer statement would be ''necessary'') certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were harvested (16 U.S.C. 1385(d)(1)(D)).

The minimum standards described above apply to any tuna product labeled dolphin-safe. The DPCIA further directs the Secretary to develop an ''official mark'' that may be used by tuna processors to label tuna products as dolphin-safe under 16 U.S.C. 1385(d)(3)(A), and requires that tuna product labeled dolphin-safe using an alternative mark may be used only if the tuna were harvested during a set or other gear deployment in which no dolphin was killed or seriously injured, regardless of the area of harvest or the type of gear used (16 U.S.C. 1385(d)(3)(C)(i)). Finally, NOAA Fisheries has broad authority to issue regulations to implement the DPCIA, including specifically the authority to establish a domestic tracking and verification program to track tuna labeled dolphin-safe (whether using the official mark or any other mark), and to adjust such regulations as appropriate to implement an international tracking and verification program (16 U.S.C. 1385(f)).

Under the rules being revised here, tuna importers had to include, an FCO with every imported tuna product, and submit that FCO to NOAA Fisheries. The exporter declared the dolphin-safe status of an import on the FCO, which was endorsed by the importer. As a condition of labeling dolphin-safe tuna caught by ETP large purse seine vessels, the importer had to attach a certification from the captain and an observer on board the vessel that no dolphins were killed or seriously injured in the sets in which the tuna were caught, and that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. For vessels using purse seine gear outside the ETP, to label tuna dolphin-safe the importer had to attach a certification from the captain that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught. Also, domestic tuna canners were required to submit to NOAA Fisheries monthly reports containing the pertinent information found on an FCO, as well as additional vessel and transshipment information not found on an FCO, for all tuna received at the plant.

In 2008, Mexico initiated WTO dispute settlement proceedings challenging the U.S. dolphin-safe labeling scheme as a violation of provisions of the WTO's *General Agreement on Tariffs and Trade 1994*

and *Agreement on Technical Barriers to Trade* (TBT Agreement). Mexico specifically challenged three U.S. measures: The DPCIA, Department of Commerce DPCIA regulations (50 CFR 216.91 and 216.92), and a Federal Court decision (*Earth Island Institute* v. *Hogarth,* 494 F.3d 757 (9th Cir. 2007)). The challenged measures established conditions (described above) under which tuna products may voluntarily be labeled dolphin-safe. On June 13, 2012, the WTO Dispute Settlement Body (DSB) adopted the WTO Appellate Body report, and the WTO panel report as modified by the Appellate Body report, finding that the U.S. dolphin-safe labeling scheme (including the regulations amended by this final rule) accords less favorable treatment to Mexican tuna products and therefore is inconsistent with Article 2.1 of the TBT Agreement. The Appellate Body based this conclusion on a finding that the U.S. measures did not set conditions for using the label in a way that reflects the risks faced by dolphins in different oceans. The DSB adopted the Appellate Body's recommendation that the United States bring its measures into conformity with the TBT Agreement.

In response to this finding, NMFS proposed (78 FR 20604; April 5, 2013) to modify the requirements for the certifications that must accompany the FCO; change storage requirements related to dolphin-safe and non-dolphin-safe tuna on board fishing vessels; modify the reporting requirements associated with tracking domestic tuna canning and processing operations; and create new requirements for processors, other than tuna canners, of tuna product labeled dolphin-safe. This final rule is largely unchanged from the proposed rule. It is intended to better ensure that dolphin-safe labels comply with the requirements of the DPCIA, and that the United States satisfies its obligations as a member of the WTO. For more information on this subject, please see the preamble to the proposed rule. In this final rule, NMFS identifies a period of education and outreach, responds to public and government comments, and makes technical modifications.

Effective Date and Period of Education and Outreach

The effective date of this regulation is July 13, 2013, and the rule is mandatory as of that date. The requirements of this rule do not apply to tuna harvested on fishing trips that began before July 13, 2013. However, NMFS understands that it may not be feasible for all of the affected entities to achieve 100% compliance immediately, and that some entities will need time to make the necessary changes to achieve full compliance with the new provisions for all tuna product labeled dolphin-safe. Therefore, through January 1, 2014, NMFS will conduct an industry education and outreach program on the provisions and requirements of this rule. NMFS has determined that this allocation of resources will ensure that the industry effectively and rationally implements this final rule.

Response to Public Comments

NMFS received seventy-one comments during the 30-day comment period, of which 64 supported the action, four opposed the action, two supported the action in a limited fashion, and one did not indicate a position to the action. Comments came from tuna industry organizations, environmental organizations, members of the public, and the Government of Mexico.

Many comments were broad statements or outside the scope of the rule, and do not require a response, such as: (1) Strong support for the proposed rule to include observer statements, where applicable; (2) the proposed rule will improve verification efforts; (3) the proposed rule is likely to cause confusion among consumers; (4) the proposed rule does not go far enough to protect dolphins; (5) the purpose and objective of U.S. dolphin-safe rules are not a guarantee of zero dolphin mortality, but as a measure to eliminate the intentional chase and encirclement of dolphin and discourage forms of fishing that have an adverse effect on dolphin populations; (6) the proposed rule is a good example of governmental overreach and overregulation; (7) the DPCIA gives the Secretary of Commerce broad authority to implement the proposed actions; (8) the dolphin-safe labeling scheme can be brought in line with consumer expectations only through legislation; (9) the proposed rule should impose new requirements only if commensurate with the incidence of interactions with dolphins; (10) the proposed rule puts the cost of keeping dolphin-safe tuna separate from non-dolphin-safe tuna on distributors and merchants rather on fishermen; (11) fines imposed under Section 5 of the Federal Trade Commission Act may not be enough to deter fraud; (12) Congress and not NOAA must address discrimination against tuna labeled dolphin-safe pursuant to the Agreement on the International Dolphin Conservation Program; (13) the proposed rule will not create a sustainable, ecosystem-safe approach to fishing for tuna; (14) additional regulations will help provide greater protections for dolphins in all fisheries during the catching of tuna and safeguard the integrity of the dolphin-safe label for the benefit of consumers; and (15) the United States Government might be tempted, especially when subjected to lobbying, to pressure foreign observer programs to seek NOAA's determination that the program is ''qualified and authorized.'' Specific pertinent comments are summarized and responded to below.

Comments on Captain and Observer Certifications

Comment 1: The facts do not warrant requiring captains of vessels outside the ETP to certify the absence of mortality or serious injury because dolphin interactions in fisheries outside the ETP are negligible and incidental.

Response: NMFS disagrees. Regulations at 50 CFR 216.91(a)(2)(ii) already require a written statement executed by the captain of a purse seine vessel fishing outside the ETP to certify that no purse seine was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested. This rule also requires a captain's statement certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught using any fishing gear type in all fishing locations (a broader application than the current regulations that apply this standard only to large purse seine vessels fishing in the ETP). The broader application is authorized under DPCIA sections 1385(d)(3)(C)(i) and 1385(f). Section 1385(d)(3)(C)(i) prohibits labeling a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals (other than the official mark) unless no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught. Notably, almost all tuna in the United States is labeled using alternative marks. Exercising its broad regulatory authority under Section 1385 paragraph (f) of the DPCIA, NMFS has long applied the standard applicable to any alternative mark to the use of the official mark. Therefore, these regulations require that all captains certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, regardless of the gear type or fishing location, regardless of the mark used.

Comment 2: Several commenters asserted that a captain's self-certification is unreliable and unverifiable.

Response: The DPCIA itself expressly mandates the use of written statements by captains to attest that either no purse seine net was intentionally deployed on or used to encircle dolphins during the trip in which the tuna were caught, and (in some cases) to also attest that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught. The tracking and verification system does not rely solely on certifications by fishing captains. As described elsewhere in this rule, certifications by an onboard observer or by an authorized representative of the nation participating in a qualified and authorized observer program are also used to help verify the dolphin-safe status of the harvested tuna for some fishing trips. The tracking and verification system also includes recordkeeping and inspections at processing facilities and certifications by importers and exporters.

Comment 3: The rule should be clarified so that the regulated public understands that if an observer is not qualified and authorized in a fishery, no observer certification would be required to use a dolphin-safe label.

Response: The rule is already clear that observer certifications are required only in some fisheries, and not all, as described in the preamble of the proposed rule.

Comment 4: Several commenters asserted that fishery observers other than those working on large purse seine vessels in the ETP are not trained to identify dolphins and are not trained to determine whether a set was intentionally set on dolphins or not. Therefore, they are not qualified to make the required certifications. NMFS needs to make certain that any international observer program meets the same standards as U.S. observer programs by providing clear guidance during pertinent training.

Response: This rule expands the observer requirements, to certain fisheries outside the ETP, but only if NOAA determines that the participating observers are qualified, and are authorized by the applicable observer authority to make the certifications. NMFS anticipates that qualified observers will undergo training programs that include such topics as recognizing an intentional set, dolphin species identification, and criteria for determining a serious injury. NMFS acknowledges that these skills are complex, and that many existing observer programs give little attention to marine mammal interactions. NMFS will determine an observer program is qualified and authorized only after rigorous scrutiny of the program's training programs, and a finding that the observers are able to make the requisite determinations. When such a determination is made, the rationale for the determination will be explained in a public notice published in the **Federal Register**.

Comment 5: The rule would extend the requirement for an observer certification (if determined to be qualified and authorized), even though NMFS has never determined that scientific evidence exists of a regular and significant association between dolphins and tuna in the western Pacific Ocean purse seine fishery. The DPCIA requires this determination as the basis for expanding the observer requirement. Without such a determination, the DPCIA requires that the captain certify only that no purse seine net was intentionally deployed on or used to encircle dolphins (16 U.S.C. 1385 (d)(1)(B)(ii)). NMFS' regulatory authority in the DPCIA at 16 U.S.C. 1385(f) is not broad authority, but is limited to regulations ''for tracking purposes.'' Claiming the need to ensure ''consistency'' or to seek conformity with WTO obligations does not provide additional regulatory authority.

Response: NMFS agrees with the commenter that, to date, there has not been adequate information to make a determination of such a ''regular and significant'' association in the Western Pacific purse seine fishery. However, NMFS disagrees with the commenter that NMFS' authority in the DPCIA is limited to ''tracking purposes.'' Under 16 U.S.C. 1385(f), NOAA has broad authority to establish an effective tracking and verification program, as well as authority to make adjustments, as may be appropriate, that meets or exceeds the minimum requirements referenced in the statute. NMFS believes requiring a certification from a captain and a qualified and authorized observer on board the vessel (if any), or from an authorized representative of the nation participating in a qualified and authorized observer program (if any), that no purse seine net was intentionally deployed on or to encircle dolphins during the fishing trip and that no dolphins were killed or seriously injured in the sets in which the tuna were caught, is within the authority of the Secretary to meet or exceed the minimum requirements for the effective tracking of tuna labeled under 16 U.S.C. 1385(d). This potential expansion of the requirements of certifications from an observer, or from an authorized government representative associated with an observer, which will be implemented only if the ''qualified and authorized'' criteria are met, is intended to help verify the required captain's certificates. In addition, 16 U.S.C. 1385(f) gives NMFS broad authority to issue regulations to implement the DPCIA generally: ''The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement the Act, *including* regulations to establish a domestic tracking and verification program . . . .'' (emphasis added). The agency's regulatory authority under the DCPIA is not limited to matters of domestic tracking and verification, but ''includes'' those matters as a subset of broader authority. The final paragraph of 16 U.S.C. 1385(f) specifically authorizes NMFS to adjust the regulations to implement an international tracking and verification program. The new observer requirements, if imposed after the requisite determinations of ''qualified and authorized,'' would be part of the U.S. domestic tracking program and could be part of an international program. Regulations governing both are authorized under section 1385(f). This regulatory authority exists, regardless of whether the motivation for asserting this authority was the need to harmonize the tracking and verification program with United States obligations to the WTO. Finally, aside from meeting international WTO obligations, this rule also ensures that consumers are better informed about whether the ''tuna they purchase is falsely labeled as to the effect of the harvesting on dolphins,'' one of the primary objectives of the DPCIA (Congressional Finding for the DPCIA, 16 U.S.C. 1385(b)(3)).

Comments on Tuna Separation

Comment 6: The new requirements to keep dolphin-safe and non-dolphin-safe tuna separate would require double the space and double the containers.

Response: NMFS disagrees. The new requirements will only affect operations in which dolphin-safe and non-dolphin-safe tuna are harvested on the same trip or otherwise stored together, which is probably unusual. Furthermore, the rules being revised required separation (see 50 CFR 216.93(d)(4)). Where separation is required under this rule, fishing vessels or transportation and storage entities are allowed to use netting, other material, or separate storage areas to achieve separation. This change is not expected to require double the space or double the containers.

Comment 7: The rule falls short of ensuring consumers that non-dolphin-safe tuna will be verifiably segregated from dolphin-safe tuna and not be mixed through storage and processing, and therefore will affect the ability of

the United States Government to audit and verify a captain's statement of no dolphin mortality or serious injury.

Response: NMFS disagrees. Regulations at 50 CFR 216.93(c)(4) and (d)(4) already require vessels to segregate non-dolphin-tuna and dolphin-safe tuna. Additionally, 50 CFR 216.93(f)(3) gives the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna. NMFS believes the current system is already working well and the increased authorities and requirements of this rule will fortify the verification program. In addition, the new observer requirements will afford NMFS an additional tool in verifying the dolphin-safe status of the harvested tuna.

Comment 8: The use of an entire well for separating one set of non-dolphin-safe tuna on U.S. purse seine vessels is inefficient. Webbing or other material should be considered as an acceptable method to separate non-dolphin-safe tuna from dolphin-safe tuna because it would be an effective, creative compromise without requiring drastic changes to a fishing vessel.

Response: The majority of tuna labeled dolphin-safe that is harvested by U.S. purse seine vessels comes from vessels that have more than 10 storage wells. NMFS believes using a separate well to store non-dolphin-safe tuna would not be inefficient, and would not require changes on most fishing vessels. By designating a particular well on a fishing trip as containing non-dolphin-safe tuna, a captain would aid fishery inspectors in verifying the location of non-dolphin-safe tuna on board a vessel, and would also facilitate tuna canneries and the NMFS Tuna Tracking and Verification Program to track, verify, and audit performance. The monitoring and tracking of tuna that is not dolphin-safe in separate wells is supported by the language of the DPCIA that requires the DPCIA implementing regulations to include, among other things, ''[t]he designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck . . . .'' (16 U.S.C. 1385(f)(3)).

Comments on Collections of Information Under the Paperwork Reduction Act

Comment 9: The expansion of the certification requirements to non-purse seine captains and the new requirements for statements by observers, will result in a significant increase in paperwork and associated tracking, reporting and auditing for the seafood supply chain and for the United States Government. Measures to reduce paperwork, such as consolidating required NMFS forms and allowing cell phone photos of captain and observer statements, should be considered.

Response: While current regulations require the submission of a captain's statement for purse seine vessels outside of the ETP, a significant number of FCOs for tuna product importations already include statements submitted by captains of non-purse seine vessels on a voluntary basis. Thus, while this rule would increase paperwork submission requirements for some segments of industry, and increase paperwork handling for the U.S. Government, the actual increase in the number of documents received by the U.S. Government will be significantly less when taking into consideration the number of documents currently being voluntarily submitted. Additionally, NMFS is a Participating Governmental Agency working with U.S. Customs and Border Protection (CBP) in the International Trade Data System (ITDS) project. See: *http://www.itds.gov/.* The Document Imaging System, a part of ITDS expected to be tested in the near future through a pilot project, would allow customs brokers to send a version of the FCO and associated certifications in portable document format (PDF) to CBP. The NMFS copy would then be retrieved by or forwarded to NMFS, therefore eliminating the need for brokers to submit multiple copies to different U.S. agencies. If implemented, NMFS expects that the Document Imaging System will result in a significant reduction of paperwork for both the seafood supply chain and the U.S. Government, as well as allowing for more efficient tracking and auditing.

Comment 10: The rule will require the industry to make outreach efforts to educate thousands of longliners of U.S. dolphin-safe rules in multiple languages. Adequate time will need to be allotted to the industry to reach back into its supply chain and implement a new system to collect captain statements.

Response: The effective date of this regulation is July 13, 2013, and the rule is mandatory as of that date. As explained below, the United States has an international obligation to make this rule effective by July 13, 2013. The rule will require certification by the captain and, if applicable, by a qualified and authorized observer or an authorized representative of a nation participating in the observer program for all tuna labeled dolphin-safe that is harvested on fishing trips that begin on or after July 13, 2013. NMFS has determined that a period for education and outreach by NMFS and industry is appropriate. NMFS believes that mid-July 2013 through January 1, 2014 is a sufficient timeframe for the industry to become familiar with, and fully transition to, the new requirements under the rule. During this period, NMFS will continue to educate the industry on NMFS' compliance and enforcement procedures so that fishermen, processors, importers, brokers, and others responsible for the paperwork required by this rule have clear expectations as to the requirements of this rule.

Comments on Additional Topics

Comment 11: Is there a defined process for determining ''regular and significant,'' and has the Department of Commerce defined it?

Response: The ''regular and significant'' standard has been part of the DPCIA and its implementing regulations for many years. This rule is not intended to address or revise that standard. The DPCIA directs the Secretary to make a determination or identification of a fishery if there is a regular and significant association between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), or if a fishery has regular and significant mortality or serious injury to dolphins. NMFS has no credible reports of any fishery in the world, other than the tuna purse seine fishery in the ETP, where dolphins are systematically and routinely chased and encircled each year in significant numbers by tuna fishing vessels, or any tuna fishery that has regular and significant mortality or serious injury of dolphins. Therefore, the Secretary has not made a determination that another fishery has either a regular and significant association between dolphins and tuna or regular and significant mortality or serious injury of dolphins.

Comment 12: The rule does not fully implement the letter and spirit of the 1997 International Dolphin Conservation Program Act, which requires that tuna bearing the dolphin-safe label must be independently certified as being caught without harm to dolphins.

Response: NMFS disagrees. This final rule fully implements the letter and spirit of the DPCIA in several ways. It modifies the requirements for the certifications that must accompany the FCO (i.e. the certification must include that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught); changes storage requirements related to dolphin-safe

and non-dolphin-safe tuna on board fishing vessels; modifies the reporting requirements associated with tracking domestic tuna canning and processing operations; and creates other new requirements for processors, other than tuna canners, of tuna product labeled dolphin-safe. NMFS welcomes specific suggestions about how to better implement the letter and spirit of the statute. NMFS is not certain what the commenter means by ''independent certification.'' The DPCIA requires a rather complex series of measures to certify the dolphin-safe status of labeled tuna product, but the statute does not specifically require that the certification be made by an independent party.

Comment 13: The rule would cause economic harm to the U.S. tuna purse seine fleet due to reduced value (or zero value) of non-dolphin-safe tuna.

Response: Tuna not eligible to be labeled dolphin-safe has value and is currently sold in stores throughout the United States. Almost all tuna sold in the United States is labeled dolphin-safe, and is subject to the standard under 16 U.S.C. 1385(d)(3)(C)(i) (i.e. no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught). This rule merely requires new paperwork and separation procedures to support the assertion that tuna complies with the standard. Furthermore, NMFS received comments from representatives of the U.S. tuna purse seine fleet acknowledging that dolphin mortalities or serious injuries to dolphins were rare events.

Comment 14: NMFS should ensure observers are able to talk with and provide information to outside non-governmental groups.

Response: The issue is beyond the scope of this rule.

Comment 15: NOAA should create a separate ''international dolphin-safe label'' that would allow customers to be aware that the tuna comes from international sources that are ideally subjected to the same standards as U.S. fishermen, but due to oversight issues these standards cannot be guaranteed.

Response: The issue is beyond the scope of this rule.

Comment 16: The rule would perpetuate current deceptive practices in the U.S. market by allowing tuna products to be labeled as dolphin-safe even if dolphins and other marine mammals were killed or seriously injured while the tuna was being harvested.

Response: NMFS disagrees. This rule explicitly requires documentation that any tuna product labeled dolphin-safe contains no tuna harvested during a set or other gear deployment in which dolphins were killed or seriously injured.

Comment 17: The terms ''dolphin,'' ''longline set,'' and ''troll (jig) set'' need to be defined.

Response: While the subject matter is relevant to the general topic of the rule, defining ''dolphin,'' ''longline set,'' and ''troll (jig) set'' is beyond the scope of this rule. However, NMFS will consider a future rulemaking to define these terms.

Comment 18: Several commenters gave views as to whether the rule would satisfy U.S. obligations to the WTO. Some commenters believed the rule would satisfy U.S. obligations and others either stated that it would not satisfy U.S. obligations or expressed skepticism about whether it would.

Response: NMFS, in consultation with the Office of the United States Trade Representative, has determined that this rule will bring the dolphin-safe labeling requirements into compliance with the WTO DSB's recommendations and rulings.

Changes From the Proposed Rule

In response to public comments, there will be a period of education and outreach, beginning on the effective date through January 1, 2014, during which the industry will be educated on how NMFS will enforce the rule. The effective date of the rule is July 13, 2013, and the rule will apply to fishing trips that begins on or after this date. The effective date has been added to § 216.91(a)(2)(ii), (a)(2)(iii), (a)(4), (a)(5) and to § 216.93(c)(2) and (3). Regulatory text at § 216.91(a)(2)(ii) and (iii) has been added and paragraphs have been redesignated in order to keep existing requirements for tuna harvested on fishing trips that began before July 13, 2013 (i.e. the effective date of this final rule). In this final rule, NMFS is publishing 50 CFR 216.93 in its entirety (including provisions that were not changed from the proposed rule) for the convenience of readers and to improve clarity.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the DPCIA 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 regulatory flexibility analysis was not required and none was prepared.

This final rule contains two collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control numbers 0648–0335 and 0648–0387. Public reporting burden for OMB control number 0648–0335, titled ''Fisheries Certificate of Origin,'' is estimated to average 25 minutes 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. Public reporting burden for OMB control number 0648–0387, titled ''International Dolphin Conservation Program,'' is estimated to average 65 minutes 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 aspects of these data collections, including suggestions for reducing the burden, to NMFS Southwest Region (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.

The effective date of July 13, 2013, is a product of an agreement between the United States and Mexico that the United States will bring the U.S. measures into conformity with the WTO DSB's recommendations and ruling within 13 months of the DSB's adoption of the WTO Appellate Body report, and the WTO panel report as modified by the Appellate Body report. Accordingly, this rule is a military or foreign affair function of the United States, and the 30-day delay-in-effectiveness date requirement of the Administrative Procedure Act is inapplicable under 5 U.S.C. 553(a)(1).

List of Subjects in 50 CFR Part 216

Commercial fisheries, Food labeling, Imports, Marine mammals, Reporting and recordkeeping requirements, Seafood.

Dated: July 3, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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

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

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

Authority: 16 U.S.C. 1385

■ 2. In § 216.91, revise paragraphs (a)(2)(ii) and (a)(4), and add paragraphs (a)(2)(iii) and (a)(5) to read as follows:

§ 216.91 Dolphin-safe labeling standards.

(a) * * *

(2) * * *

(ii) In any other fishery on a fishing trip that began before July 13, 2013 unless the products are accompanied as described in § 216.93(d), (e), or (f), as appropriate, by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

(iii) In any other fishery on a fishing trip that began on or after July 13, 2013 unless the products are accompanied as described in § 216.93(d), (e), or (f), as appropriate, by:

(A) A written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught, and that no dolphins were killed or seriously injured in the sets in which the tuna were caught; and

(B) Where the Assistant Administrator has determined that observers participating in a national or international observer program are qualified and authorized to certify that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught, and that no dolphins were killed or seriously injured in the sets in which the tuna were caught, and where such an observer is on board the vessel, a written statement executed by the observer, or by an authorized representative of a nation participating in the observer program based on information from the observer, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the fishing trip in which the tuna were caught and that no dolphins were killed or seriously injured in the sets in which the tuna were caught. Any determination by the Assistant Administrator shall be announced in a notice published in the **Federal Register**. Determinations under this subparagraph will also be publicized on the Web site of the NMFS Southwest Region (*http://swr.nmfs.noaa.gov/*).

* * * * *

(4) *Other fisheries.* By a vessel on a fishing trip that began on or after July 13, 2013 in a fishery other than one described in paragraphs (a)(1) through (3) of this section unless such product is accompanied as described in section 216.93(d), (e), or (f), as appropriate, by:

(i) A written statement executed by the Captain of the vessel certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

(ii) Where the Assistant Administrator has determined that observers participating in a national or international observer program are qualified and authorized to certify that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, and where such an observer is on board the vessel, a written statement executed by the observer, or by an authorized representative of a nation participating in the observer program based on information from the observer, certifying that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught. Any determination by the Assistant Administrator shall be announced in a notice published in the **Federal Register**. Determinations under this subparagraph will also be publicized on the Web site of the NMFS Southwest Region (*http://swr.nmfs.noaa.gov/*); and

(iii) In any other fishery that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, a written statement executed by an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

(5) *All Fisheries.* On a fishing trip that began on or after July 13, 2013 during which any dolphin was killed or seriously injured, unless the tuna labeled dolphin-safe was caught in a set or other gear deployment was stored separately from tuna caught in non-dolphin-safe sets or other gear deployments by the use of netting, other material, or separate storage areas from the time of capture through unloading. If a purse seine vessel has more than one well used to store tuna, all tuna inside a well shall be considered non-dolphin-safe, if at any time non-dolphin-safe tuna is loaded into the well, regardless of the use of netting or other material inside the well.

* * * * *

■ 3. Section 216.93 is revised to read as follows:

§ 216.93 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the dolphin-safe condition of tuna, under the standards set forth in §§ 216.91 and 216.92. The tracking program includes procedures and reports for use when importing tuna into the United States and during U.S. fishing, processing, and marketing in the United States and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(a) *Tuna tracking forms.* Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing a unique number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record dolphin-safe sets and a second TTF is used to record non-dolphin-safe sets. The information entered on the TTFs following each set includes the date, well number, weights by species composition, estimated tons loaded, and additional notes, if any. The observer and the vessel engineer initial the entry as soon as possible following each set, and the vessel captain and observer review and sign both TTFs at the end of the fishing trip certifying that the information on the forms is accurate. TTFs are confidential official

documents of the IDCP, consistent with Article XVIII of the Agreement on the IDCP, and the Agreement on the IDCP Rules of Confidentiality.

(b) *Dolphin-Safe Certification.* Upon request, the Office of the Administrator, Southwest Region, will provide written certification that tuna harvested by U.S. purse seine vessels greater than 400 st (362.8 mt) carrying capacity is dolphin-safe, but only if NMFS' review of the TTFs for the subject trip shows that the tuna for which the certification is requested is dolphin-safe under the requirements of the Agreement on the IDCP and U.S. law.

(c) *Tracking fishing operations.* (1) *ETP large purse seine vessel.* In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity:

(i) During fishing trips, any part of which included fishing in the ETP, by purse seine vessels greater than 400 st (362.8 mt) carrying capacity, tuna caught in sets designated as dolphin-safe by the vessel observer must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is dolphin-safe or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as non-dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The observer will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.

(ii) The captain, managing owner, or vessel agent of a U.S. purse seine vessel greater than 400 st (362.8 mt) returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours' notice of the vessel's intended place of landing, arrival time, and schedule of unloading to the Administrator, Southwest Region.

(iii) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(iv) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(v) The handling of TTFs and the tracking and verification of tuna caught in the Convention Area by a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity shall be conducted consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(2) *Purse seine vessel other than ETP large purse seine vessel.* This paragraph (c)(2) applies to tuna product labeled dolphin-safe that includes tuna harvested on a fishing trip that began on or after July 13, 2013, in the ETP by a purse seine vessel of 400 st (362.8 mt) or less carrying capacity or by a purse seine vessel outside the ETP of any carrying capacity.

(i) Tuna caught in sets designated as dolphin-safe must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Tuna caught in sets where a dolphin died or was seriously injured must be stored in a well designated as non-dolphin-safe by the captain or, where applicable, by a qualified and authorized observer under § 216.91. Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The captain or, where applicable, a qualified and authorized observer under § 216.91, will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured. If a purse seine vessel has only one well used to store tuna, dolphin-safe tuna must be kept physically separate from non-dolphin-safe tuna by using netting or other material. If a purse seine vessel has more than one well used to store tuna, all tuna inside a well shall be considered non-dolphin-safe, if at any time non-dolphin-safe tuna is loaded into the well, regardless of the use of netting or other material inside the well.

(ii) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(3) *Other vessels.* This paragraph (c)(3) applies to tuna product labeled dolphin-safe that includes tuna harvested by a vessel on a fishing trip that began on or after July 13, 2013 other than ones described in paragraphs (c)(1) or (2) of this section:

(i) Tuna caught in sets or other gear deployments designated as dolphin-safe must be stored separately from tuna caught in non-dolphin-safe sets or other gear deployments from the time of capture through unloading. Dolphin-safe tuna must be kept physically separate from non-dolphin-safe tuna by using netting, other material, or separate storage areas. The captain or, where applicable, a qualified and authorized observer under § 216.91, must designate the storage areas for dolphin-safe and non-dolphin-safe tuna.

(ii) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(d) *Tracking cannery operations.* (1) Whenever a U.S. tuna canning company in the 50 states, Puerto Rico, or American Samoa receives a domestic or imported shipment of tuna for processing, a NMFS representative may be present to monitor delivery and verify that dolphin-safe and non-dolphin-safe tuna are clearly identified and remain segregated. Such inspections may be scheduled or unscheduled, and canners must allow the NMFS representative access to all areas and records.

(2) Tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the month following the month being reported. Monthly reports must contain the following information:

(i) *Domestic receipts:* whether the tuna is eligible to be labeled dolphin-safe under § 216.91, species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (ETP, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, gear type, trip dates, carrier name, unloading dates, and location of unloading. Where the processor indicates the tuna is eligible to be labeled dolphin-safe under § 216.91, it

must enclose the certifications required by that section.

(ii) *Import receipts:* In addition to the information required in paragraph (d)(2)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(3) Tuna processors must report on a monthly basis the amounts of ETP-caught tuna that were immediately utilized upon receipt or removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (d)(2) of this section. This report must contain:

(i) The date of removal from cold storage or disposition;

(ii) Storage container or lot identifier number(s) and dolphin-safe or non-dolphin-safe designation of each container or lot; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, non-dolphin-safe tuna may not be mixed in any manner or at any time during processing with any dolphin-safe tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(e) *Tracking processor operations other than cannery operations.* U.S. tuna processors other than cannery operations engaged in processing tuna products, including frozen, dried, or smoked tuna products, must submit a report to the Administrator, Southwest Region that includes the information set out in § 216.93(d)(2) and (3) on a monthly basis for all tuna received at their processing facilities that will be included in any tuna product labeled dolphin-safe.

(f) *Tracking imports.* All tuna products, except fresh tuna, that are imported into the United States must be accompanied as described in § 216.24(f)(3) by a properly certified FCO as required by § 216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 10 calendar days of the shipment's entry into the commerce of the United States as required by § 216.24(f)(3)(ii).

(g) *Verification requirements.* (1) *Record maintenance.* Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records related to that tuna for at least 2 years. These records include, but are not limited to: FCOs and required certifications, any reports required in paragraphs (a), (b), (d) and (e) of this section, invoices, other import documents, and trip reports.

(2) *Record submission.* Within 10 calendar days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) *Audits and spot checks.* Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

(h) *Confidentiality of proprietary information.* Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216–100 ''Protection of Confidential Fisheries Statistics.''

[FR Doc. 2013–16508 Filed 7–8–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 131
Tuesday, July 9, 2013

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0602; Directorate Identifier 2012–CE–010–AD]

RIN 2120–AA64

Airworthiness Directives; Vulcanair S.p.A. Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Vulcanair S.p.A. (type certificate previously held by Partenavia) Models P 68, P 68B, P 68C, P 68C–TC, P 68 ''OBSERVER,'' P68TC ''OBSERVER,'' and P68 ''OBSERVER 2'' airplanes that would supersede AD 2008–24–11, Amendment 39–15751. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracking and/or corrosion of the wing spar, which could result in structural failure of the wing. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 23, 2013.

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 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Vulcanair Airworthiness Office, Via G Pascoli, 7, 80026 Casoria, Italy; phone: +39 081 59 18 135; fax: +39 081 59 18 172; email: *airworthiness@vulcanair.com;* Internet: *http://www.vulcanair.com/page-view.php?pagename=Service Bulletins.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this 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: Mike Kiesov, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0602; Directorate Identifier 2012–CE–010–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://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 November 19, 2008, we issued AD 2008–24–11, Amendment 39–15751 (73 FR 72314; November 28, 2008). That AD required actions intended to address an unsafe condition on the Vulcanair S.p.A. Models P 68, P 68B, P 68C, P 68C–TC, P 68 ''OBSERVER,'' AP68TP300 ''SPARTACUS,'' P68TC ''OBSERVER,'' AP68TP 600 ''VIATOR,'' and P68 ''OBSERVER 2'' airplanes.

Since we issued AD 2008–24–11 (73 FR 72314; November 28, 2008), Vulcanair S.p.A. developed modification kits to repair certain lower spar caps. They also developed a maintenance manual supplement with special inspections of the wing and stabilator structures and new limitations for the wing structure.

The FAA also realized that the Models AP68TP300 ''SPARTACUS'' and AP68TP 600 ''VIATOR'' were inadvertenly included in AD 2008–24–11.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No.: 2010–0051, dated March 25, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Safe Life Limits of the wing structure of P.68 Series aeroplanes have now been extended up to a maximum of 23 900 Flight Hours (FH), depending on the condition of the spar lower cap angles and on the embodiment of some modification kits. Furthermore, special inspections of the wing and stabilator structures, different from those previously required by EASA AD 2007–0027, have also been introduced. This change has been developed by Vulcanair under change No. MOD. P68/144 approved by EASA with approval No. 10028661 on 02 February 2010.
>
> Consequently this AD, which supersedes EASA AD 2007–0027, allows the implementation of the extended Safe Life Limits, in accordance with the instructions of Vulcanair SB 162, and requires the accomplishment of special inspections for the wing and stabilator structures, in accordance with the Aircraft Maintenance Manual (AMM) Supplement part number (P/N) NOR 10.771–52.

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

EASA AD No.: 2010–0051, dated March 25, 2010; Vulcanair S.p.A. Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010; Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010; Vulcanair S.p.A. Service Instruction No. 88, dated March 1, 2010; and Vulcanair S.p.A. Service Instruction No. 89, dated March 1, 2010, base the extended safe life limits on repetitive inspections and other required preventive and corrective actions that under certain conditions allow flight with known cracks in critical structure. The FAA's Small Airplane Directorate does not allow further flight with known cracks in critical structure without additional substantiating data. Advisory Circular (AC) 23–13A, Chapter 6, dated September 29, 2005, describes what additional data is required to allow flight with known cracks (found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf).*

Relevant Service Information

Vulcanair S.p.A. has issued Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010; Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010; Vulcanair S.p.A. Service Instruction No. 88, dated March 1, 2010; and Vulcanair S.p.A. Service Instruction No. 89, dated March 1, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the 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 will affect 75 products of U.S. registry. We also estimate that it would take about 60 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $382,500, or $5,100 per product.

We estimate that the wing replacement would take about 300 work-hours and require parts costing $443,406, for a cost of $468,906 per product. Wing replacement is only required when the wing structure exceeds the safe life established in this AD.

In addition, we estimate that any necessary follow-on actions for kit installation would take about 120 work-hours and require parts costing $2,595, for a cost of $12,795 per product. We have no way of determining the number of products that may need these actions.

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.

Initial Regulatory Flexibility Analysis

This section presents the initial regulatory flexibility analysis (IRFA) that was done for this action. We have reworded and reformatted for **Federal Register** publication purposes. The IRFA in its original form can be found in the docket at *http://www.regulations.gov.*

Introduction and Purpose of This Analysis

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

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

Section 603(a) of the RFA requires that each initial regulatory flexibility analysis contain the following information:

- A description of the reasons action by the agency is being considered;
- A succinct statement of the objectives of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- To the extent practicable, an identification of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statues and which minimize any significant economic impact of the proposed rule on small entities.

The following represents a detailed description of the six items required by section 603(a) of the RFA.

1. A Description of the Reasons Action by the Agency Is Being Considered

This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by EASA and would supersede AD 2008–24–11, Amendment 39–15751 (73 FR 72314; November 28, 2008). AD 2008–24–11 established safe limits for the wing structure of Vulcanair P 68 series airplanes and required repetitive inspection and repair of the wing and stabilator structures when the airplanes reach safe life limits. Operation beyond existing conservative safe limits (with inspections and repair) is allowed pending establishment of final safe limits and a terminating action.

The proposed AD significantly increases wing structure life limits (in a few cases requiring kit modification of

the wing structure), but establishes a terminating action requiring replacement of the wing structure and wing fuselage attachments and bolts when new established safe limits are reached. Prior to the wing structure safe life limit being reached, the proposed AD also requires special inspections of the wing structure with time limits, since new, of 6,000; 12,000; and 18,000 flight hours.

2. Objectives of, and Legal Basis for, the Proposed Rule

Title 49 of the U.S. 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 FAA's authority. We propose 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 the airplanes identified in this AD.

3. A Description of and an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

This proposed rule would affect 67 U.S.-registered airplanes, of which 40 are owned by corporations, 8 by individuals, 2 by the Federal Government, and 17 by state governments. Of the 48 airplanes held by private sector parties, one financing firm owns 2 of them, and 2 operators each own 2 of them. The remaining 36 airplanes are owned by 36 corporations and individuals. The FAA believes that all, or nearly all, of these private sector owners are privately held small firms, for which we cannot obtain financial records. We conclude that the proposed rule would affect a substantial number of small entities.

4. Reporting, Record Keeping, and Other Compliance Requirements of the Proposed Rule

Small entities will incur no new reporting and record-keeping requirements as a result of this rule.

The additional requirements of the proposed AD compared to AD 2008–24–11, Amendment 39–15751 (73 FR 72314; November 28, 2008) are the special wing structure inspections at 6,000; 12,000; and 18,000 flight hours; the terminating action to replace the wing structure when the wing structure safe limit is reached; and, for airplanes with serial numbers 1–256 for which a spar crack was found under previous Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65, Revison 3, dated September 30, 1985, replacement of the four main spar lower cap angles using Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010. The costs of the required actions provided in the proposed AD are as follows:

Requirement	Work-hours	Labor cost	Cost of materials	Total cost
Special inspections	60	$5,100		
Wing structure replacement	300	25,500	$443,406	$468,906
Replacement of lower spar cap angles with Service Bulletin 162 (S/N 1–256)	120	10,200	2,595	12,795

Figure 1 of the Initial Regulatory Flexibility Analysis in this AD.

The requirement to replace the wing structure, at considerable cost, occurs when the airplanes are old and have low value, often less than the cost of wing structure replacement. Therefore, in many cases airplane retirement is the least cost alternative, in which case the effective cost of the requirement is the loss in airplane value net of salvage value. The requirement to replace the lower spar cap angles applies to at most ten U.S.-registered airplanes and only if a front spar crack was previously found under Partenavia Costruzioni Aeronautiche S.p.A. Service Bulletin No. 65, Revison 3, dated September 30, 1985. The expected present value cost of this requirement is thus minimal. The requirement for special inspections at 6,000; 12,000; and 18,000 flight hours applies to all AD-affected airplanes.

Economic Impact on Small Entities

Since we have no financial information of the privately held firms that constitute most of the operators of the affected airplanes, we assess the economic impact of the proposed rule using airplane values. As the Vulcanair P 68 airplanes are not listed in the Aircraft Bluebook Price Digest, we undertook an internet search and found that the resale value of older P 68 airplanes, manufactured between 1975 and 1984 ranged from about $80,000 to $300,000. Many of these airplanes will be subject to the special inspection at 6,000 hours or even the special inspection at 12,000 hours. Using a significant economic impact criterion of 2 percent of airplane value, for operators of many of these airplanes there is a significant economic impact based on just one $5,100 inspection. Taking into account the present value cost of two to three possible future inspections and possible repair, as well as the present value cost of forced early retirement, there is a significant economic impact on most if not all of these operators.

Therefore, we conclude that this proposed rule will have a significant impact on a substantial number of firms.

5. Duplicative, Overlapping or Conflicting Federal Rules

The FAA is unaware of any Federal rules that duplicate, overlap, or conflict with this proposed rule.

6. Significant Alternatives to the Proposed Rule

Because of an unsafe condition that is likely to exist or develop on the airplanes identified in this proposed AD, there is no feasible significant alternative to requiring the actions of this proposed AD. The FAA invites public comment on this determination.

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 have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15751 (73 FR 72314; November 28, 2008), and adding the following new AD:

Vulcanair S.p.A. (Type Certificate Previously Held by Partenavia): Docket No. FAA–2013–0602; Directorate Identifier 2012–CE–010–AD.

(a) Comments Due Date

We must receive comments by August 23, 2013.

(b) Affected ADs

This AD supersedes AD 2008–24–11, Amendment 39–15751 (73 FR 72314; November 28, 2008).

(c) Applicability

This AD applies to Vulcanair S.p.A. Models P 68, P 68B, P 68C, P 68C–TC, P 68 ''OBSERVER,'' P68TC ''OBSERVER,'' and P68 ''OBSERVER 2'' airplanes, serial numbers (S/N) 01 through 429, S/Ns 431 through 452, and S/N 454, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 57: Wings.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracking and/or corrosion of the wing spar. We are issuing this AD to detect and correct cracking and corrosion of the wing spars, which, if not corrected, could result in structural failure of the wing.

(f) Actions and Compliance

Unless already done, do the following actions specified in paragraphs (f)(1) through (f)(8) of this AD, to include all subparagraphs.

(1) Within 10 days after the effective date of this AD, incorporate Vulcanair S.p.A. Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010, into the FAA-approved maintenance program (maintenance manual) following Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010.

(2) Within 10 days after the effective date of this AD, determine the safe life limit of the wing structure as follows:

(i) For all rows except rows (c) and (e) in table 1, of paragraph 1.3, of Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010, use the safe life limit specified in the appropriate row of the table; and

(ii) For rows (c) and (e) in table 1, of paragraph 1.3, of Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010, before further flight, you must modify the wing structure following Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010. After modification, use the safe life limit specified in the appropriate row of the table.

(3) Before reaching the life limit as determined in paragraph (f)(2) of this AD, before further flight, you must replace the wing structure and wing fuselage attachments and bolts with new ones. Do the replacement following Vulcanair S.p.A Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010, as specified in the instructions in WORK PROCEDURE, paragraph 2 of Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010.

(4) Do an initial inspection of the wing structure as specified in the instructions in paragraph 2.1 of Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010, at the applicable times as specified in paragraphs (f)(4)(i) and (f)(4)(ii). Repetitively thereafter inspect and replace the wing structure following the limitations in Vulcanair S.p.A. Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010.

(i) *For aircraft that have not exceeded the safe life limit hours time-in-service (TIS) on the wing structure as determined in paragraph (f)(2) of this AD:* Before accumulating 6,000 hours TIS on the wing structure or within 100 hours TIS after the effective date of this AD, whichever occurs later, follow Vulcanair S.p.A. Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010. You may take unless already done credit for this inspection if inspected in compliance with AD 2008–24–11 (73 FR 72314; November 28, 2008); or

(ii) *For aircraft that have exceeded the safe life limit hours TIS on the wing structure as determined in paragraph (f)(2) of this AD*: Within 100 hours TIS after the effective date of this AD, follow Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010.

(5) Before accumulating 8,500 hours TIS since new on the stabilator, within 500 hours TIS after January 2, 2009 (the effective date of AD 2008–24–11 (73 FR 72314; November 28, 2008)), or within 500 hours TIS from the last inspection done in compliance with AD 2008–24–11, whichever occurs later, do the initial inspection of the stabilator following Vulcanair S.p.A. Maintenance Manual Supplement NOR10.771–52, paragraph 2.2, dated March 1, 2010, or Vulcanair S.p.A. Service Bulletin No. 120 Rev. 1, dated June 7, 2006. Repetitively thereafter inspect the stabilator following the limitations in Vulcanair S.p.A. Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010.

(6) If any cracks are found during the inspections required in paragraphs (f)(4) and/or (f)(5) of this AD, before further flight, modify the wing structure following Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010.

(7) For certain Model P 68 airplanes, AD 2009–24–03, Amendment 39–16090 (74 FR 62211, November 27, 2009) requires repetitive inspections of the front and rear wing spars for cracks and modification if cracks are found. The modification terminates the repetitive inspections required in AD 2009–24–03 and may be done regardless if cracks are found. The actions of AD 2009–24–03 are independent of this AD action and remain in effect.

(8) EASA AD No.: 2010–0051, dated March 25, 2010; Vulcanair S.p.A. Maintenance Manual Supplement NOR10.771–52, dated March 1, 2010; Vulcanair S.p.A. Service Bulletin No. 162, dated March 1, 2010; Vulcanair S.p.A. Service Instruction No. 88, dated March 1, 2010; and Vulcanair S.p.A. Service Instruction No. 89, dated March 1, 2010, base the required preventive and corrective actions on allowing flight with known cracks in critical structure. The FAA's Small Airplane Directorate does not allow further flight with known cracks in critical structure without additional substantiating data. Advisory Circular (AC) 23–13A,Chapter 6, dated September 29, 2005, describes what additional data is required to allow flight with known cracks (found on the Internet at *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf*).

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Safety Engineer, FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(h) Related Information

(1) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2010–0051,

dated March 25, 2010, which may be found in the AD docket on the Internet at *http://www.regulations.gov;* Vulcanair S.p.A. Service Instruction No. 88, dated March 1, 2010; and Vulcanair S.p.A. Service Instruction No. 89, dated March 1, 2010, for related information.

(2) For service information identified in this AD, contact Vulcanair Airworthiness Office, Via G Pascoli, 7, 80026 Casoria, Italy; phone: +39 081 59 18 135; fax: +39 081 59 18 172; email: *airworthiness@vulcanair.com;* Internet: *http://www.vulcanair.com/page-view.php?pagename=Service-Bulletins*.

(3) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on July 2, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–16394 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0501]

RIN 1625–AA00

Safety Zone; National Governors Association, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two safety zones in Milwaukee, Wisconsin for the 2013 National Governors Association summer meeting. The first zone is intended to restrict vessels from a portion of Milwaukee Harbor; the second zone is intended to restrict vessels from a portion of the Menomonee River. These two proposed safety zones are necessary to protect the public and transiting vessels from the hazards associated with the anticipated congregation of spectator, volunteer, and government vessels in these areas. The proposed safety zones are also necessary to protect the public from the hazards associated with a fireworks display.

DATES: Comments and related material must be received by the Coast Guard on or before August 8, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2013–0501 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* 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.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Petty Officer Joseph McCollum, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7148, email *Joseph.P.McCollum@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. 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 (USCG–2013–0501), 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 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–2013–0501 in the ''SEARCH'' box and click ''SEARCH.'' Click on the ''submit a comment'' box, which will then become highlighted in blue. 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,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''SEARCH'' box insert ''USCG–2013–0501'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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 four 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

The National Governors Association will hold its 2013 meeting in Milwaukee, WI. This meeting is expected to bring large gatherings of officials, volunteers, and spectators to locations within and around the city of Milwaukee. As part of this event, a fireworks show is planned within Milwaukee Harbor. The Captain of the Port, Lake Michigan, has determined that the likelihood of transiting watercraft and congestion of vessels in the affected waterways, along with a fireworks display presents significant safety risks. These risks include collisions among spectators and transiting local watercraft as well as falling debris, accidental detonations, and the spread of fire among spectator vessels.

C. Discussion of Proposed Rule

The Captain of the Port, Lake Michigan, has determined that a safety zone is necessary to mitigate the aforementioned safety risks. Thus, this proposed rule establishes two safety zones. The first safety zone encompasses all waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, within a rectangle with coordinates beginning at 43°02′22.8″ N, 087°53′46.4″ W then east to 43°02′22.4″ N, 087°53′22.5″ W, then southwest to 43°01′59.8″ N, 087°53′27.4″ W, then west to 43°02′02.1″ N, 087°53′50.8″ W, then northeast along shore to the point of origin (NAD 83). The second safety zone encompasses all waters and branches of the Menomonee River from the North Plankinton Avenue Bridge in position 43°01′57.4″ N, 087°54′44.8″ W then west to an imaginary line running north and south along 6th street.

This proposed rule will be effective from August 1, 2013, until August 5, 2013. This safety zone will be enforced between August 1 and August 5, 2013.

The Captain of the Port Lake Michigan will use all appropriate means to notify the public that the zones in this proposal will be enforced, in accordance with 33 CFR 165.7(a). Such means of notice may include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

All persons and vessels shall comply with the instructions of the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

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 these statutes and 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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this proposed rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this proposed rule will be relatively small. Also, the safety zones are designed to minimize impact on navigable waters. Furthermore, the safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. Thus, restrictions on vessel movements within the affected areas are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulkemaking. 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 will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor within a portion of Milwaukee Harbor and/or a portion of the Menomonee River during the times that these zones are enforced.

This proposed safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule will be enforced for a limited time on 5 days. These proposed safety zones have been designed to allow traffic to pass safely around the zones whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 so that they can better evaluate its effects on them and participate in the rulemaking. 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 Petty Officer Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148. 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 would call 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 proposed rule under that Order and have determined that this proposed 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 expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not affect 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 proposed 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

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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. An environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of a safety zone and is therefore categorically excluded under figure 2–1, paragraph 34(g) of the Instruction. 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. Chapters 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.T09–0501 to read as follows:

§ 165.T09–0501 Safety Zone; National Governors Association, Milwaukee, WI.

(a) *Location.* The following are safety zones:

(1) All waters of Milwaukee Harbor, including Lakeshore inlet and Discovery World Marina, within a rectangle with coordinates beginning at 43°02′22.8″ N, 087°53′46.4″ W then east to 43°02′22.4″ N, 087°53′22.5″ W, then southwest to 43°01′59.8″ N, 087°53′27.4″ W, then west to 43°02′02.1″ N, 087°53′50.8″ W, then northeast along shore to the point of origin (NAD 83).

(2) All waters and branches of the Menomonee River from the North Plankinton Avenue Bridge in position 43°01′57.4″ N, 087°54′44.8″ W then west to an imaginary line running north and south along 6th street.

(b) *Effective Period.* This safety zone will be effective and enforced from August 1, 2013, until August 5, 2013. Specific times during which these safety zones will be enforced will be provided by Broadcast Notice to Mariners and/or actual notice from the Captain of the Port's on-scene representative.

(c) *Definitions.* The following definitions apply to this section:

(1) ''On-scene Representative'' means any Coast Guard Commissioned, warrant, or petty officer designated by the Captain of the Port, Lake Michigan to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) ''Public vessel'' means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) *Regulations.*

(1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as permitted by the Captain of the Port, Lake Michigan, or his or her designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port, Lake Michigan, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Lake Michigan, to act or his or her behalf. The Captain of the Port, Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Lake Michigan, or his or her designated on-scene 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 Captain of the Port, Lake Michigan, or his or her on-scene representative.

(e) *Exemptions.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: June 24, 2013.

M.W. Sibley,

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

[FR Doc. 2013–16391 Filed 7–8–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2013–0009; FRL–9832–2]

Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extended comment period.

SUMMARY: On February 5, 2013, EPA proposed a Best Available Retrofit Technology (BART) determination for oxides of nitrogen (NO_X) for the Navajo Generating Station (NGS), located on the Navajo Nation, and provided a 3-month period for public comments, to close on May 6, 2013. The Navajo Nation, Gila River Indian Community, and other affected stakeholders requested a 90-day extension of the comment period to allow time for stakeholders to develop an alternative to EPA's proposed BART determination that achieves greater reasonable progress. On March 19, 2013, EPA extended the close of the public comment period to August 5, 2013. On June 10, 2013, EPA signed a notice, published in the **Federal Register** on June 19, 2013, of our intent to hold five public hearings in the state of Arizona. On June 20, 2013, Salt River Project (SRP), the operator and co-owner of NGS, submitted a letter on behalf of six stakeholders, including the Navajo Nation and Gila River Indian Community, describing the development of a stakeholder alternative, and requesting another extension of the comment period to allow the stakeholders additional time to finalize their alternative and submit it to EPA for consideration in the rulemaking process. EPA is extending the comment period for this proposed rulemaking by 60 days to October 4, 2013.

DATES: The comment period for the proposed rule published February 5, 2013, at 78 FR 8274, extended March 19, 2013, at 78 FR 16825, is further extended. Comments on the proposed BART determination for NGS must be postmarked no later than October 4, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0009, by one of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

(2) *Email: r9ngsbart@epa.gov.*

(3) *Mail or deliver:* Anita Lee (Air–2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

For more detailed instructions concerning how to submit comments on this proposed rule, and for more information on our proposed rule, please see the notice of proposed rulemaking, published in the **Federal Register** on February 5, 2013 (78 FR 8274).

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Hearings: EPA intends to schedule five public hearings to accept oral and written comments on the proposed rulemaking. EPA intends to hold the public hearings at locations on the Navajo Nation and the Hopi Tribe, as well as in Page, Phoenix, and Tucson, Arizona. EPA will provide notice and additional details related to the hearings in the **Federal Register,** on our Web site, and in the docket for this proposed rulemaking.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972–3958, *r9ngsbart@epa.gov.*

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

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I. Background

NGS is a coal-fired power plant located on the Navajo Nation Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, Arizona. Emissions of NO_X from NGS affect visibility at 11 National Parks and Wilderness Areas that are designated as Class I federal areas, mandated by Congress to receive heightened protection. NGS is subject to the BART requirement of the CAA and the Regional Haze Rule based on its age

and its effects on visibility in Class I areas.

On February 5, 2013, EPA proposed a BART determination to require NGS to achieve a nearly 80 percent reduction of its current overall NO_X emission rate. EPA also proposed an alternative to BART that would provide flexibility to NGS in the schedule for the installation of new post-combustion control equipment. EPA's proposed alternative to BART credits NGS for its early and voluntary installation of new combustion controls to reduce NO_X emissions beginning in 2009. EPA, therefore, proposed to find that this alternative achieves greater reasonable progress than BART.

In recognition that there may be other approaches that could result in equivalent or better visibility benefits than BART, as well as the singular importance of NGS to the Navajo Nation, Hopi Tribe, the Gila River Indian Community, and numerous other tribes located in Arizona, EPA also outlined a framework for evaluating other alternatives to provide greater flexibility than EPA's proposed alternative to BART.

EPA encouraged a robust public discussion of our proposed BART determination and alternative, as well as other possible alternatives, and recognized the potential need for a supplemental proposal if other approaches developed by other parties are identified as meeting the needs of stakeholders and meeting the requirements of the CAA.

EPA received requests for a 90-day extension of the public comment period from the Navajo Nation, the Gila River Indian Community, and other stakeholders, in order to allow stakeholders time to develop alternatives to BART for EPA's consideration. On March 19, 2013, EPA extended the close of the public comment period to August 5, 2013 (78 FR 16825). EPA recognized that the stakeholder process, to develop viable alternatives to BART that provide additional flexibility to the owners of NGS while achieving more emission reductions to assure greater reasonable progress than BART, would require a significant amount of time. EPA also recognized the critical importance of active participation by affected tribes located in Arizona in the development of alternatives to BART.

On June 10, 2013, EPA signed a notice, published on June 19, 2013, of our intent to hold five public hearings throughout the state of Arizona (78 FR 36716). EPA intends to hold hearings at one location each on reservation lands of the Navajo Nation and Hopi Tribe, and in Page, Phoenix, and Tucson, Arizona.

On June 20, 2013, SRP submitted a letter, on behalf of six stakeholders, requesting another extension of the comment period for NGS.[1] SRP describes working over the past several months with representatives from the Central Arizona Water Conservation District, the Environmental Defense Fund, the Gila River Indian Community, the Navajo Nation Environmental Protection Agency, and the U.S. Department of the Interior to develop a BART alternative. SRP states that although significant progress has been made on the development of an alternative, additional time is needed to finalize their alternative and submit it to EPA for consideration in the rulemaking process.

II. Today's Action

In today's action, EPA is extending the comment period for our proposed BART determination for NGS by 60 days, to October 4, 2013. EPA is granting a 60-day extension to allow time for the stakeholders to finalize their alternative and submit it to EPA for consideration in the rulemaking process.

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Nitrogen dioxide.

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

Dated: June 26, 2013.

Deborah Jordan,

Air Division Director, Region 9.

[FR Doc. 2013–16491 Filed 7–8–13; 8:45 am]

BILLING CODE 6560–50–P

[1] See letter dated June 20, 2013 from Kelly J. Barr, SRP, to Jared Blumenfeld, EPA, re: Request for Extension of the Public Comment Period, Proposed Rule—Regional Haze Requirements for Navajo Generating Station Docket No. EPA–R09–OAR–2013–0009.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 431

[CMS–1450–CN]

RIN 0938–AR52

Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This document corrects technical errors that appeared in the proposed rule with comment period titled ''Medicare and Medicaid Programs; Home Health Prospective Payment System Rate Update for CY 2014, Home Health Quality Reporting Requirements, and Cost Allocation of Home Health Survey Expenses'' published on July 3, 2013.

FOR FURTHER INFORMATION CONTACT: Elmer Barksdale, (410) 786–1943.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2013–15766, published on Wednesday, July 3, 2013 (78 FR 40272), there was an error that is identified and corrected in the Correction of Errors section below.

II. Summary of Errors

In section ''VI.G. *Accounting Statement and Table''* of the Regulatory Impact Analysis section, in the Transfers column of Table 31, under the heading Medicare HH Survey & Certification Costs, we inadvertently made a typographical error when we listed the amount for the Annualized Monetized Transfers. Specifically, we stated that the amount was ''−$18.6 Million'' instead of ''$18.6 Million.''

IV. Correction of Errors

In FR Doc. 2013–15766, published on July 3, 2013, on page 40308, in the Transfers column of Table 31, under the heading Medicare ''HH Survey & Certification Costs'', the amount ''−$18.6 Million'' is corrected to read ''$18.6 Million.''

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

Dated: July 2, 2013.

Jennifer M. Cannistra,

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

[FR Doc. 2013–16392 Filed 7–3–13; 11:15 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 00–168; DA 13–1440]

Online Political File and Petition for Reconsideration

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: The Federal Communications Commission solicits public comment on the impact of the rules requiring broadcast television stations to post their political files online, and on a Petition for Reconsideration filed by the Television Station Group.

DATES: Comments may be filed on or before August 26, 2013, and reply comments may be filed on or before September 23, 2013.

ADDRESSES: You may submit comments, identified by MB Docket No. 00–168, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in MB Docket No. 00–168, DA 13–1440, released on June 25, 2013. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., Room CY–A257, Washington, DC 20554. This document will also be available via ECFS at *http://fjallfoss.fcc.gov/ecfs/.* Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *fcc504@fcc.gov* or calling the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary

1. In the Public Notice, the Media Bureau seeks comment on the impact of the rules adopted by the Commission in the *Second Report and Order* in MM Docket Nos. 00–168 and 00–44,[1] requiring broadcast television stations to post their political files online. We seek comment also on the Petition for Reconsideration of the *Second Report and Order* filed by the Television Station Group.[2]

2. *Background.* In the *Second Report and Order,* the Commission required stations to post their public files online in a Commission-hosted database rather than maintaining the files locally at their main studios. With respect to political file documents that must be maintained in the public file, the Commission required stations that are affiliated with the top four national networks (ABC, NBC, CBS, and Fox) and that are licensed to serve communities in the top 50 Designated Market Areas (''DMAs'') to post these documents online as part of the online public file, but exempted all other stations from posting their political file documents to their online public file until July 1, 2014.[3] The Commission stated that, by July 1, 2013, the Media Bureau would issue a Public Notice seeking comment on the impact of this online posting requirement for the political file so that the Commission can consider whether any changes should be made to the requirement before it takes effect for other stations.[4] The Media Bureau is issuing this Public Notice consistent with the Commission's commitment in the *Second Report and Order.*

3. The online public file requirement adopted in the *Second Report and Order* replaced the decades-old requirement that commercial and noncommercial television stations maintain public files at their main studios with a requirement to post most of the documents in those files to a central, online public file hosted by the Commission. The Commission's goals were to modernize the procedures television broadcasters use to inform the public about how they are serving their communities, make information concerning broadcast service more accessible to the public, and reduce broadcasters' cost of compliance. The political file component of the public inspection file provides information about requests by political candidates and other political advertisers to purchase television advertising time, including the station's disposition of each request and the rate charged for the broadcast time.

4. Stations were required to upload new public file documents to the online database starting August 2, 2012.[5] Stations were given six months from this date to upload documents that were already in their public inspection file.[6]

[1] *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, Extension of the Filing Requirement for Children's Television Programming Report, Second Report and Order,* 27 FCC Rcd 4535 (2012) (''*Second Report and Order*''). The effective date of the new online public file requirements was August 2, 2012.

[2] *See* Petition for Reconsideration, Television Station Group, MM Docket Nos. 00–168 and 00–44 (June 11, 2012) (''*Petition for Reconsideration*'').

[3] *Id.* at 4536–7, paragraph 3.

[4] *Id.*

[5] The National Association of Broadcasters (''NAB'') filed a petition for review of the *Second Report and Order* with the U.S. Court of Appeals for the District of Columbia Circuit. *Nat'l Assoc. of Broadcasters* v. *FCC,* No. 12–1225 (D.C. Cir. May 21, 2012). NAB sought an emergency stay of the *Second Report and Order* from the FCC and the D.C. Circuit Court of Appeals; both requests were denied. *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations,* 27 FCC Rcd 7683 (2012); *Order, Nat'l Assoc. of Broadcasters* v. *FCC,* No. 12–1225 (D.C. Cir. July 27, 2012). On January 18, 2013, NAB filed an unopposed motion to hold further proceedings in the case before the D.C. Circuit in abeyance pending (1) FCC action on the petition for reconsideration filed by the Television Station Group and (2) the Commission's opening of a notice and comment period concerning these rules, prior to July 1, 2013, to consider whether changes to the requirements are warranted. On February 12, 2013, the court granted NAB's motion to hold proceedings in abeyance. *Order, Nat'l Assoc. of Broadcasters* v. *FCC,* No. 12–1225 (D.C. Cir. February 12, 2013).

[6] The six-month deadline expired February 4, 2013. *See* Public Notice, *Television Broadcast Stations Reminded of the Upcoming Public*

However, the Commission did not require stations to upload their existing political files to the online database;[7] rather, stations were required only to upload new political file content on a going-forward basis.[8] In addition, to better ensure that the Commission can accommodate television broadcasters' online filings and to confine any unforeseen start-up difficulties to those stations that are best able to address them, the Commission phased in the new political file posting requirement by, as noted above, limiting it for the first two years, until July 1, 2014, to affiliates of ABC, CBS, NBC, and Fox networks in the top-50 markets.[9]

5. To date, over 361,000 documents have been uploaded into the online public file, including over 66,000 documents in political files. During the month leading up to the November 6, 2012 general election, stations uploaded nearly 27,000 documents to political files, peaking at 1582 documents uploaded on November 5. In addition, the public file has attracted over 2.5 million pageviews on 500,000 unique visits to the site. The busiest day was September 11, 2012, on which the site attracted 5,296 visits.

6. *Online Political File.* We hereby request comment on how moving online the political file has impacted the approximately 240 stations that are currently subject to this requirement. We seek comment generally on the experience of this initial group of stations in posting their political files online as well as the public's experience in accessing this information. Have stations encountered particular obstacles in connection with posting documents to the online political file? Has online posting become easier over time as station personnel have become more familiar with the process and as the Commission has made improvements to its online database?[10] Are there other steps the Commission could take to make its online database more user-friendly? We also ask members of the public, including political candidates and their representatives, who review the online political file to comment on whether they have found it easy to access information in the file, whether there are other improvements that we could make to the database to facilitate access and review of this material, and whether the ability to view the political file online has been beneficial.

7. In addition, we seek comment on the ability of stations that are currently exempt from the political posting requirement to comply with the July 1, 2014 deadline. Are there changes we should make to our rules or our database to facilitate compliance for stations that will be subject to the online political file requirements for the first time next year? We note that more than 200 television stations that are not currently subject to the online political file requirement have posted at least one document into the online political file. We invite these stations to provide us with information about their experiences in uploading political file documents to the Commission's database.

8. *Petition for Reconsideration.* Finally, we also seek comment on the Petition for Reconsideration of the *Second Report and Order* filed on June 11, 2012 by the Television Station Group, a group of large television station owners. The petition requests that the Commission reconsider the online political file requirement in the *Second Report and Order* on the ground that it is not in the public interest for stations to disclose online specific, spot-by-spot information about the rates charged for advertisements placed by candidates or those placed by other parties that concern candidates.[11] Although the Commission's rules formerly required that this information be made publicly available in hard-copy in the station's local political files, the petition argues that disclosure online of this sensitive pricing information is anti-competitive, disrupts markets, and is not contemplated by current campaign finance disclosure statutes.[12] As an alternative, the petition proposes, among other things, that the Commission require television stations to continue to make this specific rate information available in hard-copy in their local political files and, in addition, that the Commission permit stations, on an opt-in basis, to post to the Commission's database the aggregate amount of money spent by a sponsor of political advertisements on the station in lieu of posting specific rate information online.[13]

9. The Public Interest Public Airwaves Coalition (''PIPAC'') opposes the petition on the ground that allowing stations to post only aggregate data regarding political ads would be contrary to the Commission's efforts to modernize its reporting systems and to promote transparency and data-driven policymaking.[14] PIPAC also argues that the Television Station Group proposal would make it more difficult for the public to obtain specific information in the political file as paper files are costly and time consuming to view.[15] Finally, PIPAC also argues that aggregated information is insufficient to enable the public to ascertain whether stations are meeting their statutory obligations with respect to lowest unit rate, equal opportunities, and public disclosure of the sources of political ads.[16]

10. We seek comment on the issues raised by the petition and opposition. Would the voluntary nature of the proposal affect the usefulness of the data collected? In addition, we invite comment on whether there are other mechanisms that the Commission should consider to improve consumer access to relevant data regarding political ads.

11. *Permit-but-Disclose.* This proceeding, including both the online political file inquiry and the Petition for Reconsideration, will be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules.[17] Persons making *ex parte* presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's

Inspection File Deadline, DA 13–120, rel. January 30, 2013.

[7] These documents must continue to be maintained at the station, however, until the end of the two-year retention period.

[8] *Second Report and Order,* 27 FCC Rcd at 4536, paragraph 2 and at 4551, paragraph 33.

[9] *Id.* at 4536–7, paragraph 3.

[10] In October 2012, the Commission announced the availability of a new, pre-generated ''Terms and Disclosures'' folder in the online database where stations can upload explanations for any terms, abbreviations or other language necessary for a full understanding of any documents posted to the online political file. The Commission also announced it was continuing work on other improvements to the online public file including a public search feature, RSS feeds for easy identification of new documents filed, and a feature permitting broadcaster access to the interface through Dropbox. *See* Public Notice, *New Features in Online Public Inspection File System Announced,* DA 12–1578, rel. October 3, 2012.

[11] *See* Petition for Reconsideration at 1–2, 5.

[12] *Id.* at 2.

[13] *Id.* at 5.

[14] *See Ex Parte* Communication, MM Docket No. 00–168, (February 11, 2013), at 1–2.

[15] *Id.* at 2.

[16] *Id.*

[17] *See* 47 CFR 1.1200 *et seq.*

written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable, .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

12. *Comments and Replies.* Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments and Reply Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'').[18]

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

13. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

14. *People with Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

15. *Additional Information.* For additional information on this proceeding, contact Kim Matthews, *Kim.Matthews@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2154. Press contact: Janice Wise (202–418–8165; *Janice.Wise@fcc.gov*).

Federal Communications Commission.

William T. Lake,

Chief, Media Bureau.

[FR Doc. 2013–16487 Filed 7–8–13; 8:45 am]

BILLING CODE 6712–01–P

[18] *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2013–0073]

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

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

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2011, including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2011. The preliminary theft data indicate that the vehicle theft rate for CY/MY 2011 vehicles (0.10 thefts per thousand vehicles) significantly decreased by 91.45 percent from the theft rate for CY/MY 2010 vehicles (1.17 thefts per thousand vehicles). Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before September 9, 2013.

ADDRESSES: You may submit comments identified by Docket No. NHTSA–2012–0073 by any of the following methods:

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

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

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

• *Fax:* 202–493–2251.

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

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

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

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202)

366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR Part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

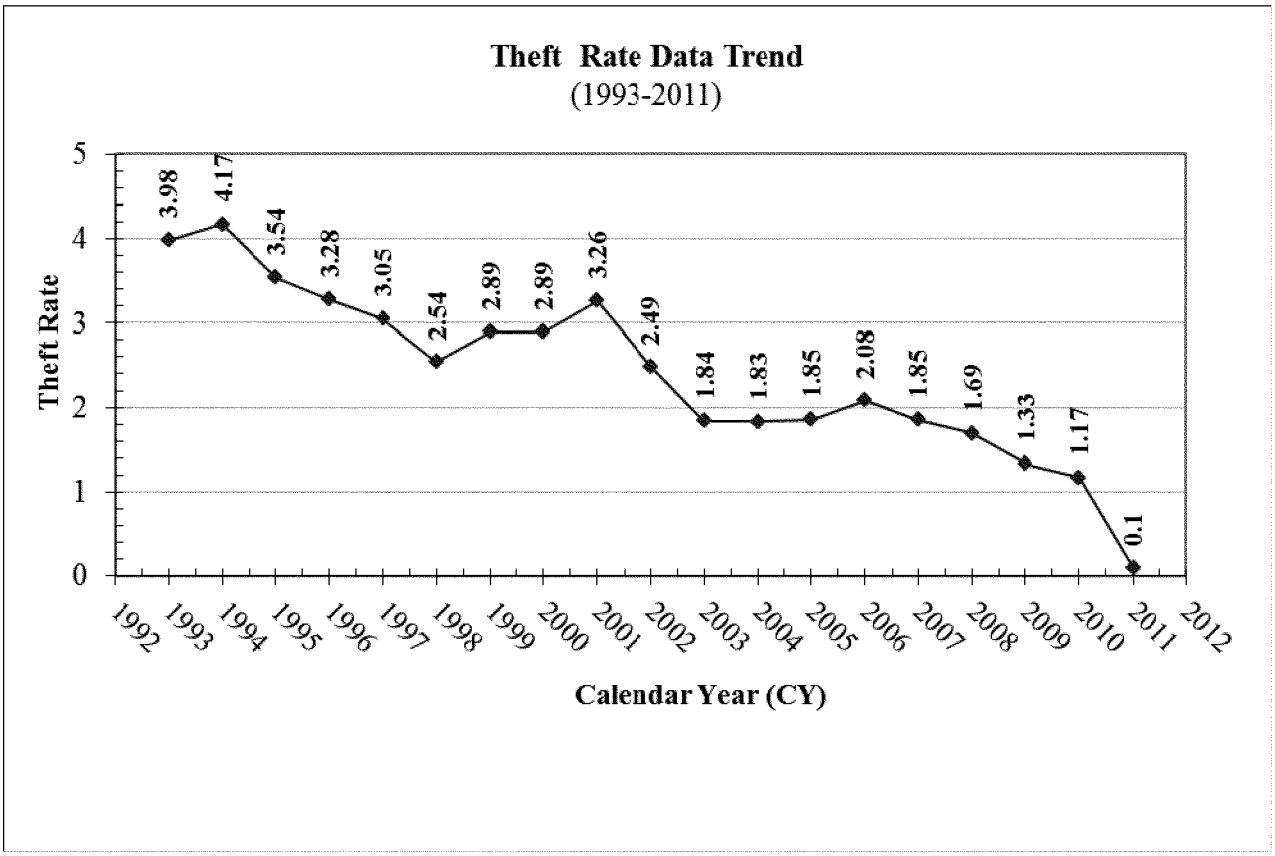
The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the section 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2010 the most recent calendar year for which data are available.

In calculating the 2011 theft rates, NHTSA followed the same procedures it has used since publication of the 1983/1984 theft rate data (50 FR 46669, November 12, 1985). The 2011 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2011 vehicles of that line stolen during calendar year 2011 by the total number of vehicles in that line manufactured for MY 2011, as reported to the Environmental Protection Agency (EPA). As in all previous reports, NHTSA's data were based on information provided to NHTSA by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a government system that receives vehicle theft information from approximately 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The preliminary 2011 theft data show a significant decrease in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2010 (For 2010 theft data, see 77 FR 58500, September 21, 2012). The preliminary theft rate for MY 2011 passenger vehicles stolen in calendar year 2011 decreased to 0.10 thefts per thousand vehicles produced, a decrease of 91.45 percent from the rate of 1.17 thefts per thousand vehicles experienced by MY vehicles in CY 2010. For MY 2011 vehicles, out of a total of 226 vehicle lines, four lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991 (See 59 FR 12400, March 16, 1994). Of the four vehicle lines with a theft rate higher than 3.5826, four are passenger car lines, none are multipurpose passenger vehicle lines, and none are light-duty truck lines.

The agency believes that the theft rate reduction is a result of several factors, including vehicle parts marking; the increased use of standard antitheft devices and other advances in electronic technology (i.e., immobilizers) and theft prevention methods; increased and improved prosecution efforts by law enforcement organizations; and, increased public awareness which may have contributed to the overall reduction in vehicle thefts. The preliminary MY 2011 theft rate reduction is consistent with the general decreasing trend of theft rates over the past 19 years as indicated by Figure 1.

Figure 1: Theft Rate Data Trend (1993-2011)



Theft rate per thousand vehicles produced

In Table I, NHTSA has tentatively ranked each of the MY 2011 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given in the **FOR FURTHER INFORMATION CONTACT** section, and two copies from which the purportedly confidential information has been deleted should be submitted to the docket. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2011 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2011

	Manufacturer	Make/model (line)	Thefts 2011	Production (mfr's) 2011	2011 Theft rate (per 1,000 vehicles produced)
1	CHRYSLER	DODGE CHARGER	216	44,849	4.8162
2	MITSUBISHI	GALANT	71	16,728	4.2444
3	GENERAL MOTORS	CADILLAC STS	18	4,637	3.8818
4	LAMBORGHINI	GALLARDO	1	259	3.8610
5	HYUNDAI	ACCENT	106	30,231	3.5063
6	GENERAL MOTORS	CHEVROLET IMPALA	591	172,098	3.4341
7	GENERAL MOTORS	CHEVROLET HHR	230	68,454	3.3599
8	GENERAL MOTORS	CHEVROLET AVEO	142	42,367	3.3517
9	NISSAN	INFINITI FX35	21	6,711	3.1292
10	NISSAN	GT–R	1	326	3.0675
11	KIA	RIO	51	18,803	2.7123
12	PORSCHE	PANAMERA	22	8,144	2.7014
13	CHRYSLER	DODGE CHALLENGER	60	24,237	2.4756
14	NISSAN	VERSA	229	97,410	2.3509
15	FORD MOTOR CO	MERCURY GRAND MARQUIS	23	10,050	2.2886
16	NISSAN	SENTRA	213	95,341	2.2341
17	NISSAN	ALTIMA	387	179,269	2.1588
18	AUDI	AUDI A8	10	4,751	2.1048
19	MAZDA	6	52	25,456	2.0427
20	GENERAL MOTORS	CHEVROLET CAMARO	196	97,518	2.0099
21	MERCEDES-BENZ	S–CLASS	19	9,652	1.9685
22	TOYOTA	MATRIX	9	4,588	1.9616
23	GENERAL MOTORS	CHEVROLET MALIBU	400	211,025	1.8955
24	MITSUBISHI	ENDEAVOR	22	12,018	1.8306
25	CHRYSLER	DODGE AVENGER	73	41,013	1.7799
26	CHRYSLER	DODGE CALIBER	65	37,104	1.7518
27	KIA	FORTE	91	52,119	1.7460
28	FORD MOTOR CO	MUSTANG	107	61,620	1.7365
29	SAAB	9–3	3	1,750	1.7143
30	GENERAL MOTORS	CADILLAC DTS	28	17,146	1.6330
31	NISSAN	MAXIMA	101	62,836	1.6074
32	TOYOTA	CAMRY/SOLARA	781	486,288	1.6060
33	FORD MOTOR CO	TAURUS	118	76,821	1.5360
34	TOYOTA	YARIS	38	24,850	1.5292
35	AUDI	AUDI A3	10	6,734	1.4850
36	CHRYSLER	300	42	28,373	1.4803
37	FORD MOTOR CO	CROWN VICTORIA	27	19,244	1.4030
38	JAGUAR LAND ROVER	XJ	4	2,852	1.4025
39	FORD MOTOR CO	MERCURY MARINER	12	8,656	1.3863
40	FORD MOTOR CO	FOCUS	127	91,762	1.3840
41	MERCEDES-BENZ	CLS–CLASS	2	1,472	1.3587
42	HONDA	ACURA ZDX	1	737	1.3569
43	NISSAN	INFINITI G25/G37	72	53,917	1.3354
44	MAZDA	RX–8	1	768	1.3021
45	MASERATI	GRANTURISMO	2	1,545	1.2945
46	MAZDA	3	123	97,252	1.2648
47	BENTLEY MOTORS	CONTINENTAL	1	809	1.2361
48	MERCEDES-BENZ	C–CLASS	74	60,373	1.2257
49	SUZUKI	SX4	16	13,280	1.2048
50	KIA	SEDONA VAN	20	16,717	1.1964
51	HYUNDAI	ELANTRA	119	99,916	1.1910
52	NISSAN	CUBE	17	14,294	1.1893
53	HYUNDAI	SONATA	350	301,276	1.1617
54	HONDA	CIVIC	158	136,721	1.1556
55	TOYOTA	SCION XB	23	19,909	1.1553
56	VOLVO	S40	5	4,352	1.1489
57	SUZUKI	KIZASHI	7	6,110	1.1457
58	CHRYSLER	JEEP LIBERTY	65	57,104	1.1383
59	FORD MOTOR CO	FUSION	239	211,964	1.1276
60	AUDI	AUDI A6	8	7,108	1.1255
61	CHRYSLER	200	72	64,140	1.1225
62	CHRYSLER	DODGE NITRO	40	35,638	1.1224
63	KIA	SPORTAGE	50	45,604	1.0964
64	NISSAN	INFINITI M37/M56	16	14,818	1.0798
65	BMW	7	13	12,087	1.0755
66	TOYOTA	SCION TC	20	18,637	1.0731
67	KIA	OPTIMA	69	64,320	1.0728

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2011 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2011—Continued

	Manufacturer	Make/model (line)	Thefts 2011	Production (mfr's) 2011	2011 Theft rate (per 1,000 vehicles produced)
68	FORD MOTOR CO	LINCOLN TOWN CAR	15	14,209	1.0557
69	HONDA	CR–Z	17	16,421	1.0353
70	MERCEDES-BENZ	GLK–CLASS	21	21,303	0.9858
71	TOYOTA	COROLLA	215	223,032	0.9640
72	FORD MOTOR CO	LINCOLN MKT	4	4,274	0.9359
73	VOLVO	S80	4	4,281	0.9344
74	BMW	M3	7	7,575	0.9241
75	GENERAL MOTORS	GMC CANYON PICKUP	6	6,510	0.9217
76	TOYOTA	LEXUS GS	5	5,485	0.9116
77	FORD MOTOR CO	LINCOLN MKS	12	13,171	0.9111
78	VOLVO	C30	5	5,530	0.9042
79	JAGUAR LAND ROVER	LAND ROVER LR2	3	3,333	0.9001
80	MITSUBISHI	ECLIPSE	5	5,610	0.8913
81	GENERAL MOTORS	CHEVROLET CORVETTE	11	12,353	0.8905
82	HYUNDAI	SANTA FE	62	69,685	0.8897
83	HYUNDAI	GENERAL MOTORSSIS	26	29,398	0.8844
84	GENERAL MOTORS	BUICK LUCERNE	28	31,887	0.8781
85	SUZUKI	VITARA/GRAND VITARA	5	5,704	0.8766
86	VOLKSWAGEN	JETTA/GLI	128	148,313	0.8630
87	PORSCHE	CAYMAN	1	1,199	0.8340
88	KIA	SOUL	80	96,970	0.8250
89	JAGUAR LAND ROVER	XK/XKR	3	3,662	0.8192
90	MERCEDES-BENZ	E–CLASS	61	74,557	0.8182
91	BMW	B7	10	12,493	0.8005
92	GENERAL MOTORS	BUICK LACROSSE/ALLURE	49	62,533	0.7836
93	FORD MOTOR CO	EDGE	105	134,206	0.7824
94	HONDA	ACURA TL	10	12,807	0.7808
95	HONDA	ACCORD	173	221,250	0.7819
96	CHRYSLER	JEEP PATRIOT	41	53,153	0.7714
97	GENERAL MOTORS	CADILLAC CTS	43	57,930	0.7423
98	VOLVO	C70	5	6,867	0.7281
99	HONDA	ACCORD CROSSTOUR	9	12,388	0.7265
101	KIA	SORENTO	121	168,443	0.7183
102	TOYOTA	LEXUS IS	22	30,811	0.7140
103	FORD MOTOR CO	FIESTA	55	77,183	0.7126
104	AUDI	AUDI R8	1	1,416	0.7062
105	HONDA	ACURA MDX	36	51,201	0.7031
106	NISSAN	PATHFINDER	22	31,439	0.6998
107	GENERAL MOTORS	BUICK REGAL	35	50,439	0.6939
108	BMW	1	9	13,131	0.6854
109	AUDI	AUDI A4/A5	29	42,875	0.6764
110	NISSAN	370Z	4	6,218	0.6433
111	FORD MOTOR CO	ESCAPE	133	207,528	0.6409
112	CHRYSLER	JEEP WRANGLER	66	103,837	0.6356
113	GENERAL MOTORS	CHEVROLET COLORADO PICKUP	16	25,283	0.6328
114	BMW	5	42	66,525	0.6313
115	MERCEDES-BENZ	SL–CLASS	2	3,188	0.6274
116	HONDA	INSIGHT	8	12,924	0.619
117	HONDA	ELEMENT	7	11,460	0.6108
118	BMW	3	100	164,060	0.6095
119	MAZDA	2	11	18,108	0.6075
120	TOYOTA	SCION XD	4	6,609	0.6052
121	JAGUAR LAND ROVER	XF	7	11,734	0.5966
122	AUDI	AUDI Q5	14	23,731	0.5900
123	CHRYSLER	JEEP COMPASS	25	42,921	0.5825
124	MAZDA	CX–9	17	29,203	0.5821
125	VOLKSWAGEN	TIGUAN	15	25,785	0.5817
126	TOYOTA	TACOMA PICKUP	71	122,520	0.5795
127	HONDA	ACURA RDX	9	15,590	0.5773
128	GENERAL MOTORS	CHEVROLET CRUZE	100	177,381	0.5638
129	MAZDA	CX–7	21	37,655	0.5577
130	BMW	Z4/M	3	5,450	0.5505
131	TOYOTA	RAV4	100	181,785	0.5501
132	GENERAL MOTORS	CADILLAC SRX	32	59,077	0.5417
133	VOLKSWAGEN	CC	7	13,003	0.5383
134	CHRYSLER	DODGE JOURNEY	17	32,094	0.5297
135	VOLKSWAGEN	EOS	1	1,908	0.5241

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2011 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2011—Continued

	Manufacturer	Make/model (line)	Thefts 2011	Production (mfr's) 2011	2011 Theft rate (per 1,000 vehicles produced)
136	NISSAN	ROGUE	72	138,221	0.5209
137	FORD MOTOR CO	FLEX	17	32,847	0.5176
138	AUDI	AUDI S4/S5	4	7,820	0.5115
139	PORSCHE	911	3	5,892	0.5092
140	NISSAN	FRONTIER PICKUP	23	47,081	0.4885
141	SUBARU	IMPREZA	24	49,315	0.4867
142	VOLVO	XC90	5	10,641	0.4699
143	TOYOTA	SIENNA VAN	87	187,467	0.4641
144	TOYOTA	4RUNNER	26	56,942	0.4566
145	TOYOTA	HIGHLANDER	38	87,503	0.4343
146	TOYOTA	VENZA	18	42,351	0.4250
147	SUBARU	LEGACY	21	50,878	0.4128
148	HYUNDAI	TUCSON	32	78,643	0.4069
149	FORD MOTOR CO	LINCOLN MKX	11	27,119	0.4056
150	MITSUBISHI	LANCER	11	28,316	0.3885
151	HONDA	PILOT	63	163,910	0.3844
152	NISSAN	JUKE	16	42,380	0.3775
153	NISSAN	MURANO	21	56,539	0.3714
154	HYUNDAI	AZERA	1	2,699	0.3705
155	FORD MOTOR CO	LINCOLN MKZ	9	24,752	0.3636
156	TOYOTA	FJ CRUISER	4	11,018	0.3630
157	HONDA	ACURA TSX	8	22,189	0.3605
158	GENERAL MOTORS	CHEVROLET EQUINOX	67	188,476	0.3555
159	BMW	MINI COOPER	17	48,663	0.3493
160	FORD MOTOR CO	RANGER PICKUP	34	99,043	0.3433
161	MITSUBISHI	OUTLANDER	12	35,054	0.3423
162	VOLVO	S60	1	2,951	0.3389
163	FORD MOTOR CO	MERCURY MILAN	2	6,291	0.3179
164	VOLKSWAGEN	GOLF/RABBIT/GTI	10	31,726	0.3152
165	NISSAN	QUEST VAN	5	16,012	0.3123
166	MAZDA	TRIBUTE	1	3,206	0.3119
167	HONDA	FIT	13	41,694	0.3118
168	HYUNDAI	EQUUS	1	3,305	0.3026
169	TOYOTA	AVALON	17	56,692	0.2999
170	SUBARU	OUTBACK	37	129,071	0.2867
171	MERCEDES-BENZ	SMART FORTWO	1	3,542	0.2823
172	HONDA	CR–V	70	255,339	0.2742
173	NISSAN	XTERRA	6	21,983	0.2729
174	GENERAL MOTORS	GMC TERRAIN	22	83,531	0.2634
175	BMW	X3	6	23,188	0.2588
176	HONDA	ODYSSEY VAN	25	103,550	0.2414
177	TOYOTA	LEXUS RX	18	76,526	0.2352
178	TOYOTA	LEXUS ES	10	44,249	0.2260
179	FORD MOTOR CO	TRANSIT CONNECT VAN	6	28,091	0.2136
180	TOYOTA	LEXUS LS	2	9,861	0.2028
181	TOYOTA	LEXUS CT	2	10,216	0.1958
182	MAZDA	MX–5 MIATA	1	5,464	0.1830
183	TOYOTA	PRIUS	22	133,660	0.1646
184	NISSAN	INFINITI EX35	1	6,118	0.1635
185	SUBARU	FORESTER	11	74,829	0.1470
186	VOLVO	XC60	4	36,854	0.1085
187	HYUNDAI	VERACRUZ	1	10,861	0.0921
188	LOTUS	EVORA	0	347	0.0000
189	ASTON MARTIN	DB9	0	86	0.0000
190	ASTON MARTIN	V8 VANTAGE	0	259	0.0000
191	ASTON MARTIN	DBS	0	104	0.0000
192	ASTON MARTIN	RAPIDE	0	317	0.0000
193	AUDI	AUDI TT	0	1,434	0.0000
194	AUDI	AUDI S6	0	159	0.0000
195	BENTLEY MOTORS	MULSANNE	0	235	0.0000
196	BMW	X5	0	37,865	0.0000
197	BMW	X6	0	4,430	0.0000
198	BMW	ACTIVE HYBRID 7L	0	584	0.0000
199	ROLLS ROYCE	DROPHEAD COUPE CONVERTIBLE	0	82	0.0000
200	FERRARI	458	0	662	0.0000
201	FERRARI	599	0	247	0.0000
202	FERRARI	612 SCAGLIETTI	0	1	0.0000

PRELIMINARY REPORT OF THEFT RATES FOR MODEL YEAR 2011 PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2011—Continued

	Manufacturer	Make/model (line)	Thefts 2011	Production (mfr's) 2011	2011 Theft rate (per 1,000 vehicles produced)
203	FERRARI	CALIFORNIA	0	518	0.0000
204	GENERAL MOTORS	CADILLAC FUNERAL COACH/ HEARSE.	0	752	0.0000
205	GENERAL MOTORS	CADILLAC LIMOUSINE	0	488	0.0000
206	GENERAL MOTORS	PONTIAC G3	0	243	0.0000
207	GENERAL MOTORS	CHEVROLET VOLT	0	4,370	0.0000
208	HONDA	ACURA RL	0	1,012	0.0000
209	KIA	RONDO	0	109	0.0000
210	KIA	BORREGO	0	14	0.0000
211	LOTUS	ELISE	0	232	0.0000
212	MASERATI	QUATTROPORTE	0	635	0.0000
213	MERCEDES-BENZ	SLK–CLASS	0	1,288	0.0000
214	MERCEDES-BENZ	CL–CLASS	0	723	0.0000
215	MERCEDES-BENZ	F–CELL	0	44	0.0000
216	MERCEDES-BENZ	SLS–CLASS	0	863	0.0000
217	PORSCHE	BOXSTER	0	1,967	0.0000
218	ROLLS ROYCE	PHANTOM	0	67	0.0000
219	ROLLS ROYCE	GHOST	0	854	0.0000
220	SAAB	9–5	0	2,034	0.0000
221	SUBARU	B9 TRIBECA	0	2,780	0.0000
222	SUZUKI	EQUATOR	0	2,160	0.0000
223	TOYOTA	LEXUS SC	0	45,155	0.0000
224	TOYOTA	LEXUS HS	0	2,356	0.0000
225	VOLVO	V50	0	865	0.0000
226	VOLVO	XC70	0	5,069	0.0000

Issued on: June 25, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–16428 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0071; 4500030113]

RIN 1018–AY21

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination for the Proposed Listing of the Lesser Prairie-Chicken as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the lesser prairie-chicken (*Tympanuchus pallidicinctus*) as a threatened species and reopen the comment period on the proposed rule to list the species. We are taking this action based on our finding that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our determination regarding the proposed listing rule, making it necessary to solicit additional information by reopening the comment period for 30 days.

DATES: The comment period end date is August 8, 2013. If you comment using the Federal eRulemaking Portal (see **ADDRESSES**), you must submit your comment by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2012–0071, which is the docket number for the proposed rule to list the lesser prairie-chicken as threatened. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to located the proposed rule. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Jontie Aldrich, Acting Field Supervisor, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; by telephone 918–581–7458; or by facsimile 918–581–7467. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2012, we published in the **Federal Register** a proposed rule (77 FR 73828) to list the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a grassland bird known from southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and the Texas Panhandle, as a threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*).

For a description of previous Federal actions concerning the lesser prairie-chicken, please refer to the proposed rule. The proposed listing rule had a 90-day comment period, ending March 11, 2013. We held a public meeting and hearing in Woodward, Oklahoma, on February 5, 2013; in Garden City, Kansas, on February 7, 2013; in Lubbock, Texas, on February 11, 2013; and in Roswell, New Mexico, on February 12, 2013. On May 6, 2013, we reopened the comment period on the proposed listing rule and proposed a special rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the lesser prairie-chicken (78 FR 26302). The reopening of the comment period closed June 20, 2013.

Section 4(b)(6) of the Act and its implementing regulation, 50 C.F.R. 424.17(a), requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

During the public comment periods, we received multiple comments on the proposed listing and the sufficiency or accuracy of the available data used to support the proposed listing. In particular, commenters raised questions regarding:

(1) The interpretation of scientific literature in the proposed rulemaking and scientific literature that we may have overlooked in our analysis. Specifically, commenters were concerned with the appropriateness of our interpretation of habitat fragmentation, grassland conversion, and collision mortality.

(2) Whether the Service considered the effectiveness of conservation practices of the oil and gas industry, and of agricultural practices, including grazing management, brush management, and water development, in relation to reducing threats. In particular, the U.S. Department of Agriculture provided a letter that questioned the adequacy of our evaluation of conservation measures associated with agricultural practices.

(3) The accuracy of short-term and long-term population trends of the lesser prairie-chicken, particularly as it relates to climate change. Specifically, commenters recommended a more thorough analysis of the U.S. Geological Survey's Great Plains modeling effort.

As a result of the public comments we have received, we find that there is substantial disagreement regarding the sufficiency or accuracy of the available data that is relevant to our determination of the proposed listing. Therefore, in consideration of these disagreements, we have determined that a 6-month extension of final determination of this rulemaking is warranted, and we are hereby extending the final determination for up to 6 months in order to solicit information that will help to clarify these issues and to fully analyze this information.

As noted in the proposed listing rule (77 FR 73828), we were previously required by the terms of judicially approved settlement agreement to make a final determination on the lesser prairie-chicken proposed listing rule no later than September 30, 2013. Therefore, with this 6-month extension, we will make a final determination on the proposed rule no later than March 30, 2014.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing for the lesser prairie-chicken that was published in the **Federal Register** on December 11, 2012 (77 FR 73828), and on our proposed 4(d) special rule for the species that was published in the **Federal Register** on May 6, 2013 (78 FR 26302). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposals be as accurate as possible and based on the best available scientific and commercial data.

In consideration of the disagreements surrounding the data used to support the proposed rulemaking, we are extending the final determination for 6 months in order to solicit information that will help to clarify these issues. We are particularly interested in new information and comments regarding:

(1) The historical and current status and distribution of the lesser prairie-chicken, its biology and ecology, specific threats (or lack thereof) and regulations that may be addressing those threats, and ongoing conservation measures for the species and its habitat.

(2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of the species' 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.

(3) Application of the Lesser Prairie-Chicken Interstate Working Group's draft rangewide conservation plan to our determination of status under section 4(a)(1) of the Act; we particularly request comments or information to help us assess the certainty that the rangewide conservation plan will be effective in conserving the lesser prairie-chicken and will be implemented.

(4) Which areas would be appropriate as critical habitat for the species and why areas should or should not be proposed for designation as critical habitat, including whether any threats to the species from human activity would be expected to increase due to the designation and whether that increase in threat would outweigh the benefit of designation such that the designation of critical habitat may not be prudent.

(5) Specific information on:

(a) The amount and distribution of habitat for the lesser prairie-chicken;

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why; and

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(6) Information on the projected and reasonably likely impacts of climate change on the lesser prairie-chicken and its habitat.

(7) Whether measures outlined in the proposed 4(d) special rule are necessary and advisable for the conservation and management of the lesser prairie-chicken.

(8) Additional provisions the Service may wish to consider for the proposed 4(d) special rule in order to conserve, recover, and manage the lesser prairie-chicken.

If you previously submitted comments or information on the proposed listing rule or proposed special 4(d) rule, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this proposed listing will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0071, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0071, or by mail from the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 26, 2013.

Stephen Guertin,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2013–16111 Filed 7–8–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 131
Tuesday, July 9, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Cancellation of July 9 President's Global Development Council Meeting

AGENCY: United States Agency for International Development.

ACTION: Notice of cancellation of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of cancellation of the meeting of the President's Global Development Council (GDC) on Tuesday, July 9, 2013 in the Eisenhower Executive Office Building, South Court Auditorium, Pennsylvania Avenue and 17th Street NW., Washington, DC 20050 which was published in the **Federal Register** on June 24, 2013, 78 FR 37775.

A new meeting date and time will be forthcoming.

FOR FURTHER INFORMATION CONTACT: Jayne Thomisee, 202–712–5506.

Dated: July 1, 2013.

Jayne Thomisee,

Executive Director & Policy Advisor, U.S. Agency for International Development.

[FR Doc. 2013–16396 Filed 7–8–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 2, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by August 8, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725–17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Imported Seed and Screening.

OMB Control Number: 0579–0124.

Summary of Collection: The United States Department of Agriculture (USDA) is responsible for preventing plant diseases or insect pests from entering the United States, preventing the spread of pests not widely distributed in the United States, and eradicating those imported pests when eradication is feasible. Under the authority of the Federal Seed Act of 1939, as amended, the USDA regulates the importation and interstate movement of certain agricultural and vegetable seeds. The Plant Protection & Quarantine Division of USDA's Animal & Plant Health Inspection Service (APHIS) has established a seed analysis program with Canada that allows U.S. companies that import seed for cleaning or processing, to enter into compliance agreements with APHIS. This program eliminates the need for sampling shipments of Canadian-origin seed at the border, and allows certain seed importers to clean seed without the direct supervision of an APHIS inspector. APHIS will collect information using forms PPQ 925, Seed Analysis Certificate and PPQ 519, Compliance Agreement, and other information activities to enable the importation of seeds for cleaning and processing so that they can enter into compliance agreements with USDA.

Need and Use of the Information: APHIS will collect information from PPQ 925 and PPQ 519 to ensure that imported seeds do not pose a health threat to U.S. agriculture. If the information were not collected there would be no way of preventing noxious weeds from entering the United States.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 1,168.

Frequency of Responses: Recordkeeping: Reporting: On occasion.

Total Burden Hours: 9,588.

Animal and Plant Health Inspection Service

Title: National Animal Health Monitoring System (NAHMS); Equine Herpesvirus Study.

OMB Control Number: 0579–0399.

Summary of Collection: Collection and dissemination of animal health data and information is mandated by 7 U.S.C. 391, the Animal Industry Act of 1884, which established the precursor of the Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), the Bureau of Animal Industry. Legal requirements for examining and reporting on animal disease control methods were further mandated by 7 U.S.C. 8308 of the Animal Health Protection Act, ''Detection, Control, and Eradication of Diseases and Pests,'' May 13, 2002. APHIS is conducting an Equine Herpesvirus Myeloencephalopathy (EHM) study as part of an ongoing series of NAHMS studies on the U.S. livestock population. The purpose of the study is to collect information using questionnaires to identify risk factors for the neurologic form of equine herpesvirus (EHV–1) in horses called EHM. EHV–1 is an infection of horses that can cause

respiratory disease, abortion in mares, neonatal foal death, and/or neurologic disease. The information collected through the Equine Herpesvirus study will be analyzed and organized into descriptive reports and/or peer reviewed publications.

Need and Use of the Information: APHIS will use the data collected from the EHM study to: (1) Understand the risk factors for EHM; (2) make recommendations for disease control; and (3) provide guidance on the best ways to mitigate future outbreaks based on a thorough analysis of the data. Without the information on outbreaks of EHM, the U.S.' ability to understand the risk factors would be reduced or nonexistent.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 626.

Frequency of Responses: Reporting: Other: One time.

Total Burden Hours: 778.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–16359 Filed 7–8–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Request for Proposals for 2013 Statewide Wood Energy Teams

AGENCY: U.S. Forest Service, USDA.

ACTION: Request for proposals.

SUMMARY: The Department of Agriculture (USDA), Forest Service, State and Private Forestry (S&PF), is providing leadership and funding on behalf of a USDA, multi-agency, Wood To Energy Initiative by offering a Request For Proposals (RFP) that supports collaborative, statewide wood energy teams that advance the installation of commercially viable wood energy systems. Public-private statewide teams are invited to seek funding to support the development of geographic or business sector-based clusters of wood energy projects. Activities may include, but are not limited to, workshops and assistance that provide technical, financial and environmental information; preliminary engineering assessments; and community outreach needed to support development of wood energy projects in both the public and private sectors.

DATES: Application Deadline: Monday, August 5, 2013.

ADDRESSES: All applications shall be sent to the Wood Education and Resource Center (WERC): Wood Education and Resource Center, U.S. Forest Service, 301 Hardwood Lane, Princeton, WV 24740, Phone: (304) 487–1510, Email: *werc@fs.fed.us*.

Detailed information regarding what to include in the application, eligibility, and necessary prerequisites for consideration are available at *http://www.na.fs.fed.us/werc* and at *www.grants.gov.* Paper copies of the information are also available by contacting the U.S. Forest Service, Wood Education and Resource Center (WERC), 301 Hardwood Lane, Princeton, West Virginia 24740, (304) 487–1510.

FOR FURTHER INFORMATION CONTACT: For questions regarding the application or administrative regulations, contact your appropriate Forest Service Regional Biomass Coordinator as listed in the addresses below or contact Steve Milauskas (*smilauskas@fs.fed.us*) or Ed Cesa (*ecesa@fs.fed.us*) at the Wood Education and Resource Center, Princeton, WV (304) 487–1510. For additional contact information, please see **SUPPLEMENTARY INFORMATION**.

SUPPLEMENTARY INFORMATION:

Additional Contact Information

- Forest Service Region 1 (MT, ND, Northern ID & Northwestern SD), ATT: Angela Farr, USDA Forest Service, Northern Region (R1), Federal Building, 200 East Broadway, Missoula, MT 59807, *afarr@fs.fed.us,* (406) 329–3521
- Forest Service Region 2 (CO, KS, NE, SD, & WY), ATT: Rick Cooksey, USDA Forest Service, Rocky Mountain Region (R2), 740 Simms St., Golden, CO 80401–4702, *rcooksey@fs.fed.us,* (303) 275–5750
- Forest Service Region 3 (AZ & NM), ATT: Dennis Dwyer, USDA Forest Service, Southwestern Region (R3), 333 Broadway Blvd. SE., Albuquerque, NM 87102, *ddwyer@fs.fed.us,* (505) 842–3480
- Forest Service Region 4 (Southern ID, NV, UT, & Western WY), ATT: Scott Bell, USDA Forest Service, Intermountain Region (R4), Federal Building, 324 25th St., Ogden, UT 84401, *sbell@fs.fed.us,* (801) 625–5259
- Forest Service Region 5 (CA, HI, Guam and Trust Territories of the Pacific Islands), ATT: Larry Swan, USDA Forest Service, Pacific Southwest Region (R5), 1323 Club Drive, Vallejo, CA 95492–1110, *lswan01@fs.fed.us,* (707) 562–8917
- Forest Service Region 6 (OR & WA), ATT: Ron Saranich, USDA Forest Service, Pacific Northwest Region (R6), 333 SW 1st Ave., Portland, OR 97204, *rsaranich@fs.fed.us,* (503) 808–2346
- Forest Service Region 8 (AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA, Virgin Islands & Puerto Rico), ATT: Dan Len, USDA Forest Service, Southern Region (R8), 1720 Peachtree Rd. NW., Atlanta, GA 30309, *dlen@fs.fed.us,* (404) 347–4034
- Forest Service Region 9 (CT, DL, IL, IN, IA, ME, MD, MA, MI, MN, MO, NH, NJ, NY, OH, PA, RI, VT, WV, WI), ATT: Lew McCreery, Northeastern Area—S&PF, 180 Canfield St., Morgantown, WV 26505, *lmccreery@fs.fed.us,* (304) 285–1538
- Forest Service Region 10 (Alaska), ATT: Daniel Parrent, USDA Forest Service, Alaska Region (R10), 161 East 1st Avenue, Door 8, Anchorage, AK 99501, *djparrent@fs.fed.us,* (907) 743–9467

The agreements awarded pursuant to this RFP may support one or more goals of Public Law 110–234, *Food, Conservation, and Energy Act of 2008, Rural Revitalization Technologies (7 U.S.C. 6601),* Consolidated and Further Continuing Appropriations Act, 2013, Public Law 113–6 and the nationwide challenge of disposing of woody residues from wildland fire hazardous fuels, other forest management treatments, and manufacturing residuals while expanding renewable energy opportunities in rural areas and markets for ecosystem restoration projects. Goals of the program are to:

- Create wood energy systems using commercially available technologies that use woody biomass.
- Expand markets that convert woody biomass into energy to support wildfire mitigation, forest restoration, and other forest management goals.
- Develop a systematic approach to installations that will support clusters of projects or larger projects that improve the viability of businesses that harvest, process, and deliver wood.
- Support the development or expansion of statewide wood energy teams that can provide technical, financial and environmental information required for developing wood energy projects to reduce the use of fossil fuels, including but not limited to:
  - Pre-feasibility and preliminary engineering assessments.
  - Education and outreach to support the installation of commercially available wood energy systems in the public and private sectors.
  - Innovative approaches to managing and financing wood energy project development.

Cooperative Agreement Requirements

1. Eligibility Information

a. Eligible Applicants. Eligible applicants are State, local and Tribal governments, non-profit organizations, or public utilities districts. Applicants may be either or both of the fiscal and administrative agents for the funding.

b. Cost Sharing (Matching Requirement). Applicants must demonstrate at least a 1:1 non-Federal match of the amount received through the Cooperative Agreement. The match amount can be either cash or in-kind contributions. For example, if the Forest Service provides $250,000 through the Cooperative Agreement, $200,000 could be provided in cash and $50,000 could be provided by in-kind contributions from non-Federal partners. In-kind salary contributions from Federal partners in the statewide teams do not qualify as match.

2. Award Information

Total funding anticipated for awards is $1 million for the FY 2013 Statewide Wood Energy Teams. Individual Cooperative Agreements cannot exceed $250,000. The Federal government's obligation under this program is contingent upon the availability of funds. Cooperative Agreements exist for three to five years from the date of award. Written performance reports and financial reports shall be required and submitted to the appropriate office as described in the final Cooperative Agreement. Ten percent of funding will be held by the administrator of the Cooperative Agreement until reporting is completed. Cooperative Agreements require Forest Service personnel to have substantial involvement in projects.

3. Application Requirements

This program requires that teams have had prior working experience or demonstrate capacity to form and develop effective working teams immediately upon award of funding. The following are key elements applicants will need to include in their application submission:

a. Applicants must include a list of team members and what agencies, organizations, businesses or interests they represent, and why this particular team composition and representation will enable successful implementation of the proposed work plan. Evidence of outreach or description of what has been done to date to incorporate participation from underserved communities must be described. Letters of commitment from individual members or institutions to participate as part of the team should be included in an appendix.

b. Applicants shall explain how and why the team was begun and its accomplishments to date. Applicants must describe team management structure and what individuals fill what roles. Proposed teams should describe prior working relationships and accomplishments as a team or demonstrate their capacity to function as an effective team. If a formal strategic or organizational plan exists, it can be included as an appendix. In addition, there should be evidence of prior ability to leverage resources and/or a clear plan with experienced individuals assigned that will implement the team's plan to leverage resources, sufficient at minimum for the 1:1 match requirement.

c. Applicants shall include the geographic scope of the team's work. Most teams will operate statewide. If a sub-state level team is proposed, the importance of operating at that scale will need to be justified. Only one team per state will be funded. Multi-state proposals will not be considered at this time. However, regional coordination across state lines can improve a team's effectiveness. An applicant can submit individual proposals for multiple states, but must have letters of support from officials in each state.

d. Applicants must include a proposed program of work for the life of the agreement which could be for a period of three to five years. The program of work will include a statement of need and specific goals and/or objectives that articulates how the team plans to accomplish the installation of clusters of wood energy projects or larger projects. It will include expected timeframes and methods for identifying target areas, outreach to accomplish installations, engineering assessments, financing, addressing sustainability issues, and other tasks as appropriate. This section should also identify potential challenges and uncertainties that could have a significant impact on the program of work.

e. Applicants will estimate of the number of systems planned, under construction, and installed for each year and the total length of the agreement period. Systems should be commercially available with a track record of successful operation, not experimental or demonstration systems. If the team has been functioning and has some projects in process, it is appropriate to show how this agreement will facilitate completion of these projects and provide a list of the projects already underway.

4. Application Evaluation

Applications will be evaluated against the criteria discussed in Section 5. All applications will be screened to ensure compliance with the administrative requirements as set forth in this RFP. Applications not following the directions for submission shall be disqualified without appeal. Directions can be found at *http://www.na.fs.fed.us/werc/* under 2013 Statewide Wood Energy Teams.

The appropriate Forest Service Region/Area shall provide guidance on completing the RFP during the application development process. The nationwide competition will consist of a technical review of the proposed projects by Federal experts or their designees. Panel reviewers independently evaluate each proposal for merit and assign a score using the criteria listed in Section 5. Selected proposals shall be submitted to the Forest Service national leadership, who make the final decision on the selected proposals.

5. Evaluation Criteria and Point System

Reviewers will assign points to each proposal based on their ability to meet the following criteria. A maximum of 100 total points can be earned per proposal.

- Alignment with statewide wood energy team goals identified in RFP (20 points),
- Knowledge and skills of team members and composition of teams (20 points),
- Team management and leveraged resources (20 points),
- Program of work, budget, and projected accomplishments (20 points),
- Communication; outreach; and methodology for announcing, selecting and providing project assistance (20 points).

6. Application Information

a. Application Submission. Applications shall be postmarked on or before *August 5, 2013.* No Exceptions. One paper copy and an electronic version shall be submitted to U.S. Forest Service, Wood Education and Resource Center, 301 Hardwood Lane, Princeton, West Virginia 24740. Electronic versions shall be submitted to *werc@fs.fed.us.* In addition, applications may also be submitted electronically through *www.grants.gov.*

b. Application Format and Content. Each submittal shall be in PDF or Word format. Paper copy shall be single sided on 8.5- by 11-inch plain white paper only (no colored paper, over-sized paper, or special covers). Do not staple.

Submit all parts of the application at one time. Do not submit Letters of Commitment separately. No proposals will be accepted by facsimile machine. Use an 11-point font or larger. All forms and application template can be found at *http://www.na.fs.fed.us/werc* under 2013 Statewide Wood Energy Teams.

A complete application includes the following items:

1. SWET Project Application, Part 1: Cooperator Contact Information
2. SWET Project Application, Part 2: Narrative Proposal and Program of Work
3. SWET Project Application, Part 3: Financial Forms

A maximum of 11 pages per proposal for the items listed below will be accepted,

(1) Qualifications and Summary Portfolio of Team Members (Limit 1.5 Pages)

- *Include each team member's name, affiliation, and years of experience in wood energy, including combustion technology, wood sourcing, financing, and community outreach.*
- *Describe outreach to underserved communities for participation or what has been done to incorporate participation from underserved communities.*
- *Include a description of prior working relationships and accomplishments as a team, including Memoranda of Understanding (MOUs), charters, or other formal agreements.*

(2) Project Narrative (3.5 Pages)

- *Describe how the team will be managed and which individuals will fill which roles.*
- *Describe the team's experience leveraging funds and its plan to leverage funds to support the team's operation and achieve the required 1:1 match.*
- *Describe methods for selecting areas of focus (e.g. geographic clusters, business sectors or larger projects to be targeted).*
- *Describe methods for solicitation and selection of projects.*
- *Include the proposed geographic area where the team will work and the number of years requested for the agreement.*

(3) Program of Work (3.5 Pages)

- *Describe statement of need and specific goals and objectives.*
- *Describe projected accomplishments and deliverables, including estimated number of systems planned, under construction, and installed.*
- *Describe communication and outreach activities that create social acceptance in communities where projects are targeted.*
- *Describe monitoring plan, including annual and final reports provided to agreement administrator, which will include summaries of community outreach activities, preliminary assessments, resource inventories, success stories, etc.*
- *Describe timeframe for activities described.*

(4) Budget Summary and Justification in Support of SF 424A (2 Pages)

- *Address proposed expenditures in relation to the proposed program of work.*
- *Include cash and in kind match, other federal funds and staff time that may help accomplish the program of work, and fee structure for fee-for-services, if planned.*

(5) Project Outcomes, Annual Progress Reports and Final Reports (0.5 Pages)

- *List anticipated project outcomes and accomplishments, as well as desired results.*
- *Describe types of reports, documents, and success stories that will be provided at the end of the project to be posted to the WERC Web site.*
- *Annual progress reports are required on an annual calendar year basis. The reports will provide an overview of accomplishments by goals and objectives included in the approved Cooperative Agreement narrative.*
- *A detailed final progress report is required and should include the following items:*
  - ○ *Final Summary Report—A brief overview of accomplishments by goals and objectives included in the approved Cooperative Agreement narrative.*
  - ○ *Final Accomplishment Report—includes various assessments, reports, case studies and related documents that resulted from project activities.*

Final reports will be added to the WERC Statewide Wood Energy Team Web site.

7. Appendices

The following information shall be included in appendices:

a. *Letters of Commitment from Team Members or Institutions:* Letters of commitment shall be included in an appendix and are intended to display willingness to participate in the wood energy team. These letters shall include commitments of cash or in-kind services from all those listed in the SF 424 and SF 424A. Each letter of support is limited to one page in length.

b. *Documentation of Team Member or Institution Experience with Wood Energy:* Additional information about team member or institutional experience with wood energy should be provided in this appendix.

c. *Documentation of Formal Agreements, Charters, etc. (optional):* Provide any written formal organizational framework that will guide the operation of the team such as MOUs, State Incorporation papers, or other instruments which establish the capacity and ability of the team to function and manage their actions.

d. *Federal Funds:* List all other Federal funds received for this Wood Energy Team within the last three years. List agency, program name, and dollar amount.

e. *Administrative Forms:* SF 424, SF 424A, SF 424B and AD 1047, 1049, 3030 and certificate regarding lobbying activities are standard forms that shall be included in the application. These forms can be accessed at *http://www.na.fs.fed.us/werc* under 2013 Statewide Wood Energy Teams.

Dated: July 1, 2013.

James Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. 2013–16361 Filed 7–8–13; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Massachusetts Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Massachusetts Advisory Committee to the Commission will convene at 12:00 p.m. (ET) on Wednesday, July 24, 2013, at the McCarter and English Law Office, 265 Franklin Street, Boston, MA 02110. The purpose of the meeting is for project planning.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by Monday, August 26, 2013. Comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, faxed to (202) 376–7548, or emailed to *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at 202–376–7533.

Persons needing accessibility services should contact the Eastern Regional Office at least 10 working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

The meetings will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on July 2, 2013.

David Mussatt,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2013–16336 Filed 7–8–13; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Generic Clearance for Questionnaire Pretesting Research.

OMB Control Number: 0607–0725.

Form Number(s): Various.

Type of Request: Extension of a currently approved collection.

Burden Hours: 16,500 over the next three years.

Number of Respondents: 5,500 annually.

Average Hours per Response: 1 hour.

Needs and Uses: In recent years, there has been an increased interest among federal agencies and others in the importance of testing questionnaires. This interest has been spurred by a recognition that the traditional methods of pretesting are weak tools for evaluating questionnaires and procedures. These methods consist of a small ''hothouse'' field test accompanied by interviewer debriefing, and the information collected through their use is quite limited in its ability to detect and diagnose problems with the instruments and the procedures being tested.

In response to this recognition, new methods have come into popular use, which are useful for identifying questionnaire and procedural problems, suggesting solutions, and measuring the relative effectiveness of alternative solutions. Through the use of these kinds of techniques, employed routinely in the testing phase of Census Bureau surveys, questionnaires can be simplified for respondents, respondent burden can be reduced, and the quality of the questionnaires used in continuing and one-time surveys can be improved. Thus an increase in the quality of the data collected through these surveys can be achieved as well.

In September 1991, the Census Bureau requested and received a generic clearance (Number 0607–0725) on an experimental basis, which relaxed some of the time constraints and enabled the Census Bureau to begin conducting extended cognitive and questionnaire design research as part of testing for its censuses and surveys. The clearance covered data collections in the demographic, economic, and decennial areas of the Bureau, and specifically applied to research that is focused on questionnaire design and procedures aimed at reducing measurement errors in surveys. Research on paying respondents was specifically excluded from the clearance. As part of the experimental clearance, the Census Bureau submitted to the Office of Management and Budget (OMB) a report that contained indicators of the work that was conducted under the clearance. At the end of the experimental period, the Census Bureau requested and received a three-year renewal of the clearance (through December 1995), covering the same kinds of research activities. As part of the clearance, the Census Bureau has submitted to OMB a report of pretesting activities at the end of each year of the clearance.

Subsequently, the Census Bureau has received six more three-year renewals of the generic clearance for pretesting (through August 2013). The current clearance contains approval for three additional types of activities: Research about incentives, expanded field tests conducted to include split sample questionnaire experiments in multiple panels, and usability testing of electronic instruments.

At this time, the Census Bureau is seeking another three-year renewal of the generic clearance for pretesting, with the same conditions as the previous clearance. This will enable the Census Bureau to continue providing support for pretesting activities, which is important given the length of time required to plan the activities.

The specific methods proposed for coverage by this clearance are described below. Also outlined are the procedures in place for keeping the Economics and Statistics Administration and OMB informed about the identity of the surveys and the nature of the research activities being conducted.

The methods proposed for use in questionnaire development are as follows:

Field test. For the purposes of this clearance, we are defining field tests as small data collection efforts of 500 cases or less, conducted among either purposive or statistically representative samples, for which evaluation of the questionnaire and/or procedures is the main objective and no plans to publish the data other than for purely methodological purposes are envisioned.

Field tests are an essential component of this clearance package because they serve as the vehicle for conducting standardized behavior coding of the interaction between the respondent and the interviewer. This methodology does not require any additional data collection above and beyond the field test—it involves applying a standardized coding scheme to the completion of a field interview, either by a coder using a tape-recording of the interview or by a ''live'' observer at the time of the interview. The coding scheme is designed to identify situations that occur during the interview that reflect problems with the questionnaire. For example, if respondents frequently interrupt the interviewer before the question is completed, the question may be too long. If respondents frequently give inadequate answers, this suggests there are some other problems with the question. Quantitative data derived from this type of standardized coding scheme can provide valuable information to identify problem areas in a questionnaire, and research (''New Techniques for Pretesting Survey Questions'' by Cannell, Kalton, Oksenberg, Bischoping, and Fowler, 1989) has demonstrated that this is a more objective and reliable method of identifying problems than the traditional interviewer debriefing, which is typically the sole tool used to evaluate the results of a traditional field test.

Interviewer debriefing has advantages as well, since it utilizes the knowledge of the employees who have the closest contact with our respondents. In conjunction with other methods, we plan to use this method in our field tests to collect information about how interviewers react to the survey instruments.

Field tests conducted under this clearance will involve either purposive or statistically representative samples. Under this clearance a variety of surveys will be pretested, and the exact nature

of the surveys and the samples is undetermined at present. However, due to the small nature of the tests, we expect that some will not involve representative samples. In these cases, samples will basically be convenience samples, which will be limited to specific geographic locations and may involve expired rotation groups of a current survey or census blocks that are known to have specific aggregate demographic characteristics. The needs of the particular sample will vary based on the content of the survey being tested, but the selection of sample cases will not be completely arbitrary in any instance.

Respondent debriefing questionnaire. In this method, standardized debriefing questionnaires are administered to respondents who have participated in a field test. The debriefing form is administered at the end of the questionnaire being tested, and contains questions that probe to determine how respondents interpret the questions and whether they have problems in completing the survey/questionnaire. This structured approach to debriefing enables quantitative analysis of data from a representative sample of respondents, to learn whether respondents can answer the questions, and whether they interpret them in the manner intended by the questionnaire designers.

Split sample experiments. This involves testing alternative versions of questionnaires, at least some of which have been designed to address problems identified in draft questionnaires or questionnaires from previous survey waves. The use of multiple questionnaires, randomly assigned to permit statistical comparisons, is the critical component here; data collection can include mail, telephone, or personal visit interviews or group sessions at which self-administered questionnaires are completed. Comparison of revised questionnaires against a control version, preferably, or against each other facilitates statistical evaluation of the performance of alternative versions of the questionnaire.

In any split sample experiments conducted under this clearance, alternative questionnaire versions will be tested. The number of versions tested and the number of cases per version will depend on the objectives of the test. We cannot specify with certainty a minimum panel size, although we would expect that no questionnaire versions would be administered to less than fifty persons in a split sample test.

Split sample tests that incorporate methodological questionnaire design experiments will have a larger maximum sample size (up to several hundred cases per panel) than field tests using other pretest methods. This will enable the detection of statistically significant differences, and facilitate methodological experiments that can extend questionnaire design knowledge more generally for use in a variety of Census Bureau data collection instruments. The Census Bureau will consult with OMB prior to submission regarding split sample tests with sample sizes over 1000.

Cognitive interviews. This method involves intensive, one-on-one interviews in which the respondent is typically asked to ''think aloud'' as he or she answers survey questions. A number of different techniques may be involved, including asking respondents to paraphrase questions, probing questions asked to determine how respondents came up with their answers, and so on. The objective is to identify problems of ambiguity or misunderstanding, or other difficulties respondents may have answering questions. This is frequently the first stage of revising a questionnaire.

Usability Interviews. This method involves getting respondent input to aid in the development of automated questionnaires and Web sites and associated materials. A number of different techniques may be involved, such as one-on-one usability interviews with think aloud, probing, and paraphrasing tasks, card-sorting techniques, and disability accommodation testing. The objective is to identify problems that keep respondents from completing automated questionnaires accurately and efficiently, with minimal burden or that prevent respondents from successfully navigating Web sites and finding the information they seek.

Focus groups. This method involves group sessions guided by a moderator, who follows a topical outline containing questions or topics focused on a particular issue, rather than adhering to a standardized questionnaire. Focus groups are useful for surfacing and exploring issues (e.g., confidentiality concerns) which people may feel some hesitation about discussing.

This clearance will only cover pretests that involve more extensive testing than the traditional field test with interviewer debriefing as the only evaluative component. Since the types of surveys included under the umbrella of the clearance are so varied, it is impossible to specify at this point what kinds of activities would be involved in any particular test. But at a minimum, one of the types of testing described above or some other form of cognitive pretesting would be incorporated into the testing program for each survey.

We will provide OMB with a copy of questionnaires, protocols, and debriefing materials in advance of any testing activity. Depending on the stage of questionnaire development, this may be the printed questionnaire from the last round of a survey or a revised draft based on analysis of other evaluation data. When the time schedule for a single survey permits multiple rounds of testing, the questionnaire(s) for each round will be provided separately. When split sample experiments are conducted, either in small group sessions or as part of a field test, all the questionnaires to be used will be provided. For a test of alternative procedures, the description and rationale for the procedures would be submitted. A brief description of the planned field activity will also be provided. OMB will endeavor to provide comments on substantive issues within 10 working days of receipt.

Any large field tests or dress rehearsals that follow from the initial questionnaire development activity included here are not covered by this generic clearance. Separate submissions for any such data collection efforts will be made.

The Census Bureau will consult with the Economics and Statistics Administration (ESA) and OMB prior to submission on the appropriateness of submissions under this clearance that may raise policy or substantive issues. With respect to ESA, this will include all research and testing related to the American Community Survey (ACS) and any testing of any activities directly related to the 2020 decennial. In addition, the Census Bureau will consult with ESA on any research and testing proposals that are presented to the Data Stewardship Executive Policy (DSEP) Committee. Consultation with ESA includes the Census Bureau providing copies of questionnaires, protocols, and debriefing materials in advance of any of the above-mentioned activities.

The Census Bureau will send ESA and OMB an annual report at the end of each year summarizing the number of hours used, as well as the nature and results of the activities completed under this clearance.

The information collected in this program of developing and testing questionnaires will be used by staff from the Census Bureau and sponsoring agencies to evaluate and improve the quality of the data in the surveys and censuses that are ultimately conducted. None of the data collected under this

clearance will be published for its own sake.

Because the questionnaires being tested under this clearance are still in the process of development, the data that result from these collections are not considered official statistics of the Census Bureau or other Federal agencies. Data will be included in research reports prepared for sponsors inside and outside of the Census Bureau. The results may also be prepared for presentations related to survey methodology at professional meetings or publications in professional journals.

Affected Public: Individuals or households, business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be Title 13, Sections 131, 141, 161, 181, 182, 193, and 301 for Census Bureau-sponsored surveys, and Title 13 and 15 for surveys sponsored by other Federal agencies. We do not now know what other titles will be referenced, since we do not know what survey questionnaires will be pretested during the course of the clearance.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: July 3, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–16489 Filed 7–8–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Proposed Information Collection; Comment Request; Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 9, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230, or via email at *jjessup@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Sarahelen Thompson, Acting Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone: (202) 606–9660; fax: (202) 606–5318; or via email at *Sally.Thompson@bea.gov.*

SUPPLEMENTARY INFORMATION:

1. Abstract

The Annual Survey of U.S. Direct Investment Abroad (Form BE–11) obtains financial and operating data covering the operations of U.S. parents and their foreign affiliates, including their balance sheets; income statements; property, plant, and equipment; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The survey is a sample survey that covers all foreign affiliates above a size-exemption level and their U.S. parents. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is conducted every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies.

No changes to the survey forms or reporting requirements are proposed.

II. Method of Collection

Survey forms are sent to potential respondents in March of each year; responses covering a reporting company's fiscal year ending during the previous calendar year are due by May 31. A report must be filed by each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock (or the equivalent) in a foreign business enterprise and that meets the additional conditions detailed in Form BE–11.

As an alternative to filing paper forms, BEA offers an electronic filing option, the eFile system, for use in reporting on Form BE–11. For more information about eFile, go to *www.bea.gov/efile.*

Potential respondents are those U.S. parents that reported owning foreign business enterprises in the 2009 benchmark survey of U.S. direct investment abroad, along with entities that subsequently entered the direct investment universe. The data collected are sample data. Universe estimates are developed from the reported sample data.

III. Data

OMB Control Number: 0608–0053.

Form Number: BE–11.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,900 U.S. parents filing for their U.S. operations and for 18,700 foreign affiliates.

Estimated Time per Response: 91 hours is the average, but may vary considerably among respondents because of differences in company structure, size, and complexity.

Estimated Total Annual Burden Hours: 172,600.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended by Pub. L. 98–573 and Pub. L. 101–533).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of

the Agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 2, 2013.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2013–16330 Filed 7–8–13; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Special Comprehensive License

AGENCY: Bureau of Industry and Security.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 9, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Special Comprehensive License (SCL) procedure authorizes multiple shipments of items from the U.S. or from approved consignees abroad who are approved in advance by the Bureau of Industry and Security (BIS) to conduct the following activities: servicing, support services, stocking spare parts, maintenance, capital expansion, manufacturing, support scientific data acquisition, reselling and reexporting in the form received, and other activities as approved on a case-by-case basis. An application for an SCL requires submission of additional supporting documentation, such as the company's internal control program. This additional information is needed by BIS to ensure that the requirements and the restrictions of this procedure are strictly observed.

II. Method of Collection

Submitted on paper forms.

III. Data

OMB Control Number: 0694–0089.

Form Number(s): BIS–752P, BIS–752A.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 64.

Estimated Time Per Response: 30 minutes to 40 hours.

Estimated Total Annual Burden Hours: 542.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 2, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–16302 Filed 7–8–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Foreign Availability Procedures

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before September 9, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, *Lawrence.Hall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information is collected in order to respond to requests by Congress and industry to make foreign availability determinations in accordance with Section 768 of the Export Administration Regulations. Exporters are urged to voluntarily submit data to support the contention that items controlled for export for national security reasons are available-in-fact, from a non-U.S. source, in sufficient quantity and of comparable quality so as to render the control ineffective.

II. Method of Collection

Submitted electronically or on paper.

III. Data

OMB Control Number: 0694–0004.

Form Number(s): N/A.

Type of Review: Regular submission (extension of a currently approved information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2.

Estimated Time per Response: 255 hours.

Estimated Total Annual Burden Hours: 510.

Estimated Total Annual Cost to Public: $20.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 2, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–16301 Filed 7–8–13; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC399

Fisheries of the Northeast Region, Southeast Region, North Pacific Region, Pacific Region; Western Pacific Region

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

ACTION: Notification of a determination of overfishing or an overfished condition.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that the following stocks are subject to overfishing or are in an overfished state: Georges Bank (GB) yellowtail flounder is subject to overfishing and continues to be in an overfished condition; Bering Sea and Aleutian Islands (BSAI) octopus complex was determined to be subject to overfishing; both North Pacific Pribilof Islands blue king crab, and South Atlantic red porgy were found to be in an overfished condition; Pacific bluefin tuna (*Thunnus orientalis*), which is jointly managed by the Pacific Fisheries Management Council and the Western Pacific Fisheries Management Council, continues to be subject to overfishing and is now in an overfished condition.

NMFS, on behalf of the Secretary, notifies the appropriate fishery management council (Council) whenever it determines that overfishing is occurring, a stock is in an overfished condition, a stock is approaching an overfished condition, or when a rebuilding plan has not resulted in adequate progress toward ending overfishing and rebuilding affected fish stocks.

FOR FURTHER INFORMATION CONTACT: Mark Nelson, (301) 427–8565.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS, on behalf of the Secretary, must notify Councils whenever it determines that a stock or stock complex is: overfished; approaching an overfished condition; or an existing rebuilding plan has not ended overfishing or resulted in adequate rebuilding progress. NMFS also notifies Councils when it determines a stock or stock complex is subject to overfishing. Section 304(e)(2) further requires NMFS to publish these notices in the **Federal Register**.

On December 4, 2012, NMFS informed the New England Fishery Management Council that the latest stock assessment for Georges Bank yellowtail flounder overfishing was occurring, and the stock remains in an overfished condition.

On December 5, 2012, at the North Pacific Fishery Management Council meeting, NMFS reported to the Council that the catch of the BSAI octopus complex exceeded the overfishing limit (OFL) for the 2011 fishing year, therefore the stock was determined to be subject to overfishing.

On January 24, 2013, NMFS also notified the North Pacific Fishery Management Council that the latest assessment has found that Pribilof Islands blue king crab remains in an overfished condition, even though fishing mortality has been limited to levels well below OFL. Unfavorable environmental conditions, resulting in poor recruitment, are thought to be a large factor in the stock's decline.

NMFS informed the South Atlantic Fishery Management Council of the status of red porgy at their December 2012 Council meeting. At this meeting NMFS scientists presented the results from the latest stock assessment showing that red porgy remains in an overfished condition but is no longer experiencing overfishing.

On April 8, 2013, NMFS informed both the Pacific Fishery Management Council and Western Pacific Fishery Management Council that the latest assessment of Pacific bluefin tuna conducted by the International Scientific Committee for Tuna and Tuna-Like Species in the North Pacific Ocean (ISC) concluded that the stock is still experiencing overfishing and is now in an overfished condition. The Southwest Fisheries Science Center affirmed that the ISC stock assessment was the best available science.

Pacific bluefin tuna is considered to be a single North Pacific-wide stock. Its conservation and management are the responsibility of the Western and Central Pacific Fisheries Commission and the Inter-American Tropical Tuna Commission. The United States is a member of both regional fishery management organizations. Although both regional fisheries management organizations have internationally agreed upon management measures in place for Pacific bluefin tuna, these measures are inadequate to end overfishing. NMFS has determined that Section 304(i) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) applies because: (i) The overfished and overfishing condition of Pacific bluefin is due to excessive international fishing pressure and (ii) the IATTC and WCPFC have inadequate measures in place to correct the problem. Therefore, the Councils are not required to prepare an FMP amendment to end overfishing, but must undertake action under MSA Section 304(i)(2).

This section requires the Council, or the Secretary, to develop domestic regulations to address the relative impact or the domestic fishing fleet; and to develop recommendations for the Secretary of State, and to Congress, to address international actions to end overfishing and rebuild Pacific bluefin tuna.

Dated: July 2, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–16510 Filed 7–8–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC711

Endangered Species; File No. 18102

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the North Carolina Department of Environment and Natural Resources, Division of Marine Fisheries (NCDMF) has applied in due form for a permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The permit application is for the incidental take of Atlantic sturgeon (*A. oxyrinchus*) associated with the otherwise lawful commercial and recreational fisheries operating in estuarine waters and deploying anchored gill nets (i.e., passive gill net sets deployed with an anchor or stake at one or both ends of the nets). The duration of the proposed permit is 10 years. NMFS is providing this notice in order to allow other agencies and the public an opportunity to review and comment on the application materials. All comments received will become part of the public record and will be available for review.

DATES: Written comments must be received at the appropriate address or fax number (see **ADDRESSES**) on or before August 8, 2013.

ADDRESSES: The application is available for download and review at *http://www.nmfs.noaa.gov/pr/permits/esa_review.htm* under the section heading ESA Section 10(a)(1)(B) Permits and Applications. The application is also available upon written request or by appointment in the following office: Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; phone (301) 427–8403; fax (301) 713–4060.

You may submit comments, identified by the following document number, NOAA–NMFS–2013–0104, by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0104.* Click the ''Comment Now'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* (301)713–4060; Attn: Therese Conant or Angela Somma.
- *Mail:* Submit written comments to Endangered Species Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; Attn: Therese Conant or Angela Somma.

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

FOR FURTHER INFORMATION CONTACT: Therese Conant or Angela Somma, (301) 427–8403.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the 'taking' of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

NMFS received a draft permit application from NCDMF on April 5, 2012. Based on our review of the draft application, we requested further information and clarification. On December 19, 2012, NCDMF submitted an updated draft application. Based on review of the updated draft, NMFS and NCDMF held further discussions on a monitoring program to gather improved estimates of Atlantic sturgeon bycatch and a better understanding of population impacts. On June 28, 2013, NCDMF submitted a revised complete application for the take of ESA-listed Atlantic sturgeon Gulf of Maine, New York Bight, Chesapeake, Carolina, and South Atlantic Distinct Population Segments that may be caught in gill net fisheries operating in estuarine waters and deploying anchored gill nets (i.e., passive gill net sets deployed with an anchor or stake at one or both ends of the nets).

NCDMF is requesting a total annual incidental take of Atlantic sturgeon in gillnet fisheries as follows: Large mesh (≥ 5.0 ISM) = 2,203 (of which 101 are lethal); small mesh (≤ 5.0 ISM) = 724 (of which 68 are lethal). NCDMF and NMFS agreed to enter an Implementing Agreement, which would allow for the first three-years of monitoring data collected under the permit to be analyzed to verify the requested total annual incidental take. As data are gathered and analyzed through the monitoring program, NMFS will amend the permit to reflect any changes in the take estimate, if appropriate.

Conservation Plan

NCDMF's conservation plan describes measures to minimize, monitor, and mitigate the incidental take of ESA-listed Atlantic sturgeon. The conservation plan includes commercial and recreational gill net fisheries operating in estuarine waters and deploying anchored gill nets as regulated through fisheries rules adopted by the North Carolina Marine Fisheries Commission and proclamations issued by the NCDMF director. Regulations include mandatory attendance, yardage limits, mesh size restrictions, minimum distance between fishing operations, gear marking requirements, soak-time restrictions, net shot limits, net height tie down requirements, closed areas, and monitoring and reporting requirements. The conservation plan includes an adaptive management and monitoring program, fisheries reduction, extensive outreach, additional Atlantic sturgeon research, and timely response to ''hotspots'' where Atlantic sturgeon interactions are unusually high. NCDMF's monitoring program largely is funded through state appropriations and is supplemented through other sources such as the Atlantic Coastal Cooperative Statistics Program and the National Fish and Wildlife Foundation.

NCDMF considered and rejected five other alternatives: (1) No change to anchored gill net operations; (2) statewide closure of fisheries; (3) statewide reduction in large mesh gill net operations; (4) statewide reduction in gill net effort through weekly closures; and (5) statewide reduction in small mesh gill net operations.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS intends to prepare an Environmental Assessment to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments received during the comment period to determine whether the application meets the requirements of section 10(a) of the ESA. If NMFS determines that the requirements are met, a permit will be issued for incidental takes of ESA-listed sturgeon. The final NEPA and permit determinations will not be made until after the end of the comment period. NMFS will publish a record of its final action in the **Federal Register**.

Dated: July 2, 2013.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–16355 Filed 7–8–13; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The National Civilian Community Corps Advisory Board gives notice of the following meeting:

DATE AND TIME: Tuesday, July 16, 2013, 2:30 p.m.–3:30 p.m. (ET).

PLACE: Conference Room #8312, 8th Floor, Corporation for National and Community Service Headquarters, 1201 New York Avenue NW., Washington, DC 20525.

CALL-IN INFORMATION: This meeting is available to the public through the following toll-free call-in number: 888–456–0335 conference call access code number 7475. Kate Raftery will be the lead on the call. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Corporation will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Replays are generally available one hour after a call ends. The toll-free phone number for the replay is 800–871–1327, replay passcode 1657. The end replay date: August 16, 2013, 10:59 p.m. (CT).

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Meeting Convenes
- Call to Order, Welcome, and Preview of Today's Meeting Agenda
- Introduction & Acknowledgements

II. Approval of Previous Meeting's Minutes

III. Director's Report

IV. Program Reports
- Projects and Partnerships
- Policy and Operations
- 20th Anniversary Plans
- Member Development

V. Public Comment

VI. Special Recognition
- Resolution—3 Board Members

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person by 5:00 p.m. Friday, July 12, 2013.

CONTACT PERSON FOR MORE INFORMATION: Erma Hodge, NCCC, Corporation for National and Community Service, 9th Floor, Room 9802B, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–6696. Fax (202) 606–3459. TTY: (800) 833–3722. Email: *ehodge@cns.gov.*

Dated: July 3, 2013.

Valerie E. Green,

General Counsel.

[FR Doc. 2013–16583 Filed 7–5–13; 4:15 pm]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0128]

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Defense Finance and Accounting Service (DFAS) 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 September 9, 2013.

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 Defense Finance and Accounting Services—Indianapolis, DFAS–ZPR. ATTN: La Zaleus D. Leach, 8899 E. 56th St., Indianapolis, IN 46249, *Lazaleus.Leach@DFAS.MIL,* 317–212–6032.

Title, Associated Form, and OMB Number: Request for Information Regarding Deceased Debtor, DD Form 2840, OMB Number 0730–0015.

Needs and Uses: This form is used to obtain information on deceased debtors from probate courts. Probate courts review their records to see if an estate was established. They provide the name and address of the executor or lawyer

handling the estate. From the information obtained, DFAS submits a claim against the estate for the amount due the United States.

Affected Public: Clerks of Probate Courts.

Annual Burden Hours: 167 hours.

Number of Respondents: 2,000.

Responses per Respondent: 1.

Average Burden per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DFAS maintains updated debt accounts and initiates debt collection action for separated military members, out-of-service civilian employees, and other individuals not on an active federal government payroll system. When notice is received that an individual debtor is deceased, an effort is made to ascertain whether the decedent left an estate by contacting clerks of probate courts. If it's determined that an estate was established, attempts are made to collect the debt from the estate. If no estate appears to have been established, the debt is written off as uncollectible.

Dated: July 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2013–16303 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–40]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–40 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

JUN 27 2013

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding Transmittal No. 13-40, which supersedes Transmittal No. 13-35 concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to France for defense articles and services. Transmittal No. 13-35 stated an incorrect total case value. Transmittal No. 13-40 corrects total case value and makes no other changes to the previous Congressional Notification package. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

For William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 13–40

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* France

(ii) *Total Estimated Value:*

Major Defense Equipment*	$ .765 billion
Other	$ .735 billion
Total	$1.500 billion

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

16 MQ–9 Reaper Remotely Piloted Aircraft
8 Mobile Ground Control Stations
48 Honeywell TPE331–10T Turboprop Engines (16 installed and 32 spares)
24 Satellite Earth Terminal Substations
40 Ku Band Link-Airborne Communication Systems
40 General Atomics Lynx (exportable) Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) Systems
40 AN/DAS–1 Multi-Spectral Targeting Systems (MTS)-B
40 Ground Data Terminals
40 ARC–210 Radio Systems
40 Embedded Global Positioning System/Inertial Navigation Systems
48 AN/APX–119 and KIV–119 Identify Friend or Foe (IFF) Systems

Also provided are spare and repair parts, communication, test, and support equipment, publications and technical documentation, airworthiness and maintenance support, site surveys and beddown planning, personnel training and training equipment, operational

flight test, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support.

(iv) *Military Department:* Air Force (STE)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 27 June 2013

POLICY JUSTIFICATION

France—MQ–9 Reapers

The Government of France has requested a possible sale of:

16 MQ–9 Reaper Remotely Piloted Aircraft
8 Mobile Ground Control Stations (GCS)
48 Honeywell TPE331–10T Turboprop Engines (16 installed and 32 spares)
24 Satellite Earth Terminal Substations
40 Ku Band Link-Airborne Communication Systems
40 General Atomics Lynx (exportable) Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) Systems
40 AN/DAS–1 Multi-Spectral Targeting Systems (MTS)–B
40 Ground Data Terminals
40 ARC–210 Radio Systems
40 Embedded Global Positioning System/Inertial Navigation Systems
48 AN/APX–119 and KIV–119 Identify Friend or Foe (IFF) Systems

Also provided are spare and repair parts, communication, test, and support equipment, publications and technical documentation, airworthiness and maintenance support, site surveys and bed down planning, personnel training and training equipment, operational flight test, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated cost is $1.5 billion.

France is one of the major political and economic powers in Europe and the North Atlantic Treaty Organization (NATO) and an ally of the United States in the pursuit of peace and stability. It is vital to the U.S. national interest to assist France to develop and maintain a strong and ready self-defense capability. This potential sale will enhance the intelligence, surveillance, and reconnaissance (ISR) capability of the French military in support of national, NATO, United Nation-mandated, and other coalition operations. Commonality of ISR capabilities will greatly increase interoperability between the U.S. and French military and peacekeeping forces.

France requests these capabilities to provide for the defense of its deployed troops, regional security, and interoperability with the U.S. The proposed sale will improve France's capability to meet current and future threats by providing improved ISR coverage that promotes increased battlefield situational awareness, anticipates enemy intent, augments combat search and rescue, and provides ground troop support. France, which already has remotely piloted aircraft in its inventory, will have no difficulty absorbing this additional capability.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be General Atomics Aeronautical Systems, Inc. in San Diego, California. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to France and deployed location for U.S. contractor representatives to provide initial launch, recovery, and maintenance support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 13–40

Notice of Proposed Issuance of Letter of Offer

Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The MQ–9 Reaper is a long-endurance, high-altitude, Remotely Piloted Aircraft that can be used for surveillance, military reconnaissance, and targeting missions. Real-time missions are flown under the control of a pilot in a Ground Control Station (GCS). A data link is maintained that uplinks control commands and downlinks video with telemetry data. The data link can be a C-Band Line-of-Sight (LOS) communication or Ku–Band Over-the-Horizon Satellite Communication (SATCOM). Payload imagery and data are downlinked to a GCS. Pilots can change mission parameters as often as required. The aircraft can also be handed off to other strategically placed ground- or sea-based GCS. The MQ–9 air vehicle is a Missile Technology Control Regime (MTCR) Category 1 system, designed to carry 800 pounds of internal payload with maximum fuel and 3000 pounds of external payload. It can carry multiple mission payloads aloft with a range of 1800km. The MQ–9 will be configured for the following payloads: Electro-Optical/Infrared (EO/IR), Synthetic Aperture Radar (SAR), and laser designators. The MQ–9 systems will include the following components:

a. The GCS can be either fixed or mobile. The fixed GCS is enclosed in a customer-specified shelter. It incorporates workstations that allow operators to control and monitor the aircraft, as well as record and exploit downlinked payload data. The mobile GCS allows operators to perform the same functions and is contained on a mobile trailer. Workstations in either GCS can be tailored to meet customer requirements. The GCS, technical data, and documents are Unclassified.

b. The AN/DPY–1 Block 30 and AN/APY–8 Block 20 Lynx IIe Synthetic Aperture Radar and Ground Moving Target Indicator (SAR/GMTI) system provides all-weather surveillance, tracking and targeting for military and commercial customers from manned and unmanned vehicles. The AN/DPY–1 3 meter resolution can image up to a 10-km wide swath for wide-area surveillance. The Lynx IIe-9 (exportable) SAR/GMTI radar system and technical data/documents are Unclassified.

c. The Raytheon AN/DAS–1 Multi-Spectral Targeting System (MTS–B) is a multi-use infrared (IR), electro-optical (EO), and laser detecting ranging-tracking set, developed and produced for use by the U. S. Air Force on the MQ–9 Reaper. This advanced EO and IR system provides long-range surveillance, high altitude, target acquisition, tracking, range finding, and laser designation all tri-service and NATO laser-guided munitions.

d. The Raytheon AN/AAS–52 Multi-Spectral Targeting System (MTS–A) is a multi-use infrared (IR), electro-optical (EO), and laser detecting ranging-tracking set, developed and produced for use by the U. S. Air Force on the MQ–1 Predator. This advanced EO and IR system provides long-range surveillance, high altitude, target acquisition, tracking, range finding, and laser designation for all tri-service and NATO laser-guided munitions.

e. The MQ–9s systems offered to France are not capable of carrying external payloads and armament.

2. The MQ–9 Reaper Remotely Piloted Aircraft is Unclassified. The highest level of classified information required for training, operation, and maintenance is Secret.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this

proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2013–16315 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–31]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–31 with attached transmittal, and policy justification.

Dated: July 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUN 27 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-31, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Finland for defense articles and services estimated to cost $170 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

Transmittal No. 13–31

Notice of Proposed Issuance of Letter of Offer

Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

(i) *Prospective Purchaser:* Finland

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$0.0 million
Other	$170.0 million
Total	$170.0 million

* as defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* follow-on equipment and support for Finland's F–18 Mid-Life Upgrade (MLU) Program, consisting of F–18C/D Fleet Retrofit Kits of the following systems: 69 KIV–78s (Mode 5 Identification Friend or Foe), 69 AN/APX–11–30s (Combined Interrogator/Transponders), Multifunctional Information Distribution Systems, and 32 SUU–63 pylons. The proposed program support includes software test and integration center upgrades, flight testing, spare and repair parts, support and test equipment, transportation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (GAU)

(v) *Prior Related Cases:*

FMS case SAA—$2.4 billion—9Jun92
FMS case SAB—$702 million—7Feb94
FMS case GAD—$25 million—13Jul01
FMS case LBB—$63 million—4Aug01
FMS case LBC—$127 million—1Jan04
FMS case LBD—$252 million—25Jul07
FMS case LBH—$307 million—3Apr09

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(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 27 June 2013

POLICY JUSTIFICATION

Finland—F–18 Mid-Life Upgrade Program

The Government of Finland has requested a possible sale of follow-on equipment and support for Finland's F–18 Mid-Life Upgrade (MLU) Program, consisting of F–18C/D Fleet Retrofit Kits of the following systems: 69 KIV–78s (Mode 5 Identification Friend or Foe), 69 AN/APX–11–30s (Combined Interrogator/Transponders), Multifunctional Information Distribution Systems, and 32 SUU–63 pylons. The proposed program support includes software test and integration center upgrades, flight testing, spare and repair parts, support and test equipment, transportation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics support services, and other related elements of logistics support. The estimated cost is $170 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been, and continues to be an important force for political stability and economic progress in Europe.

The Finnish Air Force (FAF) intends to purchase the MLU Program equipment to extend the useful life of its F–18 fighter aircraft and enhance their survivability and communications connectivity. The FAF needs this upgrade to keep pace with technology advances in sensors, weaponry, and communications. Finland has extensive experience operating the F–18 aircraft and will have no difficulty incorporating the upgraded capabilities into its forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon in Waltham, Massachusetts; Lockheed Martin in Bethesda, Maryland; The Boeing Company in St. Louis, Missouri; BAE North America in Arlington, Virginia; General Electric in Fairfield, Connecticut; General Dynamics in West Falls Church, Virginia; Northrop Grumman in Falls Church, Virginia; and Rockwell Collins in Cedar Rapids, Iowa. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple trips to Finland involving U.S. Government and contractor representatives for technical reviews/support, program management, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2013–16314 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 13–27]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 13–27 with attached transmittal, and policy justification.

Dated: July 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUN 27 2013

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 13-27, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Qatar for defense articles and services estimated to cost $35 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

FOR William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE 5001–06–C

Transmittal No. 13–27

Notice of Proposed Issuance of Letter of Offer

Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Qatar

(ii) *Total Estimated Value:*

Major Defense Equipment* ..	$35 million
Other	$ 0 million
Total	$35 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 2 F117–PW–100 C–17 Globemaster III spare engines, support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. Government and contractor engineering, technical, and logistics support services, design and construction, and other related elements of logistics support.

(iv) *Military Department:* Air Force (QAB Amendment 4)

(v) *Prior Related Cases, if any:* FMS case QAB—$400M—9 Jul 08

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* 27 June 2013

POLICY JUSTIFICATION

Qatar—C–17 Globemaster III Equipment and Support

The Government of Qatar has requested a possible sale of 2 F117–PW–100 C–17 Globemaster III spare engines,

support equipment, publications and technical data, personnel training and training equipment, site surveys, U.S. Government and contractor engineering, technical, and logistics support services, design and construction, and other related elements of logistics support. The estimated cost is $35 million.

The proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will enhance Qatar's ability to operate and maintain its C–17s, supporting its capability to provide humanitarian aid in the Middle East and Africa region and support its troops in coalition operations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be Pratt and Whitney of East Hartford, Connecticut. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require multiple U.S. Government and contractor representatives to travel to the region to support the program.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2013–16313 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Federal Advisory Committee Meeting

AGENCY: DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Defense Business Board (DBB).

DATES: The public meeting of the Defense Business Board (hereafter referred to as ''the Board'') will be held on Thursday, July 25, 2013. The meeting will begin at 9:45 a.m. and end at 11:00 a.m. (Escort required; See guidance in ''Public's Accessibility to the Meeting'' paragraph.)

ADDRESSES: Room 3E863 in the Pentagon, Washington, DC (Escort required; See guidance in ''Public's Accessibility to the Meeting'' paragraph.)

FOR FURTHER INFORMATION CONTACT: The Board's Designated Federal Officer is Phyllis Ferguson, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Phyllis.Ferguson@osd.mil,* 703–695–7563. For meeting information please contact Ms. Debora Duffy, Defense Business Board, 1155 Defense Pentagon, Room 5B1088A, Washington, DC 20301–1155, *Debora.Duffy@osd.mil,* (703) 697–2168.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: At this meeting, the Board will deliberate the findings and draft recommendations from the ''Addressing Major Business Issues Facing the Department in the 2014 Quadrennial Defense Review'' Task Group. The Board will also receive an update from the Task Group on ''Best Practices by DoD to Achieve More Effective Participation by Industry.'' The mission of the Board is to examine and advise the Secretary of Defense on overall DoD management and governance. The Board provides independent advice which reflects an outside private sector perspective on proven and effective best business practices that can be applied to DoD.

Availability of Materials for the Meeting: A copy of the agenda and the terms of reference for the Task Group study may be obtained from the Board's Web site at *http://dbb.defense.gov/meetings.shtml.* Copies will also be available at the meeting.

Meeting Agenda

9:45 a.m.–10:45 a.m. Task Group Outbrief and Board Deliberations on ''Addressing Major Business Issues Facing the Department in the 2014 Quadrennial Defense Review''

10:45 a.m.–11:00 a.m. Task Group Update on ''Best Practices by DoD to Achieve More Effective Participation by Industry''

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR §§ 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and is on a first-come basis. All members of the public who wish to attend the public meeting must contact Ms. Debora Duffy at the number listed in **FOR FURTHER INFORMATION CONTACT** no later than 12:00 p.m. on Wednesday, July 17 to register and make arrangements for a Pentagon escort, if necessary. Public attendees requiring escort should arrive at the Pentagon Metro Entrance with sufficient time to complete security screening no later than 9:20 a.m. on Thursday, July 25. To complete security screening, please come prepared to present two forms of identification and one must be a pictured identification card.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Duffy at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Procedures for Providing Public Comments

Pursuant to 41 CFR §§ 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written comments to the Board about its mission and topics pertaining to this public meeting.

Written comments should be received by the DFO at least five (5) business days prior to the meeting date so that the comments may be made available to the Board for their consideration prior to the meeting. Written comments should be submitted via email to the address for the DFO given in **FOR FURTHER INFORMATION CONTACT** in either Adobe Acrobat or Microsoft Word format. Please note that since the Board operates under the provisions of the Federal Advisory Committee Act, as amended, all submitted comments and public presentations will be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Dated: July 2, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16343 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0030]

Proposed Collection; Comment Request

AGENCY: Air Force Chief of Chaplains Office (DOD/USAF/HQ AF/HC), Department of the Air Force, Department of Defense.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Air Force 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 September 9, 2013.

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 Chaplain Corps Accounting Center, 266 F Street, Suite 2, JBSA Randolph, TX 78150–4583, email *gary.gilliam.1@us.af.mil* or call (210) 652–5122 option 9.

Title; Associated Form; and OMB Number: AF Form 4356, Chapel Tithes and Offering Fund (CTOF) Purchase Request, AF Form 4357, Chapel Tithes and Offering Fund (CTOF) Monthly Statement of Contract Services, and AF Form 4360, Chapel Tithes And Offering Fund (CTOF) Electronic Funds Transfer EFT, OMB Control Number 0701–TBD.

Needs and Uses: The use of the AF Forms enables the request of advance funds for purchase of supplies for chapel projects, or for the payment of contract payments to Non-personnel Service Contracts between the local base chapel and each individual contractor. Air Force Instruction 52–105V2 requires that contract payments only be accomplished by EFT, the 4360 Form gives CCAC the information needed to pay by EFT.

Affected Public: Individuals or Households.

Annual Burden Hours: 6,250 hours.

Number of Respondents: 5,000.

Responses per Respondent: 5.

Average Burden per Response: 15 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Chaplain Corps Accounting Center (CCAC) requires the forms to be completed and submitted, to have all the information needed to process fund requests and payments. The calculation of average burden per response uses fifteen minutes as an average time for each form. The only members of the public that are affected are those who require funds from the CCAC.

Dated: July 3, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16440 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2013–0032]

Proposed Collection; Comment Request

AGENCY: Department of Defense/Department of the Air Force/Headquarters Air Force Personnel Center/Separation and Retirement Division.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Air Force 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 September 9, 2013.

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: Separation and Retirement Division (DPSOR), Air Force Personnel Center, ATTN: Gail Weber, 550 C Street West, Suite 3, Joint Base San Antonio, TX 78150–4713 or call 210–565–2461.

Title; Associated Form; and OMB Number: Request for Approval of Foreign Government Employment of Air Force Members; OMB Number 0701–0134.

Needs and Uses: The information collection requirement is to obtain the information needed by the Secretary of the Air Force and Secretary of State on which to base a decision to approve/

disapprove a request to work for a foreign government. This approval is specified by Title 37, United States Code, Section 908. This statute delegates such approval authority of Congress to the respective service secretaries and to the Secretary of State.

Affected Public: Individuals and households.

Annual Burden Hours: 10.

Number of Respondents: 10.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are Air Force retired members and certain Reserve members who have gained jobs with a foreign government and who must obtain approval of the Secretary of the Air Force and Secretary of State to do so. Information, in the form of a letter, includes a detailed description of duty, name of employer, Social Security Number, and statements specifying whether or not the employee will be compensated; declaring if the employee will be required or plans to obtain foreign citizenship; declaring that the member will not be required to execute an oath of allegiance to the foreign government; verifying that the member understands that that retired pay equivalent to the amount received from the foreign government may be withheld if he or she accepts employment with a foreign government before receiving approval. Reserve members only must include a request to be reassigned to Inactive Status List Reserve Section (Reserve Section Code RB). After verifying the status of the individual, the letter is forwarded to the Air Force Review Board for processing. If the signed letter is not included in the file, individuals reviewing the file cannot furnish the necessary information to the Secretary of the Air Force and Secretary of State on which a decision can be made. Requested information is necessary to maintain the integrity of the Request for Approval of Foreign Government Employment Program.

Dated: July 3, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16407 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2013–0029]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Navy 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 September 9, 2013.

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, Navy Recruiting Command (N35B), 5722 Integrity Drive, Millington, TN 38054–5057, or call at (901) 874–9048.

Title; Associated Form; and OMB Number: Enlistee Financial Statement: NAVCRUIT Form 1130/13; OMB Control Number 0703–0020.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, who have someone either fully or partially dependent on them for financial support, must provide information on their current financial situation which will determine if the individual will be able to meet their financial obligations on Navy pay.

The information is provided on NAVCRUIT Form 1130/13 by the prospective enlistee during an interview with a Navy recruiter.

Affected Public: Individuals or households.

Annual Burden Hours: 47,630.

Number of Respondents: 86,600.

Responses per Respondent: 1.

Average Burden per Response: 33 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information provided on the NAVCRUIT Form 1130/13 is used by the Navy recruiter and by recruiting management personnel in assessing the Navy applicant's ability to meet financial obligations, thereby preventing the enlistment of, and subsequent management difficulties with people who cannot reasonably expect to meet their financial obligations on Navy day.

Dated: July 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16404 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID USN–2013–0028]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Navy 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 September 9, 2013.

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 Assistant Chief of Information for Community Outreach, Office of the Chief of Navy Information, 2000 Navy Pentagon, Washington, DC 20350–2000.

Title; Associated Form; and OMB Number: U.S. Navy Chief of Information Sponsor Application; OMB Control Number 0703–0060.

Needs and Uses: This collection of information is necessary to automate an antiquated process facilitating embarks on Navy surface ships and submarines.

Affected Public: Members of the public who accept invitations to embark Navy surface ships and submarines.

Annual Burden Hours: 750.

Number of Respondents: 3000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Navy's Chief of Information proposes the establishment of a centralized system and database for those individuals who are embarking U.S. Navy ships as part of the Navy's Leaders to Sea program. Currently, the execution of this important community outreach program is done by hardcopy forms and fax. The establishment of a centralized system and database will automate the system, significantly improving its efficiency while reducing the overall paperwork required to execute the program.

Dated: July 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16406 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2013–0027]

Proposed Collection; Comment Request

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Navy 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 September 9, 2013.

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 Office of the Judge Advocate General, ATTN: Special Assistant for Strategic Planning (SASP). 1322 Patterson Ave SE., Suite 3000, Washington Navy Yard, DC 20374–5066, or call SASP at 202–685–5185.

Title; Associated Form; and OMB Number: JAGC Application Survey; OMB Control Number 0703–0059.

Needs and Uses: The U.S. Navy Judge Advocate General requires a method to improve recruiting and accession board processes to recruit and select the best individuals as judge advocates. A survey will allow the JAG Corps to assess whether certain traits and/or behaviors are indicators of future success in the JAG Corps. If the survey results reveal statistically significant personal indicators of success, then those factors can provide a reliable basis for focusing recruiting efforts and making more efficient selection decisions.

Affected Public: Individuals applying for a commission as an officer in the United States Navy Judge Advocate General's Corps.

Annual Burden Hours: 600.

Number of Respondents: approximately 800.

Responses per Respondent: 1.

Average Burden per Response: 45 minutes.

Frequency: Survey will be available to individuals who submit an application throughout the year.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This online applicant survey will help analyze Navy JAG Corps applicants and focus future recruiting efforts. A Navy JAG Corps application consists of personal academic history (e.g., grade point average and Law School Admissions Test (LSAT) scores), as well as objective assessments of traits and values through a structured interview score. This survey gathers information about an applicant's personality traits and tendencies, but the results are not part of the application. After selection of candidates for commission, an individual's survey results will be combined with that individual's application data and with measures of performance by that officer over time. Collectively, this information will provide a more thorough picture of an individual officer. Through this longitudinal study, the Navy JAG Corps will determine if any particular personal activities, academic performance, or personality traits (or combination of factors) constitute statistically significant indicators of success as Navy JAG Corps officers. If so, then recruiting efforts and selection criteria can be modified to find efficiencies and reduce costs.

Dated: July 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–16405 Filed 7–8–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of Renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, Section 102.3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Advanced Scientific Computing Advisory Committee will be renewed for a two-year period beginning on July 1, 2013.

The Committee will provide advice to the Director, Office of Science (DOE), on the Advanced Scientific Computing Research Program managed by the Office of Advanced Scientific Computing Research.

Additionally, the renewal of the Advanced Scientific Computing Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Mrs. Christine Chalk at (301) 903–7486.

Dated: Issued in Washington, DC, on July 1, 2013.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2013–16414 Filed 7–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Request for Comments on Draft Solicitation

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of and request for comments regarding Draft Solicitation for Advanced Fossil Energy Projects.

SUMMARY: The Loan Programs Office (LPO) of the Department of Energy (DOE) announces a draft of a potential future solicitation announcement for Federal Loan Guarantees for Advanced Fossil Energy Projects. LPO invites comments regarding the draft of the potential future solicitation announcement.

DATES: Comments regarding the draft of the potential future solicitation announcement must be received on or before September 9, 2013. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to David G. Frantz, Deputy Executive Director, Loan Programs Office, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. The draft solicitation is available on LPO's Web site at *http://www.lgprogram.energy.gov/*

FOR FURTHER INFORMATION CONTACT: David G. Frantz, *DraftLPOFossilSoliciationComments@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: DOE is considering a potential future solicitation announcement for Federal Loan Guarantees for Advanced Fossil Energy Projects. Should DOE choose to proceed which such a solicitation, applicants would be invited to apply for loan guarantees from DOE to finance projects and facilities located in the United States that employ innovative and advanced fossil energy technologies (''Advanced Fossil Energy Projects''). DOE may make up to Eight Billion Dollars ($8,000,000,000) in loan guarantee authority available under the proposed solicitation for Advanced Fossil Energy Projects.

DOE is considering including in any potential future solicitation projects or facilities that (1) avoid, reduce, or sequester air pollutants or anthropogenic emission of greenhouse gases, (2) employ New or Significantly Improved Technology as compared to Commercial Technology in service in the United States at the time the Term Sheet is issued (as each capitalized term is defined in the regulations implementing Title XVII, which are set forth in Part 609 under Chapter II of Title 10 of the Code of Federal Regulations, and (3) use advanced fossil energy technology (within the meaning of that term in Section 1703(b)(2) of Title XVII) and are described in one or more of the following technology areas: (a) Advanced resource development, (b) carbon capture, (c) low-carbon power systems, or (d) efficiency improvements. DOE is assuming that the scope of any potential solicitation would be broad. All fossil fuels, including, without limitation, coal, natural gas, oil, shale gas, oil gas, coal bed methane, methane hydrates, and others, may be included in the potential future solicitation. DOE is considering including both electrical and non-electrical fossil energy use.

While comments are sought on all aspects of the draft solicitation, DOE is particularly interested in comments regarding the weighting percentage allocated to each category for evaluations (Programmatic, Technical, Policy, and Financial), and the categories themselves.

LPO is announcing that a draft of a potential future solicitation announcement for Federal Loan Guarantees for Advanced Fossil Energy Projects. LPO invites comments

regarding the draft of the potential future solicitation announcement.

Statutory Authority: Title XVII of the Energy Policy Act of 2005 (42 U.S.C. 16511 *et seq.*).

Issued in Washington, DC, on July 2, 2013.

Valri Lightner,

Acting Director, Technical and Project Management, Loan Programs Office.

[FR Doc. 2013–16422 Filed 7–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program 2013 Annual Plan

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of report availability.

SUMMARY: The Office of Fossil Energy announces the availability of the *2013 Annual Plan* for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program on the DOE Web site at *http://energy.gov/fe/downloads/2013-annual-plan* or in print form (see ''Contact'' below). The *2013 Annual Plan* is in compliance with the *Energy Policy Act of 2005, Subtitle J, Section 999B(e)(3)* which requires the publication of this plan and all written comments in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Mail Stop FE–30, 1000 Independence Avenue SW., Washington, DC 20585 or phone: (202) 586–5600 or email to *UltraDeepwater@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary [Excerpted from the 2013 Annual Plan]

This 2013 Annual Plan is the seventh research plan for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research Program since the launch of the program in 2007.

This plan reflects the program's focus on safety and environmental sustainability that was initiated in the 2011 plan, and is consistent with the President's Office of Management and Budget directive for research that has significant potential public benefits.

Onshore, research on Unconventional Resources focuses on protecting groundwater and air quality, understanding rock and fluid interactions, and integrated environmental protection, including water treatment technologies and water management. For small producers, the program focuses on extending the life of mature fields in an environmentally sustainable way.

Offshore, research on Ultra-Deepwater emphasizes improved understanding of systems risk, reducing risk through the acquisition of real-time information, and reducing risk through the development of advanced technologies.

The research activities described in this plan will be administered by the Research Partnership to Secure Energy for America (RPSEA), which operates under the guidance of the Secretary of Energy. RPSEA is a consortium which includes representatives from industry, academia, and research institutions. The expertise of RPSEA's members in all areas of the exploration and production value chain ensures that the Department of Energy's research program leverages relevant emerging technologies and processes, and that project results will have a direct impact on practices in the field.

Issued in Washington, DC on June 27, 2013.

Guido DeHoratiis,

Acting Deputy Assistant Secretary, Office of Oil and Natural Gas, Office of Fossil Energy.

[FR Doc. 2013–16423 Filed 7–8–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–504–000]

UGI LNG, Inc.; Notice of Application

On June 17, 2013, UGI LNG, Inc. (UGI LNG) filed a request pursuant to section 7(c) of the Natural Gas Act, and Part 157 of the Rules and Regulations of the Commission. UGI LNG seeks authorization to construct additional refrigeration capacity at an existing liquefaction plant at its Temple liquefied national gas storage facility located in Ontelaunee Township, Berks County, Pennsylvania. As more fully described in the application, the new facilities would improve the capability and operational efficiency of the facility. UGI LNG requests authority by December 31, 2013 to allow the upgraded facility to commence operation by the Fall of 2014.

Questions regarding this application may be directed to Frank H. Markle, Counsel for UGI LNG, by calling 610–768–3625, or by emailing *marklef@ugicorp.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review (NSER). If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a NSER will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such motions or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on July 19, 2013.

Dated: June 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16318 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2249–002.
Applicants: Portland General Electric Company.
Description: Triennial Market Power Analysis for Northwest Region and Notice of Change in Status filing of Portland General Electric Company.
Filed Date: 6/26/13.
Accession Number: 20130626–5154.
Comments Due: 5 p.m. ET 8/26/13.

Docket Numbers: ER10–2579–002.
Applicants: NorthPoint Energy Solutions Inc.
Description: Notification of Non-Material Change in Status of NorthPoint Energy Solutions Inc.
Filed Date: 6/27/13.
Accession Number: 20130627–5022.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER12–911–004.
Applicants: CPV Sentinel, LLC.
Description: Triennial Market Power Update for Southwest Region of CPV Sentinel, LLC.
Filed Date: 6/27/13.
Accession Number: 20130627–5030.
Comments Due: 5 p.m. ET 8/26/13.

Docket Numbers: ER13–1737–001.
Applicants: Southwest Power Pool, Inc.
Description: 1636R10 Substitute KEPCO NITSA NOA to be effective 6/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5029.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1792–000.
Applicants: GenOn Kendall, LLC.
Description: Notice of Succession to be effective 6/27/2013.
Filed Date: 6/26/13.
Accession Number: 20130626–5121.
Comments Due: 5 p.m. ET 7/17/13.

Docket Numbers: ER13–1793–000.
Applicants: Hazle Spindle, LLC.
Description: Hazle Spindle Initial Tariff—Clone to be effective 8/1/2013.
Filed Date: 6/26/13.
Accession Number: 20130626–5139.
Comments Due: 5 p.m. ET 7/17/13.

Docket Numbers: ER13–1794–000.
Applicants: Southern California Edison Company.
Description: Mountain View IFAs and DSAs for MVI, MVII, MVIII Projects to be effective 6/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5000.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1795–000.
Applicants: Southern California Edison Company.
Description: Amended LGIA and Distribution Service Agmt for Mountain View IV Project to be effective 6/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5001.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1796–000.
Applicants: Pacific Gas and Electric Company.
Description: Amendment to the CAISO Interim Black Start Agreement to be effective 7/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5002.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1797–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: 2013–6–27-Fargo_Phase_3_CMA_0.2.0—Filing to be effective 9/28/2012.
Filed Date: 6/27/13.
Accession Number: 20130627–5025.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1798–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of Original SA No. 2717 in Docket No. ER11–2757 to be effective 5/30/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5028.
Comments Due: 5 p.m. ET 7/18/13.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH13–18–000.
Applicants: Gas Natural Inc.
Description: FERC–65A Exemption Request of Gas Natural Inc.
Filed Date: 6/26/13.
Accession Number: 20130626–5156.
Comments Due: 5 p.m. ET 7/17/13.

Docket Numbers: PH13–19–000.
Applicants: Gas Natural Inc.
Description: Notification of Holding Company Status filed on behalf of Gas Natural Inc.
Filed Date: 6/26/13.
Accession Number: 20130626–5157.
Comments Due: 5 p.m. ET 7/17/13.

Docket Numbers: PH13–20–000.
Applicants: Energy West Inc.
Description: Notification of Change in Exempt Company Status filed on behalf of Energy West Inc.
Filed Date: 6/26/13.
Accession Number: 20130626–5158.
Comments Due: 5 p.m. ET 7/17/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 27, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16323 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–998–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Cap Rel Neg Rate Agmt (ONEOK 34951 to BG 41007) to be effective 7/1/2013.
Filed Date: 06/26/2013.
Accession Number: 20130626–5013.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 08, 2013.

Docket Numbers: RP13–999–000.
Applicants: TWP Pipeline LLC.
Description: TWP Pipeline LLC submits tariff filing per 154.204: TWP Pipeline LLC Housekeeping Filing to be effective 7/26/2013.
Filed Date: 06/26/2013.
Accession Number: 20130626–5029.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 08, 2013.

Docket Numbers: RP13–1000–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Green Valley Negotiated Rate to be effective 7/1/2013.
Filed Date: 06/26/2013.
Accession Number: 20130626–5049.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 08, 2013.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 27, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16342 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–995–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Castleton Negotiated Rate to be effective 7/1/2013.
Filed Date: 06/25/2013.
Accession Number: 20130625–5059.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 08, 2013.

Docket Numbers: RP13–996–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Non-conforming Agreements Cleanup—Jun2013 to be effective 8/1/2013.
Filed Date: 06/25/2013.
Accession Number: 20130625–5074.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 08, 2013.

Docket Numbers: RP13–997–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: BP Canada Energy Negotiated Rate to be effective 7/1/2013.
Filed Date: 06/25/2013.
Accession Number: 20130625–5102.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 08, 2013.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–120–004.
Applicants: Millennium Pipeline Company, LLC.
Description: Millennium Pipeline Company, LLC submits tariff filing per 154.203: NAESB 2.0 Waiver Removal ERRATA to be effective 3/14/2013.
Filed Date: 06/25/2013.
Accession Number: 20130625–5052.
Comment Date: 5:00 p.m. Eastern Time on Monday, July 08, 2013.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 26, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16341 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1651–002.
Applicants: Golden State Water Company.
Description: Updated market power analysis of Golden State Water Company.
Filed Date: 6/27/13.
Accession Number: 20130627–5091.
Comments Due: 5 p.m. ET 8/26/13.

Docket Numbers: ER12–1663–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Request for Waiver of Midwest Independent Transmission System Operator, Inc.
Filed Date: 12/17/12.
Accession Number: 20121217–5255.
Comments Due: 5 p.m. ET 7/8/13.

Docket Numbers: ER13–1799–000.
Applicants: GenOn Potomac River, LLC.
Description: Notice of Succession—Potomac River to be effective 6/28/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5037.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1800–000.

Applicants: GenOn Power Midwest, LP.
Description: Notice of Succession—Reliability—Power Midwest to be effective 6/28/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5038.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1801–000.
Applicants: GenOn Power Midwest, LP.
Description: Notice of Succession—MBR—Power Midwest to be effective 6/28/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5040.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1802–000.
Applicants: GenOn REMA, LLC.
Description: Notice of Succession—REMA to be effective 6/28/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5041.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1803–000.
Applicants: GenOn West, LP.
Description: Notice of Succession—California South to be effective 6/28/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5042.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1804–000.
Applicants: Southern California Edison Company.
Description: IFA and Distribution Service Agreement with Wintec Energy to be effective 6/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5055.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1805–000.
Applicants: Southern California Edison Company.
Description: Revised Added Facilities Rate for Green Borders Geothermal, LLC to be effective 1/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5057.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1806–000.
Applicants: Arizona Public Service Company.
Description: Cancellation of APS Service Schedule 305 to be effective 8/26/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5058.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1807–000.
Applicants: Southwest Power Pool, Inc.
Description: MISO–SPP Joint Operating Agreement Baseline to be effective 6/27/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5061.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1808–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: 2013–6–27_CAPX_OMA_Fargo_307_0.2.0_Filing to be effective 9/28/2012.
Filed Date: 6/27/13.
Accession Number: 20130627–5062.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1809–000.
Applicants: Southwest Power Pool, Inc.
Description: 2198R7 Kansas Power Pool NITSA and NOA to be effective 5/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5064.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1810–000.
Applicants: New York State Electric & Gas Corporation.
Description: Attachment C—O&M Annual Update to be effective 9/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5066.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1811–000.
Applicants: Sky River LLC.
Description: Amended and Restated Shared Facilities Agreement to be effective 6/28/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5073.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1812–000.
Applicants: Northern States Power Company, a Minnesota corporation.
Description: 2013–6–27_CAPX_TCEA_Fargo_281_0.2.0_Filing to be effective 9/28/2012.
Filed Date: 6/27/13.
Accession Number: 20130627–5079.
Comments Due: 5 p.m. ET 7/18/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 27, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16324 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following exempt wholesale generator filings:
Docket Numbers: EG13–45–000.
Applicants: Quantum Auburndale Power, LP.
Description: Quantum Auburndale Power, LP Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/1/13.
Accession Number: 20130701–5074.
Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: EG13–46–000.
Applicants: Quantum Lake Power, LP.
Description: Quantum Lake Power, LP Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 7/1/13.
Accession Number: 20130701–5075.
Comments Due: 5 p.m. ET 7/22/13.

Take notice that the Commission received the following electric rate filings:
Docket Numbers: ER10–1840–003.
Applicants: Blythe Energy Inc.
Description: Blythe Energy Inc. MBR Tariff to be effective 7/20/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5001.
Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER10–1569–004; ER12–21–009; ER11–2855–009; ER10–1564–005; ER10–1565–005; ER11–3727–005; ER10–1566–005; ER11–2062–005; ER10–1291–006; ER11–2508–004; ER11–4307–005; ER12–1711–005; ER12–261–004; ER13–1136–003; ER10–1568–005; ER10–1581–007; ER13–1803–001; ER13–1790–001; ER13–1746–001; ER12–1525–005; ER12–2019–004; ER10–1582–004; ER12–2398–004; ER11–3459–004; ER11–4308–005; ER11–2805–004; ER10–1580–007; ER11–2856–009; ER11–2857–009.
Applicants: NRG Power Marketing LLC, Sun City Project LLC, Sand Drag LLC, Saguaro Power Company, A Limited Partnership, RRI Energy Services, LLC, Reliant Energy Northeast LLC, NRG Solar Roadrunner LLC, NRG Solar Borrego I LLC, NRG Solar Blythe LLC, NRG Solar Avra Valley LLC, NRG Solar Alpine LLC, NRG Marsh Landing LLC, NRG Delta LLC, NRG California South LP, Long Beach Peakers LLC,

Long Beach Generation LLC, Ivanpah Master Holdings, LLC, Independence Energy Group LLC, High Plains Ranch II, LLC, Green Mountain Energy Company, GenOn Energy Management, LLC, GenConn Energy LLC, Energy Plus Holdings LLC, El Segundo Power, LLC, El Segundo Energy Center LLC, Cabrillo Power II LLC, Cabrillo Power I LLC, Avenal Park LLC, Agua Caliente Solar, LLC.

Description: Triennial Market Power Analysis for the Southwest Region of NRG Power Marketing LLC, et al.

Filed Date: 6/28/13.

Accession Number: 20130628–5328.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER10–2290–002; ER10–2187–001.

Applicants: Avista Corporation.

Description: Triennial Market Power Update for the Northwest Region of the Avista Corporation, et al.

Filed Date: 7/1/13.

Accession Number: 20130701–5211.

Comments Due: 5 p.m. ET 8/30/13.

Docket Numbers: ER10–3097–000.

Applicants: Bruce Power Inc.

Description: Market Power Analysis for the Southwest Region of Bruce Power Inc.

Filed Date: 7/1/13.

Accession Number: 20130701–5065.

Comments Due: 5 p.m. ET 8/30/13.

Docket Numbers: ER10–3301–002; ER10–2757–002; ER10–2756–002.

Applicants: Arlington Valley, LLC, Griffith Energy LLC, GWF Energy LLC.

Description: Triennial Market Power Update for the Southwest Region of the GWF Energy LLC, et al.

Filed Date: 6/28/13.

Accession Number: 20130628–5326.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER11–3013–002.

Applicants: Coolidge Power LLC.

Description: Triennial Market Power Update for the Southwest Region of the Coolidge Power LLC.

Filed Date: 6/28/13.

Accession Number: 20130628–5327.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER11–4315–002; ER10–3144–002.

Applicants: Gila River Power LLC, Entegra Power Services LLC.

Description: Triennial Market Power Update for the Southwest Region of the Gila River Power LLC, et al.

Filed Date: 6/28/13.

Accession Number: 20130628–5325.

Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1182–001.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: National Grid response to FERC information request re: pending TSC revisions to be effective 7/1/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5039.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1867–000.

Applicants: New England Power Pool Participants Committee.

Description: July 2013 Membership Filing to be effective 6/1/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5000.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1868–000.

Applicants: Watson Cogeneration Company.

Description: Change in Status Filing to be effective N/A.

Filed Date: 7/1/13.

Accession Number: 20130701–5002.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1869–000.

Applicants: Southwest Power Pool, Inc.

Description: 2028R4 Sunflower Electric Power Corporation NITSA and NOA to be effective 6/1/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5076.

Comments Due: 5 p.m. ET 7/22/13

Docket Numbers: ER13–1870–000.

Applicants: New England Power Pool Participants Committee, ISO New England Inc.

Description: Revision to Billing Policy Related to State Sales Tax to be effective 8/30/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5087.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1871–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3585—Queue Position Y1–072 to be effective 5/30/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5111.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1872–000.

Applicants: Southwest Power Pool, Inc.

Description: 2562 Kansas Municipal Energy Agency NITSA and NOA to be effective 6/1/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5118.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1873–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Original Service Agreement No. 2720; Queue No. V4–001 to be effective 5/30/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5132.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1874–000.

Applicants: American Electric Power Service Corporation.

Description: Request of American Electric Power Service Corporation for Waiver of Certain Affiliate Restrictions.

Filed Date: 6/28/13.

Accession Number: 20130628–5323.

Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1875–000.

Applicants: New England Power Pool Participants Committee, ISO New England Inc.

Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: Revisions to ISO Tariff to Meet Conditions of CFTC Exemption to be effective 8/30/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5185.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1876–000.

Applicants: BP Energy Company.

Description: BP Energy Company submits tariff filing per 35.13(a)(2)(iii: Change in Status and Request for Waiver of Triennial Market Power Update to be effective 7/2/2013.

Filed Date: 7/1/13.

Accession Number: 20130701–5220.

Comments Due: 5 p.m. ET 7/22/13.

Docket Numbers: ER13–1877–000.

Applicants: New England Power Pool Participants Committee, ISO New England Inc.

Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: Energy Market Offer Flexibility Changes to be effective 12/3/2014.

Filed Date: 7/1/13.

Accession Number: 20130701–5238.

Comments Due: 5 p.m. ET 7/22/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16447 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–1001–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy EPC 2013 to be effective 8/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5039.
Comments Due: 5 p.m. ET 7/9/13.

Docket Numbers: RP13–1002–000.
Applicants: Alliance Pipeline L.P.
Description: July 1–31 2013 Auction Filing to be effective 7/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5056.
Comments Due: 5 p.m. ET 7/9/13.

Docket Numbers: RP13–1003–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5021.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1004–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5022.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1005–000.
Applicants: Bobcat Gas Storage.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5023.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1006–000.
Applicants: East Tennessee Natural Gas, LLC.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5024.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1007–000.
Applicants: Egan Hub Storage, LLC.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5025.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1008–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5026.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1009–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5027.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1010–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5028.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1011–000.
Applicants: Southeast Supply Header, LLC.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5029.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1012–000.
Applicants: Steckman Ridge, LP.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5031.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1013–000.
Applicants: Texas Eastern Transmission, LP.
Description: Execution of Trading Partner Agreements to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5032.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1014–000.
Applicants: Alliance Pipeline L.P.
Description: Tioga In Service Filing to be effective 8/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5060.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1015–000.
Applicants: Texas Eastern Transmission, LP.
Description: Gas Quality—Additional Control Point to be effective 8/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5064.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1016–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: Iroquois Gas Transmission System, L.P. submits Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 2013 through June 30, 2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5071.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1017–000.
Applicants: Ozark Gas Transmission, L.L.C.
Description: Ozark Gas Transmission, L.L.C. submits tariff filing per 154.204: Neg Rate—Tenaska Marketing Ventures 7–1–2013 to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5075.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1018–000.
Applicants: Texas Eastern Transmission, LP.
Description: EPC AUG 2013 FILING to be effective 8/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5224.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1019–000.
Applicants: Texas Eastern Transmission, LP.
Description: Range 8929185 7–1–2013 Negotiated Rate to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5228.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1020–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Non-Conforming—Neg—Antero Contract no. 142047 to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5269.
Comments Due: 5 p.m. ET 7/10/13.

Docket Numbers: RP13–1021–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: Maps 2013 Update to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5052.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1022–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: Neg Rate 2013–07–01 Midwest Energy to be effective 7/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5096.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1023–000.
Applicants: Gulf South Pipeline Company, LP.

Description: Cap Rel Neg Rate Agmt (QEP 37657 to BP 41074) to be effective 7/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5098
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1024–000.
Applicants: Gulf Crossing Pipeline Company LLC.
Description: Amendment to Neg Rate Agmt (Devon 10–11) to be effective 6/13/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5100.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1025–000.
Applicants: Texas Gas Transmission, LLC.
Description: Reservation Charge Changes to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5101.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1026–000.
Applicants: Rockies Express Pipeline LLC.
Description: Neg Rate NC 2013–07–01 Encana to be effective 7/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5106.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1027–000.
Applicants: Texas Eastern Transmission, LP.
Description: Chesapeake 8929193 7–1–2013 Negotiated Rate to be effective 7/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5125.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1028–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: Clean Up Negotiated Rate and Non-Conforming Agreements to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5134.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1029–000.
Applicants: Saltville Gas Storage Company L.L.C.
Description: Correct Typographical Error in Capacity Release Umbrella Agreement to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5173.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1030–000.
Applicants: Bobcat Gas Storage.
Description: Correct Typographical Error on Exhibit B of Hub Services Agreement to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5176.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1031–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: Trailblazer Pipeline Company LLC submits tariff filing per 154.312: TB Rate Case 2013–07–01 to be effective 1/1/2014.
Filed Date: 7/1/13.
Accession Number: 20130701–5183.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1032–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: CenterPoint Energy Gas Transmission Company, LLC submits tariff filing per 154.204: CEGT LLC—Negotiated Rate Filing—July 2013 to be effective 7/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5187.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1033–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Index Discounts to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5253.
Comments Due: 5 p.m. ET 7/15/13.

Docket Numbers: RP13–1034–000.
Applicants: MIGC LLC.
Description: MIGC LLC 2013 Fuel Filing to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5324.
Comments Due: 5 p.m. ET 7/15/13

Docket Numbers: RP13–1035–000.
Applicants: WTG Hugoton, LP.
Description: Annual Fuel Retention Percentage Filing 2013–2014 to be effective 8/1/2013.
Filed Date: 7/1/13.
Accession Number: 20130701–5343.
Comments Due: 5 p.m. ET 7/15/13.

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Dated July 2, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16409 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1585–003; ER10–1594–003; ER11–4051–002; ER10–1596–001; ER10–1617–003; ER12–60–005; ER10–1632–005; ER10–1628–003; ER11–1936–001.
Applicants: Alabama Electric Marketing, LLC, California Electric Marketing, LLC,CSOLAR IV South, LLC, High Desert Power Project, LLC, New Mexico Electric Marketing, LLC, Tenaska Power Management, LLC, Tenaska Power Services, Co., Texas Electric Marketing, LLC,TPF Generation Holdings, LLC, Alabama Electric Marketing, LLC.
Description: Updated Market Power Analysis of Tenaska MBR Seller in Southwest Region.
Filed Date: 6/27/13.
Accession Number: 20130627–5152.
Comments Due: 5 p.m. ET 8/26/13.

Docket Numbers: ER10–2331–021; ER10–2343–020; ER10–2317–018; ER10–2326–020; ER10–2327–021; ER10–2330–020.
Applicants: J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation, BE CA LLC, Cedar Brakes I, L.L.C., Cedar Brakes III, LLC., Utility Contract Funding, L.L.C.
Description: Updated Market Power Analysis and Order 697 Compliance Filing for the Southwest Region of JP Morgan Sellers.
Filed Date: 6/27/13.
Accession Number: 20130627–5149.
Comments Due: 5 p.m. ET 8/26/13.

Docket Numbers: ER10–2538–001.
Applicants: Panoche Energy Center, LLC.
Description: Triennial Market Power Study in Southwest Region and CAISO BAA of Panoche Energy Center, LLC.
Filed Date: 6/27/13.
Accession Number: 20130627–5153.
Comments Due: 5 p.m. ET 8/26/13.

Docket Numbers: ER10–3246–002.
Applicants: PacifiCorp.
Description: Triennial Market Power Update of PacifiCorp.
Filed Date: 6/28/13.

Accession Number: 20130628–5047.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER12–21–008; ER13–520–001; ER13–521–001; ER13–1441–001; ER13–1442–001; ER12–1626–002; ER13–1266–001; ER13–1267–001; ER13–1268–001; ER13–1269–001; ER13–1270–001; ER13–1271–001; ER13–1272–001; ER13–1273–001; ER10–2605–005.

Applicants: Agua Caliente Solar, LLC, Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, Solar Star California XIX, LLC, Solar Star California XX, LLC, Topaz Solar Farms LLC, CalEnergy, LLC,CE Leathers Company, Del Ranch Company, Elmore Company, Fish Lake Power LLC, Salton Sea Power Generation Company, Salton Sea Power L.L.C., Vulcan/BN Geothermal Power Company, Yuma Cogeneration Associates.

Description: Updated Market Power Analysis of the MidAmerican Southwest MBR Sellers.
Filed Date: 6/26/13.
Accession Number: 20130626–5162.
Comments Due: 5 p.m. ET 8/26/13.

Docket Numbers: ER13–1813–000.
Applicants: Wisconsin Electric Power Company.
Description: Wisconsin Electric—PJM FERC Electric Rate Schedule 117 to be effective 7/20/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5093.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1814–000.
Applicants: Appalachian Power Company.
Description: 20130627 Att K and L Revision to be effective 6/27/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5099.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1815–000.
Applicants: Southern California Edison Company.
Description: Revised Added Facilities Rates Under WDAT to be effective 1/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5101.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1816–000.
Applicants: Sustaining Power Solutions LLC.
Description: MBR Application to be effective 8/26/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5117.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1817–000.
Applicants: PJM Interconnection, L.L.C., Wisconsin Electric Power Company.
Description: PJM & WEPCO file revised BAOCA: PJM?s Rate Schedule FERC No. 43 to be effective 7/20/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5118.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1818–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position #X3–003? Original Service Agreement No. 3583 to be effective 5/30/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5119.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1819–000.
Applicants: Southwest Power Pool, Inc.
Description: 1534R3 Kansas Municipal Energy Agency NITSA and NOA to be effective 6/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5127.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1820–000.
Applicants: California Independent System Operator Corporation.
Description: 2013–06–27 CSOLAR Concurrence to be effective 6/13/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5136.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1821–000.
Applicants: Southern California Edison Company.
Description: Amended & Restated Black Start Agreement to be effective 7/1/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5137.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1822–000.
Applicants: PJM Interconnection, L.L.C.
Description: Revisions to the PJM OATT and OA re Access to E-tags to be effective 8/26/2013.
Filed Date: 6/27/13.
Accession Number: 20130627–5139.
Comments Due: 5 p.m. ET 7/18/13.

Docket Numbers: ER13–1823–000.
Applicants: PacifiCorp.
Description: FERC Triennial Change in Status Filing to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5001.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1824–000.
Applicants: NV Energy, Inc.
Description: Service Agreement No. 13–00018 NITS Retail Access TSA CRC_NLV to be effective 9/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5002.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1825–000.
Applicants: Southern California Edison Company.
Description: LGIA with KRCC to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5003.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1826–000.
Applicants: Southern California Edison Company.
Description: LGIA with Sycamore to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5004.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1827–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: 06–28–13 ETEC Attach O to be effective 12/19/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5030.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1828–000.
Applicants: Interstate Power and Light Company.
Description: IPL Changes in Depreciation Rates for Wholesale Production Service to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5046.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1829–000.
Applicants: Duke Energy Carolinas, LLC.
Description: PEMC FRPPA—RS 316 Revision (2013) to be effective 7/2/2012.
Filed Date: 6/28/13.
Accession Number: 20130628–5050.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1830–000.
Applicants: Entergy Arkansas, Inc.
Description: Rattlesnake Wind Transfer Agreement to be effective 12/1/2014.
Filed Date: 6/28/13.
Accession Number: 20130628–5066.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1831–000.
Applicants: Entergy Arkansas, Inc.
Description: Plum Point Transfer Agreement to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5070.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1832–000.
Applicants: Southwest Power Pool, Inc.
Description: 2198R8 Kansas Power Pool NITSA and NOA to be effective 6/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5082.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1833–000.
Applicants: Harbor Cogeneration Company, LLC.
Description: Clarification of Cat 2 Status in SW Region and Cat 1 Status in All Other Regions to be effective 7/1/2013.

Filed Date: 6/28/13.
Accession Number: 20130628–5103.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1834–000.
Applicants: Valencia Power, LLC.
Description: Clarification of Cat 2 Status in SW Region and Cat 1 Status in All Other Regions to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5104.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1835–000.
Applicants: Las Vegas Cogeneration II, L.L.C.
Description: Clarification of Cat 2 Status in SW Region and Cat 1 Status in All Other Regions to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5109.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1836–000.
Applicants: Fountain Valley Power, L.L.C.
Description: Clarification of Category 1 Status in All Regions to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5110.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1838–000.
Applicants: Las Vegas Cogeneration Limited Partnership.
Description: Clarification of Cat 2 Status in SW Region and Cat 1 Status in All Other Regions to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5116.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1839–000.
Applicants: SWG Colorado, LLC.
Description: Clarification of Category 1 Status in All Regions to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5119.
Comments Due: 5 p.m. ET 7/19/13.

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Dated: June 28, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16325 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1305–020.
Applicants: Westar Generating, Inc.
Description: Westar Generating, Inc. submits Informational compliance filing informing the Commission of its eleventh periodic rate adjustment in accordance with the Levelized Formula Rate of the Settlement Agreement.
Filed Date: 6/28/13.
Accession Number: 20130628–5309.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER10–1818–004; ER10–1819–005; ER10–1820–007; ER10–1817–005.
Applicants: Public Service Company of Colorado, Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin Corporation, Southwestern Public Services Company.
Description: Triennial Market Power Analysis of Public Service Company of Colorado for the Northwest Region.
Filed Date: 6/28/13.
Accession Number: 20130628–5300.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER10–2337–002; ER10–2338–002; ER10–2339–002; ER10–2340–002; ER10–2341–002; ER10–2342–002.
Applicants: CL Power Sales Eight, L.L.C., CP Power Sales Nineteen, L.L.C., CP Power Sales Seventeen, L.L.C., CP Power Sales Twenty, L.L.C., Edison Mission Marketing & Trading, Inc., Edison Mission Solutions, L.L.C.
Description: Triennial Market Power Analysis for the Southwest Region of the Edison Mission Energy subsidiaries.
Filed Date: 6/28/13.
Accession Number: 20130628–5314.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER10–2616–003; ER10–2587–001; ER10–2590–001; ER10–2593–001; ER10–2647–003.
Applicants: Dynegy Marketing and Trade, LLC, Dynegy Morro Bay, LLC, Dynegy Moss Landing, LLC, Dynegy Oakland, LLC, Dynegy Power Marketing, LLC.
Description: Triennial Market Power Analysis of the Dynegy MBR Sellers for the Southwest Region.
Filed Date: 6/28/13.
Accession Number: 20130628–5299.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER10–2848–002; ER11–1939–004; ER11–2754–004; ER12–999–002; ER12–1002–002; ER12–1005–002; ER12–1006–002; ER12–1007–003.
Applicants: AP Holdings, LLC, AP Gas & Electric (IL), LLC, AP Gas & Electric (PA), LLC, AP Gas & Electric (TX), LLC, AP Gas & Electric (MD), LLC, AP Gas & Electric (NJ), LLC, AP Gas & Electric (OH), LLC, AP Gas & Electric (NY), LLC.
Description: Updated Market Power Analysis for the Southwest Region of AP Holdings Subsidiaries.
Filed Date: 6/28/13.
Accession Number: 20130628–5298.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER11–2855–008; ER11–2856–008; ER11–2857–008.
Applicants: Avenal Park LLC, Sand Drag LLC, Sun City Project LLC.
Description: Triennial Market Power Analysis for the Southwest Region of the Avenel Park LLC, et al.
Filed Date: 6/28/13.
Accession Number: 20130628–5310.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER11–4258–001; ER11–4026–001.
Applicants: Desert View Power, Inc., Eel River Power LLC.
Description: Notice of Change in Status of the Greenleaf Companies.
Filed Date: 6/28/13.
Accession Number: 20130628–5308.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1430–001; ER13–1561–001; ER10–2755–002; ER10–2739–005.
Applicants: Arlington Valley Solar Energy II, LLC, Centinela Solar Energy, LLC, Las Vegas Power Company, LLC, LS Power Marketing, LLC.
Description: Triennial Market Power Analysis for the Southwest Region of the LS Power Development, LLC subsidiaries.
Filed Date: 6/28/13.
Accession Number: 20130628–5317.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1837–000.
Applicants: Terra-Gen Dixie Valley, LLC.
Description: Request for Waiver from requirement to file tariff amendments implementing interregional planning and cost allocation requirements.
Filed Date: 6/14/13.

Accession Number: 20130614–5170.
Comments Due: 5 p.m. ET 7/11/13.

Docket Numbers: ER13–1858–000.
Applicants: California Independent System Operator Corporation.
Description: 2013–06–28_CDWR_PLA_9 to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5232.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1859–000.
Applicants: PJM Interconnection, L.L.C.
Description: Ministerial Clean-Up Filing re PJM OATT Att DD 5.10 due to Overlapping Filings to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5233.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1860–000.
Applicants: Nevada Power Company.
Description: Rate Scehdule No. 137 Transmission Service Agreement—Cargill Power Markets to be effective 1/1/2016.
Filed Date: 6/28/13.
Accession Number: 20130628–5234.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1861–000.
Applicants: Salinas River Cogeneration Company.
Description: Triennial Market Power Analysis for the Southwest Region to be effective 6/29/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5244.
Comments Due: 5 p.m. ET 8/27/13.

Docket Numbers: ER13–1862–000.
Applicants: Southwest Power Pool, Inc.
Description: 1166R18 Oklahoma Municipal Power Authority NITSA and NOA to be effective 6/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5248.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1863–000.
Applicants: Entergy Arkansas, Inc.
Description: LEPA 2nd Rev. NITSA to be effective 6/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5250.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1864–000.
Applicants: Southwest Power Pool, Inc.
Description: JOA Market-to-Market Compliance from Docket No. ER12–1179 to be effective 12/31/9998.
Filed Date: 6/28/13.
Accession Number: 20130628–5265.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1865–000.
Applicants: Tesoro Refining & Marketing Company LLC.
Description: Wholesale MBR Tariff Filing to be effective 7/30/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5273.
Comments Due: 5 p.m. ET 7/19/13.

Docket Numbers: ER13–1866–000.
Applicants: San Diego Gas & Electric Company.
Description: SDGE TO Appendix X Formula Modification to be effective 7/1/2013.
Filed Date: 6/28/13.
Accession Number: 20130628–5276.
Comments Due: 5 p.m. ET 7/19/13.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF13–532–000.
Applicants: Verizon Corporate Services Group Inc.
Description: Form 556 of Verizon Corporate Services Group Inc.
Filed Date: 6/27/13.
Accession Number: 20130627–5059.
Comments Due: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 1, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–16446 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of Environmental Assessment

BOST5 Hydroelectric LLC ..... Project No. 12758–004
BOST4 Hydroelectric LLC ..... Project No. 12757–004
BOST3 Hydroelectric LLC ..... Project No. 12756–003

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR). Part 380 (Order No. 486, 52 **Federal Register** 47897), the Office of Energy Projects has reviewed the applications for original licenses for the Red River Lock and Dam No. 5 Hydroelectric Project (FERC Project No. 12758–004), Red River Lock and Dam No. 4 Hydroelectric Project (FERC Project No. 12757–004), and Red River Lock and Dam No. 3 Hydroelectric Project (FERC Project No. 12756–003). The proposed projects would be located on the Red River in Louisiana. The Lock and Dam No. 5 Project would be located in Bossier Parish, near the Town of Ninock, Louisiana, at the U.S. Army Corps of Engineers' (Corps) Lock and Dam No. 5 at river mile (RM) 200 and would occupy 69.9 acres of federal lands managed by the Corps. The Lock and Dam No. 4 Project would be located in Red River Parish, near the Town of Coushatta, Louisiana, at the Corps' Lock and Dam No. 4 at RM 168.5 and would occupy 135.1 acres of federal lands managed by the Corps. The Lock and Dam No. 3 Project would be located in Natchitoches Parish, near the Town of Colfax, Louisiana, at the Corps' Lock and Dam No. 3 at RM 116.5 and would occupy 60.2 acres of federal lands managed by the Corps.

Staff prepared a multi-project environmental assessment (EA), which analyzes the potential environmental effects of licensing the three projects, and concludes that licensing the projects, with appropriate environmental protection measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the issuance date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support.

Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix ''Red River Lock and Dam No. 5 Hydroelectric Project No. 12758–004, Red River Lock and Dam Hydroelectric Project No. 4 No. 12757–004, and/or Red River Lock and Dam No. 3 Hydroelectric Project No. 12756–003'' as appropriate to all comments.

For further information, contact Jeanne Edwards at (202) 502–6181, or by email at *jeanne.edwards@ferc.gov.*

Dated: June 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16322 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11831–095]

Notice of Availability of Environmental Assessment; Wisconsin Electric Power Company

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 Code of Federal Regulations Part 380, Commission staff has reviewed the application for amendment of license for the Twin Falls Hydroelectric Project (FERC Project No. 11831) and has prepared an environmental assessment (EA) in cooperation with the U.S. Army Corps of Engineers. The project is located on the Menominee River near Iron Mountain, in Iron and Dickinson counties, Michigan, and Florence County, Wisconsin.

The EA contains the Commission staff's analysis of the potential environmental effects of decommissioning an existing powerhouse, constructing a new powerhouse and spillway, and making structural improvements to the dam, and concludes that authorizing the amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

For further information, contact Steven Sachs by telephone at 202–502–8666 or by email at *Steven.Sachs@ferc.gov*.

Dated: June 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16321 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2305–036]

Sabine River Authority of Texas and Sabine River Authority, State of Louisiana; Public Meetings Soliciting Comments on the Draft Environmental Impact Statement for the Toledo Bend Hydroelectric Project

On May 17, 2013, the Commission issued a Draft Environmental Impact Statement (draft EIS) for the Toledo Bend Hydroelectric Project No 2105–036 (Toledo Bend Project). The draft EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicants, and Commission staff. All written comments must be filed by August 5, 2013, and should reference Project No. 2105–036. More information on filing comments can be found in the letter at the front of the draft EIS or on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Although the Commission strongly encourages electronic filing, documents may also be paper-filed.

In addition to or in lieu of sending written comments, you are invited to attend public meetings that will be held to receive comments on the draft EIS. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization comments, while the evening meeting is primarily for receiving input from the public. All interested individuals and entities are invited to attend one or both of the public meetings. The time and location of the meetings are as follows:

DATE: Tuesday, July 30, 2013

TIME: 10:30 a.m.

PLACE: Orange Public Library

ADDRESS: 220 North Fifth Street, Orange, Texas 77630, (409) 883–1086

DATE: Wednesday, July 31, 2013

TIME: 7 p.m.

PLACE: Cypress Bend Conference Center

ADDRESS: 2000 Cypress Bend Parkway, Many, Louisiana, 71449, (877) 519–1500

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the draft EIS. The meeting will be recorded by a court reporter, and all statements (verbal and written) will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

For further information, contact Alan Mitchnick at (202) 502–6074 or at *alan.mitchnick@ferc.gov.*

Dated: July 1, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16319 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13703–001—Mississippi Enid Lake Hydroelectric Project]

FFP Missouri 2, LLC; Notice of Proposed Restricted Service List For a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure [1] provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Mississippi Department of Archives and History (Mississippi SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, *as amended,* (16 USC section 470f), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places that could be affected by issuance of a license for the proposed Enid Lake Hydroelectric Project No. 13703.

The Programmatic Agreement, when executed by the Commission and the Mississippi SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below. The executed Programmatic Agreement would be incorporated into any Order issuing a license.

FFP Missouri 2, LLC, as applicant for the proposed Enid Lake Hydroelectric Project, the U.S. Army Corps of Engineers, the Choctaw Nation of Oklahoma, the Jena Band of Choctaw Indians, the Chickasaw Nation, the Mississippi Band of Choctaw Indians, the Quapaw Tribe of Oklahoma, the Tunica-Biloxi Tribe of Louisiana, and the Muscogee (Creek) Nation have expressed an interest in this proceeding and are invited to participate in consultations to develop the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 13703 as follows:

John Eddins, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue NW., Washington, DC 20004

Greg Williamson, Mississippi Department of Archives and History, 100 South State Street, Jackson, MS 39201

Andrew Tomlinson, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, MS 39183

Thomas M. Feldman or Representative, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114

Dr. Ian Thompson, THPO, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702

Johnnie Jacobs, Choctaw Nation of Oklahoma, P.O. Box 1210, Durant, OK 74702

Dana Masters, THPO, Jena Band of Choctaw Indians, P.O. Box 14, Jena, LA 71342.

LaDonna Brown, Chickasaw Nation, P.O. Box 1548, Ada, OK 74821.

Kenneth H. Carlton, THPO, Mississippi Band of Choctaw Indians, P.O. Box 6257, Choctaw, MS 39350.

Jean Ann Lambert, THPO, Quapaw Tribe of Oklahoma, 5681 South 630 Road, Quapaw, OK 74363.

Earl Barbry, Jr., Tunica-Biloxi Tribe of Louisiana, 151 Melacon Drive, Marksville, LA 71351.

Emman Spain, Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447.

Sarah Koeppel, U.S. Army Corps of Engineers, Vicksburg District, 4155 Clay Street, Vicksburg, MS 39183.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. Also, please identify any concerns about historic properties, including traditional cultural properties. If historic properties might be identified within the motion, please use a separate page and label it Non-Public information.

Any such motion may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please put the project number (P–13703–001) on the first page of the filing.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions within the 15-day period.

Dated: June 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–16320 Filed 7–8–13; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR section 385.2010.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0118; FRL 9532–4]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Control of Evaporative Emissions From Portable Gasoline Containers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Control of Evaporative Emissions from Portable Gasoline Containers (Renewal) (EPA ICR No. 2213.04, OMB Control No. 2060–0597) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through September 30, 2013. Public comments were previously requested via the **Federal Register** (78 FR 15010) on March 8, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 8, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2013–0118 to (1) EPA online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For further information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: EPA is required under Section 183(e) of the Clean Air Act to regulate Volatile Organic Compound (VOC) emissions from the use of consumer and commercial products. Under regulations promulgated on February 26, 2007 (72 FR 8428) manufacturers of new portable gasoline containers are required to obtain certificates of conformity with the Clean Air Act, effective January 1, 2009. This ICR covers the burdens associated with this certification process. EPA reviews information submitted in the application for certification to determine if the container design conforms to applicable requirements and to verify that the required testing has been performed. The certificate holder is required to keep records on the testing and collect and keep warranty and defect information for annual reporting on in-use performance of their products. The respondent must also retain records on the units produced, apply serial numbers to individual containers, and track the serial numbers to their certificates of conformity. Any information submitted for which a claim of confidentiality is made is safeguarded according to EPA regulations at 40 CFR 2.201 *et seq.*

Form Numbers: None.

Respondents/affected entities: Manufacturers of new portable gasoline containers from 0.25 to 10.0 gallons in capacity.

Respondent's obligation to respond: Mandatory under 40 CFR part 59, subpart F.

Estimated number of respondents: 8 (total).

Frequency of response: Annually for warranty reports; at least once every five years for certificate renewals.

Total estimated burden: 179 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $21,668 (per year), which includes $12,552 in annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 34 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to minor adjustments in the burden estimates, which are detailed in the ICR Supporting Statement.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–16421 Filed 7–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0525; FRL 9532–7]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Registration of Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Registration of Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers (Renewal) (EPA ICR No. 1696.07, OMB Control No. 2060–0297) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through August 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 11869) on February 20, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection for information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 8, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2006–0525, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Compliance

Division, Office of Transportation and Air Quality, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2802; email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* on in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For further information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel and additives for those fuels are required to have these products registered by the EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR part 79, subpart F, is the subject of this ICR. The health-effects data will be used to determine if there are any products which have evaporative or combustion emissions that may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. This information is required for specific groups of fuels and additives as defined in the regulations.

Manufacturers may perform the research independently or may join with other manufacturers to share in the costs for each applicable group. Several research consortiums (groups of manufacturers) have been formed. The largest consortium, organized by the American Petroleum Institute (API), represents most of the manufacturers of baseline gasoline, baseline diesel fuel, baseline fuel additives, and the prominent non-baseline oxygenated additives for gasoline. The research is structured into three tiers of requirements for each group. Tier 1 requires an emissions characterization and a literature search for information on the health effects of those emissions. Voluminous Tier 1 data for gasoline and diesel fuel were submitted by API and others in 1997. Tier 1 data have been submitted for biodiesel, water/diesel emulsions, several atypical additives, and renewable gasoline and diesel fuels. Tier 2 requires short-term inhalation exposures of laboratory animals to emissions to screen for adverse health effects. Tier 2 data have been submitted for baseline diesel, biodiesel, and water/diesel emulsions. Alternative Tier 2 testing can be required in lieu of standard Tier 2 testing if EPA concludes that such testing would be more appropriate. EPA reached that conclusion with respect to gasoline and gasoline-oxygenate blends, and alternative requirements were established for the API consortium for baseline gasoline and six gasoline-oxygenate blends. Alternative Tier 2 requirements have also been established for the manganese additive MMT manufactured by the Afton Chemical Corporation (formerly the Ethyl Corporation). Tier 3 provides for follow-up research, at EPA's discretion, when remaining uncertainties as to the significance of observed health effects, welfare effects, and/or emissions exposures from a fuel or fuel/additive mixture interfere with EPA's ability to make reasonable estimates of the potential risks posed by emissions from a fuel or additive. To date, EPA has not imposed any Tier 3 requirements. Under Section 211 of the Clean Air Act, (1) submission of the health-effects information is necessary for a manufacturer to obtain registration of a motor-vehicle gasoline, diesel fuel, or fuel additive, and thus be allowed to introduce that product into commerce, and (2) the information shall not be considered confidential.

Form Numbers: None.

Respondents/affected entities: Manufacturers of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives for those fuels.

Respondent's obligation to respond: Mandatory per 40 CFR part 79.

Estimated number of respondents: 2.

Frequency of response: On occasion.

Total Estimated Burden: 19,200 hours per year. Burden is defined at 5 CFR 1320.3(b).

Total Estimated Cost: $2,078,280 per year, which includes $537,000 in annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease 2,000 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is due to the completion of a testing program included in the previous ICR.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–16426 Filed 7–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0646; FRL–9533–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Incinerators (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 8, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0646, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12.

On October 17, 2012 (77 FR 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0646, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Incinerators (Renewal).

ICR Numbers: EPA ICR Number 1058.11, OMB Control Number 2060–0040.

ICR Status: This ICR is scheduled to expire on August 31, 2013. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart E.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Respondents/Affected Entities: Incinerators.

Estimated Number of Respondents: 82.

Frequency of Response: Initially and occasionally.

Estimated Total Annual Hour Burden: 8,393. *''Burden'' is defined at 5 CFR 1320.3(b).*

Estimated Total Annual Cost: $1,017,654, which includes $812,654 in labor costs, no capital/startup costs, and $205,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is non-existent, so there is no significant change in the overall burden.

There is an adjustment increase in the estimated respondent burden cost as currently identified in the OMB Inventory of Approved Burdens. This increase is due to the use of updated labor rates from the Bureau of Labor Statistics.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–16427 Filed 7–8–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0697; FRL–9533–9]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Iron and Steel Foundries (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Iron and Steel Foundries (40 CFR Part 63, Subpart EEEEE) (Renewal)'' (EPA ICR No. 2096.05, OMB Control No. 2060–0543), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through September 30, 2013. Public comments were previously requested via the **Federal Register** (77 FR 63813) on October 17, 2012, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before August 8, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0697, to: (1) EPA online, using *www.regulations.gov* (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the

Provisions specified at 40 CFR part 63, subpart EEEEE.

Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Form Numbers: None.

Respondents/affected entities: Owners or operators of iron and steel foundries.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart EEEEE).

Estimated number of respondents: 98 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 29,747 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $3,309,697 (per year), includes $400,060 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. However, there is an adjustment increase in the respondent labor costs due to an increase in labor rates. Additionally, there is an adjustment decrease in the Agency labor costs due to a correction of mathematical error. The previous ICR incorrectly calculated total Agency labor cost for each burden item.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–16425 Filed 7–8–13; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension without Change: Demographic Information on Applicants for Federal Employment.

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the Demographic Information on Applicants for Federal Employment to be effective after the current July 31, 2013 expiration date.

FOR FURTHER INFORMATION CONTACT: Barbara Dougherty, Federal Sector Programs, Office of Federal Operations, 131 M Street NE., Washington, DC 20507, (202) 663–4770 (voice); (202) 663–4593 (TTY).

SUPPLEMENTARY INFORMATION: The Demographic Information on Applicants for Federal Employment is an optional form for the use by federal agencies in gathering data on the race, sex and national origin status of applicants.

Overview of Information Collection

Collection Title: Demographic Information on Federal Job Applicants.

OMB Control No.: 3046–0046.

Description of Affected Public: Individuals submitting applications for federal employment.

Number of Annual Responses: 5,800.

Estimated Time per Respondent: 3 minutes.

Total Annual Burden Hours: (5,800 × 3)/60 = 290.

Annual Federal Cost: None.

Abstract: Under section 717 of Title VII and 501 of the Rehabilitation Act, the Commission is charged with reviewing and approving federal agencies plans to affirmatively address potential discrimination before it occurs. Pursuant to such oversight responsibilities, the Commission has established systems to monitor compliance with Title VII and the Rehabilitation Act by requiring federal agencies to evaluate their employment practices through the collection and analysis of data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment.

Response by applicants is optional. The information obtained will be used by federal agencies only for evaluating whether an agency's recruitment activities are effectively reaching all segments of the relevant labor pool, to gauge progress and trends over time with respect to equal opportunity goals, and to track progress toward meeting the recruitment and hiring strategies. The voluntary responses are treated in a highly confidential and anonymous manner, are not shared with those involved in the selection process or the supervisor (if the person is hired) and will not be placed in the employees' personnel file. The information is not provided to any panel rating the applications, to selecting officials, to anyone who can affect the application or to the public. Rather, the information is used in summary form to determine trends over many selections within a given occupational or organization area. No information from the form is entered into an official personnel file.

Burden Statement: Because of the predominant use of online application systems, which require only pointing and clicking on the selected responses, and because the form requests only eight questions regarding basic information, the EEOC estimates that an applicant can complete the form in approximately 3 minutes or less. Based on past experience, we expect that 5,800 applicants will choose to complete the form.

Once OMB approves the use of this common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

Dated: July 2, 2013.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2013–16431 Filed 7–8–13; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: GRACE COMMUNITY CHURCH OF AMARILLO, Station WBFK, Facility ID 176881, BPED–20130509ABB, From SMITHS GROVE, KY, To HISEVILLE, KY; HOG RADIO, INC., Station KCYT, Facility ID 51098, BPH–20130603AES, From OZARK, AR, To FAYETTEVILLE, AR; JOY BROADCASTING, INC., Station WXGN, Facility ID 32338, BPED–20130606AAX, From EGG HARBOR TOWNSHIP NJ, To SOMERS

POINT, NJ; LANGER BROADCASTING GROUP, LLC, Station WMSX, Facility ID 41348, BP–20130610ACC, From BROCKTON, MA, To DEDHAM, MA; RIVERFRONT BROADCASTING, LLC, Station NEW, Facility ID 190370, BMPH–20130606AAP, From MURDO, SD, To BLUNT, SD; THE MONTANA RADIO COMPANY, LLC, Station KTRO, Facility ID 183371, BPH–20130625ADB, From ROUNDUP, MT, To STANFORD, MT; WOMEN'S CIVIC IMPROVEMENT LEAGUE, INC., Station KPOV–FM, Facility ID 174895, BPED–20130612ACB, From BEND, OR, To DESCHUTES RIVERWOODS, OR.

DATES: The agency must receive comments on or before September 9, 2013.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2013–16360 Filed 7–8–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: *Thursday, July 11, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Final Rule: Civil Monetary Penalty Inflation Adjustments;

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley E. Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Secretary and Clerk of the Commission.

[FR Doc. 2013–16504 Filed 7–5–13; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, July 9, 2013 at 10:00 a.m.*

PLACE: 999 E Street NW., Washington, DC

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–16605 Filed 7–5–13; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Thursday, June 27, 2013 at 4:00 p.m.*

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting was closed to the public.

ITEMS DISCUSSED: Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2013–16544 Filed 7–5–13; 11:15 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 22, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer), P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *BJO Limited Partnerships, an Arkansas Limited Partnership,* North Little Rock Arkansas, to retain control of National Banking Corp., North Little Rock, Arkansas, and thereby indirectly retain National Bank of Arkansas in North Little Rock, North Little Rock Arkansas.

Board of Governors of the Federal Reserve System, July 3, 2013.

Michael Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–16418 Filed 7–8–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate

inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 2, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Heartland Financial USA, Inc.,* Dubuque, Iowa, to acquire 100 percent of Morrill Bancshares, Inc., Merriam, Kansas, and thereby indirectly acquire, The Morrill & Janes Bank and Trust Company, Overland Park, Kansas.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Home Bancshares, Inc.,* Conway, Arkansas, to merge with Liberty Bancshares, Inc. and thereby indirectly acquire Liberty Bank of Arkansas, both of Jonesboro, Arkansas.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Tolna Bancorp, Inc.,* Tolna, North Dakota, to acquire 100 percent of McVille Financial Services, Inc., McVille, North Dakota, and thereby indirectly acquire McVille State Bank, McVille, North Dakota. Comments must be received by July 29, 2013.

Board of Governors of the Federal Reserve System, July 3, 2013.

Michael Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2013–16417 Filed 7–8–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: OCSE–75 Tribal Child Support Enforcement Program Annual Data Report.

OMB No.: 0970–0320

Description: The data collected by form OCSE–75 are used to prepare the OCSE preliminary and annual data reports. In addition, Tribes administering CSE programs under Title IV–D of the Social Security Act are required to report program status and accomplishments in an annual narrative report and submit the OCSE–75 report annually.

Respondents: Tribal Child Support Enforcement Organizations or the Department/Agency/Bureau responsible for Child Support Enforcement in each tribe.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OCSE–75	60	1	60	3,600

Estimated Total Annual Burden Hours: 3,600.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–16357 Filed 7–8–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0319]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Draft Guidance for Industry and Food and Drug Administration Staff on Dear Health Care Provider Letters: Improving Communication of Important Safety Information

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 August 8, 2013.

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 title ''Draft Guidance for Industry and Food and Drug Administration Staff on Dear Health Care Provider Letters: Improving Communication of Important Safety Information.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–

400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@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 on and Food and Drug Administration Staff on Dear Health Care Provider Letters: Improving Communication of Important Safety Information—(OMB Control Number 0910–New)

This draft guidance provides recommendations on when to use a Dear Health Care Provider (DHCP) Letter, the types of information to include in a DHCP letter, how to organize that information, and formatting techniques to make the information more accessible. The draft guidance is intended to improve the quality of DHCP letters to make them more effective communication tools for new information about marketed products.

In the **Federal Register** of November 12, 2010 (75 FR 69449), FDA published a 60-day notice requesting public comment on the draft version of this guidance. Eleven public comments were received during the comment period and in nine of the letters the following two issues were raised. However, the other two comments did not address the information collection.

(Comment 1) Section V of the draft guidance states that the target audience should be all health care providers who could not only prescribe the drug, but who could also dispense or administer the drugs. The comments call this an expansion of the target audience, which would require manufacturers to send DHCP letters to physicians, nurses, pharmacists, and other prescribing and non-prescribing providers. Manufacturers would also need to seek out lists of such non-prescribing health care providers proactively and disseminate the letters more broadly than to just physicians. A recommendation was made to limit the letters to prescribers only.

(Response) The regulation requires manufacturers and distributors to mail important information to ''physicians and others responsible for patient care''. (See 21 CFR 200.5) To the extent this includes non-prescribing health care professionals responsible for patient care, the manufacturers should send letters to relevant personnel. This is not an expansion of the scope of the letters, merely a clarification of the regulation and a reflection of the health care system today, which has a variety of practitioners involved in patient care.

(Comment 2) In Section VI of the draft guidance, FDA recommends that companies conduct an evaluation of the extent to which the target audience received the DHCP letter and is aware of the information that was communicated in the letter. It also asked manufacturers to assess the impact of DHCP letters and their impact on patient behavior. Comments found this overly burdensome, beyond the Agency's statutory authority, and an unnecessary increase in correspondence, thereby potentially diluting the impact of the DHCP letters.

(Response) We agree with the comments. The final guidance has been modified to suggest that manufacturers conduct an evaluation, *for their own use,* of the utility of the letters and their success in reaching the target audiences.

Based on a review of MedWatch Safety Alerts for 2008 and 2009, we identified each Dear Health Care Provider Letter sent and the identity of each sponsor sending out a Dear Health Care Provider Letter for each year. We estimate that we will receive approximately 30 Dear Health Care Provider Letters annually from approximately 25 application holders. FDA professionals familiar with Dear Health Care Provider Letters and with the recommendations in the draft guidance estimate that it should take an application holder approximately 100 hours to prepare and send Dear Health Care Provider Letters in accordance with the draft guidance. Therefore we estimate the annual reporting burden as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual Average	25	1.20	30	100	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the draft guidance, we refer to an earlier guidance for industry entitled ''Using Electronic Means to Distribute Certain Product Information'' (71 FR 26102; May 3, 2006). That guidance referred to previously approved collections of information found in FDA regulations that are subject to review by OMB. The collections of information in that guidance have been approved under OMB control number 0910–0249.

Dated: July 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16445 Filed 7–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0795]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices; Third-Party Review Under the Food and Drug Administration Modernization Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection associated with medical devices third-party review under the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit either electronic or written comments on the collection of information by September 9, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written

comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under 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, including each proposed extension of an existing 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 comments on these topics: (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 of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices; Third-Party Review Under FDAMA—21 U.S.C. 360m (OMB Control Number 0910–0375)—Extension

Section 210 of the Food and Drug Administration Modernization Act (FDAMA) established section 523 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360m), directing FDA to accredit persons in the private sector to review certain premarket notifications (510(k)s). Participation in this third-party review program by accredited persons is entirely voluntary. A third party wishing to participate will submit a request for accreditation to FDA. Accredited third-party reviewers have the ability to review a manufacturer's 510(k) submission for selected devices. After reviewing a submission, the reviewer will forward a copy of the 510(k) submission, along with the reviewer's documented review and recommendation to FDA. Third-party reviewers should maintain records of their 510(k) reviews and a copy of the 510(k) for a reasonable period of time, usually a period of 3 years.

This information collection will allow FDA to continue to implement the accredited person review program established by FDAMA and improve the efficiency of 510(k) review for low- to moderate-risk devices.

Respondents to this information collection are businesses or other for-profit organizations.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Requests for accreditation	1	1	1	24	24
510(k) reviews conducted by accredited third parties	10	26	260	40	10,400
Total					10,424

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

Activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
510(k) reviews	10	26	260	10	2,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

I. Reporting

510(k) Reviews Conducted by Accredited Third Parties

According to FDA's data, the number of 510(k)s submitted for third-party review is approximately 260 annually, which is 26 annual reviews per each of the 10 accredited reviewers.

II. Recordkeeping

Third-party reviewers are required to keep records of their review of each submission. According to FDA's data, the Agency anticipates approximately 260 submissions of 510(k)s for third-party review per year.

Dated: July 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16402 Filed 7–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0796]

Agency Information Collection Activities; Proposed Collection; Comment Request; Testing Communications on Medical Devices and Radiation-Emitting Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on communication studies involving medical devices and radiation-emitting products regulated by FDA. This information will be used to explore concepts of interest and assist in the development and modification of communication messages and campaigns to fulfill the Agency's mission to protect the public health.

DATES: Submit either electronic or written comments on the collection of information by September 9, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under 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, including each proposed extension of an existing 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 comments on these topics: (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 of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Testing Communications on Medical Devices and Radiation-Emitting Products—(OMB Control Number 0910–0678)—Extension

FDA is authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) to conduct educational and public information programs relating to the safety of regulated medical devices and radiation-emitting products. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. Improving communications about medical devices and radiation-emitting products will involve many research methods, including individual indepth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about medical device and radiation-emitting product use. Knowledge of consumer and health care professional decision making processes will provide the better understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels. These communications will aim to improve public understanding of the risks and benefits of using medical devices and radiation-emitting products by providing users with a better context in which to place risk information more completely.

Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, it will allow FDA to ascertain the effectiveness of the messages and the distribution method of these messages in achieving the objectives of the message campaign. Evaluation of campaigns is a vital link in continuous improvement of communications at FDA.

Annually, FDA projects about 30 studies using a variety of research methods and lasting an average of 0.17 hours each (varying from 0.08–1.5 hours). FDA estimates the burden of this collection of information based on prior recent experience with the various types of data collection methods described earlier. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

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
Individual indepth interviews	360	1	360	0.75 (45 minutes)	270
General public focus group interviews	144	1	144	1.50 hours	216
Intercept interviews: Central location	200	1	200	0.25 (15 minutes)	50
Intercept interviews: Telephone	4,000	1	4,000	0.08 (5 minutes)	320
Self-administered surveys	2,400	1	2,400	0.25 (15 minutes)	600
Gatekeeper reviews	400	1	400	0.50 (30 minutes)	200

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Omnibus surveys	1,200	1	1,200	0.17 (10 minutes)	204
Total (general public)	8,704				1,860
Physician focus group interviews	144	1	144	1.50 hours	216
Total (physician)	144				216
Total (overall)	8,848				2,076

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16401 Filed 7–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0370]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Export of Medical Devices; Foreign Letters of Approval

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 August 8, 2013.

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 0910–0264. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *daniel.gittleson@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.

Export of Medical Devices; Foreign Letters of Approval—(OMB Control Number 0910–0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export. Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or agency of the United States. The respondents to this collection of information are companies that seek to export medical devices. FDA's estimate of the reporting burden is based on the experience of FDA's medical device program personnel.

In the **Federal Register** of April 5, 2013 (78 FR 20660), 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/section of FD&C Act	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating & maintenance costs
Foreign letter of approval—§ 801(e)(2)	38	1	38	3	114	$9,500

[1] There are no capital costs associated with this collection of information.

Dated: July 2, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16408 Filed 7–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0743]

Medical Device Reporting for Manufacturers; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Medical Device Reporting for Manufacturers.'' This draft guidance describes and explains the current FDA regulation that addresses reporting and recordkeeping requirements applicable to manufacturers of medical devices for certain device-related adverse events. This draft guidance is intended to update FDA's policy and to further clarify FDA's interpretations of the regulation requirements and, when final, will supersede the previous manufacturer guidances issued in 1988 and 1997. This draft guidance also provides answers to frequently asked questions and includes a section on common reporting errors. This draft guidance is not final nor is it in effect at this time.

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 October 7, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Medical Device Reporting for Manufacturers'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. Please use the document number 1828 to identify the guidance you are requesting. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the 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. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Barbara Myklebust, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2312, Silver Spring, MD 20993–0002, 301–796–6005.

SUPPLEMENTARY INFORMATION:

I. Background

The first Medical Device Reporting (MDR) regulation became effective December 13, 1984, with mandatory device-related adverse event reporting obligations for manufacturers and importers. FDA published ''Medical Device Reporting Questions and Answers'' as part of its Compliance Guidance Series in February 1988. Subsequent changes to the reporting requirements, including mandatory reporting by domestic distributors and device user facilities, resulted from amendments to the Federal Food Drug and Cosmetic Act (the FD&C Act) in 1990 and 1992.

The MDR regulation was revised significantly after the 1990 and 1992 amendments to the FD&C Act. The amended MDR regulation was published with significant revisions on December 11, 1995, and effective on July 31, 1996. FDA published a guidance document ''Medical Device Reporting for Manufacturers'' in March 1997 to clarify the changes to reporting requirements under the new regulation. The FD&C Act was further modified by amendments in 1997, 2002, and 2007, requiring further changes to the regulation. A plain language version of the MDR regulation was published on February 28, 2005, effective (in part) on July 13, 2005.

This draft guidance describes and explains the current FDA regulation that addresses reporting and recordkeeping requirements applicable to manufacturers of medical devices for certain device-related adverse events. This draft guidance is intended to update FDA's policy and to further clarify FDA's interpretations of the regulation requirements and, when final, will supersede the previous manufacturer guidances issued in 1988 and 1997. The draft guidance also provides answers to frequently asked questions and includes a section on common reporting errors.

II. Significance of Guidance

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 medical device reporting for manufacturers. 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 statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Medical Device Reporting for Manufacturers,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1828 to identify the guidance you are requesting.

IV. 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 collection of information in 21 CFR part 803 subparts A to E have been approved under OMB 0910–0437 (expires August 31, 2015), and the collection of information in 21 CFR 803.11 and 803.20 have been approved under OMB control number 0910–0291 (expires June 30, 2015).

V. 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. 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.*

Dated: July 1, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–16395 Filed 7–8–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Discretionary Grant Program

AGENCY: Health Resources and Services Administration (HRSA), Health and Human Services (HHS).

ACTION: Notice of Single-Source Replacement Award to the Michigan Public Health Institute.

SUMMARY: HRSA will be transferring the Michigan Family-to-Family Health Information Center (F2F HIC) grant (H84MC09365) from the Family Center for Children and Youth with Special Health Care Needs (FCCYSHCN) in Detroit, Michigan, to the Michigan Public Health Institute (MPHI) in Okemos, Michigan, to ensure the continued provision of health resources, financing, related services, and parent-to-parent support for families with children and youth with special health care needs (CYSHCN) in the state of Michigan.

SUPPLEMENTARY INFORMATION: *Former Grantee of Record:* Family Center for Children and Youth with Special Health Care Needs.

Original Grant Period: June 1, 2008, to May 31, 2013.

Replacement Awardee: The Michigan Public Health Institute.

Amount of Replacement Award: Up to $95,700 for the remainder of the project period.

Period of Replacement Award: May 1, 2013, to May 31, 2013.

Authority: Section 501(c)(1)(A) of the Social Security Act, as amended.

CFDA Number: 93.504.

Justification: The former grantee, FCCYSHCN, has relinquished the F2F HIC grant due to internal oversight decisions. The former grantee has requested that HRSA transfer the F2F HIC funds to a Michigan-based family services agency in order to implement and carry out grant activities originally proposed under the FCCYSHCN grant application.

The MPHI was chosen as the best qualified grantee for this replacement award due to its capacity to provide an array of services to the target population and its record of compliance and sound fiscal management with other HHS grants. The MPHI has demonstrated its ability to successfully implement the goals and objectives of the F2F HIC project.

It is critical that the MPHI continue helping families of CYSHCN gain access to information they need to make informed health care decisions, be full partners in decision-making, and access needed resources/referrals and financing for those services in the state of Michigan. It is also imperative that the center continues to train and support health care providers and other professionals in public and private agencies who serve Michigan's CYSHCN, helping them better understand the needs of children, youth, and their families.

This replacement award will ensure that an F2F HIC will be accessible to families and professionals to continue providing essential information and referral and support services to families with CYSHCN throughout Michigan in a manner which avoids any disruption of services.

FOR FURTHER INFORMATION CONTACT: LaQuanta Smalley, Integrated Services Branch, Division of Services for Children with Special Health Needs, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–61, Rockville, MD 20857; 301.443.2370; *lsmalley@hrsa.gov.*

Dated: July 2, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–16424 Filed 7–8–13; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Single-Case Deviation from Competition Requirements: Transfer of Grantee Request for the Detroit Healthy Start Program, Detroit, MI

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of Single-Case Deviation from Competition Requirements: Transfer of Grantee Request for the Detroit Healthy Start Program, Detroit, MI, Grant Number H49MC00147.

SUMMARY: HRSA will be issuing a grantee transfer without competition for the Detroit Michigan Healthy Start program to the Institute for Population Health (IPH). The IPH will assume responsibility for the Healthy Start program and receive year 5 funding in the amount of $1,575,000, from Grant Number H49MC00147, during the budget period of 6/1/2013–5/31/2014 to support the objectives of the Eliminating Disparities in Perinatal Health Healthy Start Program.

The Eliminating Disparities in Perinatal Health Healthy Start Program (H49), CFDA No. 93.926, is authorized by the Public Health Service Act, Title III, Part D, Section 330H (42 USC 254c–8).

The purpose of the Eliminating Disparities in Perinatal Health Healthy Start Program is to address significant disparities in perinatal health. Differences in perinatal health indicators may occur by virtue of education, income, disability, or living in rural/isolated areas. To address disparities and the factors contributing to them, project services have been designed to cover the pregnancy and interconceptional phases for women and infants residing in the proposed project area. In order to promote longer interconceptional periods and prevent relapses of risk behaviors, the women and infants are to be followed through the infant's second year of life and/or two years following delivery.

SUPPLEMENTARY INFORMATION: Intended Recipients of the Award: The Institute for Population Health will assume responsibilities associated with the grant and all associated funding will be transferred to the Institute for Population Health.

Amount of the Non-Competitive Award: $1,575,000

CFDA Number: 93.926

Current Project Period: 06/01/2009—05/31/2014

Period of Grantee Transfer Funding: 6/1/2013–5/31/2014

Authority: Public Health Service Act, Title III, Part D, Section 330H (42 U.S.C. 254c–8).

Justification: HRSA is transferring responsibility of the Detroit Healthy Start Program to the Institute for Population Health for the purpose of continuing Healthy Start services, including prenatal and interconception care, to men, women, infants, and children residing in Wayne County. The current grantee agency, the Detroit Department of Health and Wellness Promotion (DHWP) is phasing out its provision of direct public health services and will no longer have the ability to manage the Healthy Start

program. Currently in year 4 of a 5-year project period, the Detroit Healthy Start Program is funded at a total cost of $1,575,000 per year to provide core services to residents of Wayne County. The purpose of the project is to improve the health and well-being of the men and women of childbearing age, and the children and infants living in the project area who are at a risk for morbidity and mortality. The project goals will be achieved by assuring that childbearing and rearing families receive quality, comprehensive, health and supportive services.

The Institute for Population Health was established by the Health Department leadership to assure public health services remain available to residents of the City of Detroit. The Institute oversees the Mayors' Task Force for the Well-Being of Children and Families whose vision ensures that ''All families with children have access to the resources and supports that empower them to ensure their well-being.'' As part of the grant transfer request, the Mayors' Task Force for the Well-Being of Children and Families will assume the responsibilities of the Detroit Healthy Start Consortium and provide leadership in the promotion of policies and practices that support families with children, seek opportunities to strengthen community capacity building and collective impact, and facilitate systems integration through ongoing communication and collaboration with key partners and stakeholders.

FOR FURTHER INFORMATION CONTACT: Benita Baker, MHS, Division of Healthy Start and Perinatal Services, Maternal and Child Health Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 13–91, Rockville, Maryland 20857; *BBaker@hrsa.gov.*

Grantee/organization name	Grant No.	State	FY 2013 authorized funding level	FY 2013 estimated funding level
Institute for Population Health	H49MC00147	MI	$1,575,000	$1,575,000

Dated: July 2, 2013.

Mary K. Wakefield,

Administrator.

[FR Doc. 2013–16492 Filed 7–8–13; 8:45 am]

BILLING CODE 4165–15–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: Physical Activity and Weight Control Interventions among Cancer Survivors.

Date: July 29, 2013.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martha L Hare, Ph.D., RN, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3154, Bethesda, MD 20892, (301) 451–8504, *harem@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation Grants: Electron Microscopes and Detectors.

Date: July 30, 2013.

Time: 8:00 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: Wallace Ip, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, 301–435–1191, *ipws@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Mitochondria, Cardiac metabolism and Cardiac protection.

Date: August 1–2, 2013.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bioengineering Sciences and Technology.

Date: August 1, 2013.

Time: 2:00 p.m. to 5:00 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: Kee Hyang Pyon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7806, Bethesda, MD 20892, *pyonkh2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Environment, Development and Reproductive Biology.

Date: August 8–9, 2013.

Time: 7:00 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: Reed A Graves, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 402–6297, *gravesr@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: July 2, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16337 Filed 7–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2); 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Experimental Therapeutics Program (Cycle 14 NExT).

Date: August 21–22, 2013.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31 Conference Room 6C10, Bethesda, MD 20892.

Contact Person: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892, (301) 496–4291, *mroczkoskib@mail.nih.gov.*

Joseph Tomaszewski, Ph.D., Executive Secretary, Development, Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, MD 20892, (301) 496–6711, *tomaszej@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 2, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–16338 Filed 7–8–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2013–0025; OMB No. 1660–New]

Agency Information Collection Activities: Proposed Collection; Comment Request.

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a new information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning applications for the Staffing for Adequate Fire and Emergency Response (SAFER) Grants program. The SAFER program provides funding for the hiring of new firefighters and the recruitment and retention of volunteer firefighters.

DATES: Comments must be submitted on or before September 9, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under Docket ID FEMA–2013–0025. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 840, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice, which is available by clicking on the Privacy Notice link on the homepage of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Dunham, Fire Program Specialist, Grant Program Directorate, 202–786–9813. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2201 et seq.), as amended authorizes FEMA to comprise the submission of applications for the Staffing for Adequate Fire and Emergency Response (SAFER) grants. The information collected is grant application information that is necessary to assess the needs of the applicants as well as the benefits to be obtained from the use of funds. The information collected through the program's application is the minimum necessary to evaluate grant applications and is necessary for FEMA to comply with mandates delineated in the law. SAFER applications were previously collected under ICR No. 1660–0054. It is now necessary for SAFER to have its own, new collection.

Collection of Information

Title: Staffing for Adequate Fire and Emergency Response (SAFER) Grants.

Type of Information Collection: New collection.

FEMA Forms: FEMA Form 080–4, Staffing for Adequate Fire and Emergency Response (SAFER) (General Questions All Applicants); FEMA Form 080–4a, Staffing for Adequate Fire and Emergency Response Hiring of Firefighters Application (Questions and Narrative); FEMA Form 080–4b, Staffing for Adequate Fire and Emergency Response Recruitment and Retention of Volunteer Firefighters Application (Questions and Narrative)

Abstract: FEMA uses this information to ensure that FEMA's responsibilities under the legislation can be fulfilled accurately and efficiently. The information will be used to objectively evaluate each of the anticipated applicants to determine which of the applicants' proposals in each of the activities are the closest to the established program priorities.

Affected Public: State, Local or Tribal Government, and Not-for-Profit Institutions.

Number of Respondents: 3,200.

Number of Responses: 3,200.

Estimated Total Annual Burden Hours: 26,190.

Estimated Cost: There are no record keeping, capital, start-up, or maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption. Comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: June 21, 2013.

Loretta Cassatt,

Records Management Branch, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–16467 Filed 7–8–13; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4111–DR; Docket ID FEMA–2013–0001]

New York; Amendment No. 1 to Notice of a Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of New York (FEMA–4111–DR), dated April 23, 2013, and related determinations.

DATES: *Effective Date:* June 24, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Michael F. Byrne as Federal Coordinating Officer for this disaster.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–16465 Filed 7–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3351–EM; Docket ID FEMA–2013–0001]

New York; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for State of New York (FEMA–3351–EM), dated October 28, 2012, and related determinations.

DATES: *Effective Date:* June 24, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this emergency.

This action terminates the appointment of Michael F. Byrne as Federal Coordinating Officer for this emergency.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–16466 Filed 7–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4117–DR; Docket ID FEMA–2013–0001]

Oklahoma; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4117–DR), dated May 20, 2013, and related determinations.

DATES: *Effective Date:* June 28, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 20, 2013.

Atoka, Coal, Hughes, Latimer, Nowata, Pittsburg, Pushmataha, and Seminole Counties for Public Assistance, including direct federal assistance.

Canadian, Okfuskee, and Okmulgee Counties for Public Assistance, including

direct federal assistance (already designated for Individual Assistance).

Cleveland, Lincoln, McClain, Oklahoma, and Pottawatomie Counties for Public Assistance [Categories C–G] (already designated for Individual Assistance and debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–16474 Filed 7–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4086–DR; Docket ID FEMA–2013–0001]

New Jersey; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Jersey (FEMA–4086–DR), dated October 30, 2012, and related determinations.

DATES: *Effective Date:* June 25, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 25, 2013, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to W. Craig Fugate, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of New Jersey resulting from Hurricane Sandy during the period of October 26 to November 8, 2012, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the ''Stafford Act'').

Therefore, I amend my declaration of October 30, 2012, as previously amended, to authorize Federal funds for all categories of Public Assistance at 90 percent of total eligible costs, except assistance previously designated at 100 percent Federal share.

This adjustment to State and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–16468 Filed 7–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4117–DR; Docket ID FEMA–2013–0001]

Oklahoma; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–4117–DR), dated May 20, 2013, and related determinations.

DATES: *Effective Date:* June 26, 2013.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 20, 2013.

Okfuskee, Okmulgee, and LeFlore Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2013–16471 Filed 7–8–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5689–N–05]

60-Day Notice of Proposed Information Collection: Innovation in Affordable Housing Design Student Competition

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* September 9, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Innovation in Affordable Housing Design Student Competition.

OMB Approval Number: N/A.

Type of Request: New.

Form Number: N/A.

Description of the need for the information and proposed use: The Innovation in Affordable Housing Design Student Competition is a new initiative in which multidisciplinary teams of graduate students will compete to solve a real life problem faced by public housing authorities using innovations in affordable housing design. The Competition aims to: Encourage research and innovation in quality affordable housing design that strengthens the social and physical fabric of low- and moderate-income communities and neighborhoods; raise practitioner and future practitioner capacity to produce more livable and sustainable housing for low- and moderate-income people through disseminating best practices; and to foster cross-cutting team-work within the design and community development process.

Respondents (i.e. affected public): Graduate Student Teams.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Primary Applications	30	1	30	80	2400	N/A	N/A
Finalists	4	1	4	40	160	N/A	N/A
Total	14	2	14	120	2560	N/A	N/A

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: July 1, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 2013–16452 Filed 7–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5723–N–01]

Federal Housing Administration (FHA): Single Family Quality Assurance—Solicitation of Information on Quality Lending Practices

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: Through this notice, FHA solicits comment from its approved lenders, the lending industry generally, consumers, consumer protection agencies, and interested members of the public on ways to improve the efficiency and effectiveness of FHA's quality assurance process (QAP). The objective of FHA's QAP is to promote quality lending practices by FHA's approved lenders; practices that protect the consumer and mitigate risk for the lender and FHA. The feedback that FHA receives through this solicitation will help inform FHA of next steps that FHA may want to take to strengthen its current QAP.

DATES: *Comment Due Date:* September 9, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this document to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare

and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the document.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen A. Zadareky, Associate Deputy Assistant Secretary for Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; telephone number 202-708–3175 (this is not a toll-free number). Persons with hearing or speech challenges may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

FHA has long required its approved lenders to maintain and implement a quality control plan (QCP).[1] A copy of the plan must be submitted by the lender when applying for FHA lender approval. FHA considers a QCP to be an important part of a lender's origination and servicing operations. The purpose of the QCP is to help ensure that the lender maintains compliance with FHA requirements and the lender's own policies and procedures. The QCP must be sufficient in scope to enable the lender to evaluate the accuracy, validity and completeness of its loan origination and servicing operations. Specifically, the QCP should be designed to meet the following basic goals: assure compliance with FHA's and the lender's own origination or servicing requirements throughout its operations; protect the lender and FHA from unacceptable risk; guard against errors, omissions and fraud; and assure swift and appropriate corrective action.

In addition to the lender QCP, FHA conducts an independent review of loan endorsements through one or more processes: post-endorsement technical reviews, Quality Assurance Division reviews and targeted lender reviews. Each of these approaches has a targeted sampling methodology. FHA also relies on certain metrics as part of its QAP. For example, for each lender, FHA computes a Compare Ratio, which measures the early default and claim rate on that lender's FHA mortgages, relative to the early default and claim rate on all FHA mortgages in that given geographic area.

Over the last few years, FHA has taken several steps to strengthen FHA's oversight functions, and conducting an examination of FHA's single family QAP is another step in that direction. FHA is evaluating single family quality assurance alternatives that would better align with FHA's mission. Specifically, FHA seeks to ensure that it maintains and improves a quality assurance framework that does not hinder or dissuade lending to FHA-targeted populations, enhances the efficiency and effectiveness of the QAP, ensures compensation to FHA for defects resulting from the lender manufacturing process, and applies fairly to all lenders. FHA also seeks a framework that ensures that loans are reviewed within a reasonable time period, post-endorsement, to allow FHA to use loan quality findings to improve credit policy and to allow lenders to improve their FHA origination practices. Any changes initiated as a result of this solicitation will be prospective only, and will not apply to any pending claims, reviews, or enforcement actions.

II. Solicitation of Comment

As part of FHA's own evaluation of the QAP, FHA welcomes input from warehouse lenders, retail lenders, mortgage bankers, wholesale lenders, mortgage brokers, federal, state, and local consumer protection and enforcement agencies, consumer groups and other interested parties in the mortgage lending industry and the broader public. FHA specifically seeks input that addresses one or more of the following areas, which are the current focus of FHA regarding the QAP:

1. *Loan defect and appropriate consequence (e.g. indemnification, other administrative remedies).* What types of loan manufacturing or compliance defects found in the QAP should be subject to indemnification or other administrative remedies or a combination of responses?

2. *Annual review and comparison of rate of early defaults and claims.* FHA is currently required by statute to review, at least annually, the rate of early defaults and claims for FHA-insured single family mortgages originated and underwritten by each mortgagee and, for each mortgagee, to compare these rates to those of other mortgagees originating or underwriting mortgages in the same geographic area. FHA is examining how, within the current parameters, the review and comparison may achieve an improved assessment of a mortgagee's performance. For example, whether FHA should establish a specific standard of defaults and claims which mortgagees should not exceed within a given construct. This standard would be based on FHA's review of all mortgagees' performance in the area, thus undertaking the statutorily required comparative review, but would also be based on certain specified criteria that reflect generally accepted practices of prudent and responsible lending.

3. *Standard of overall manufacturing quality.* FHA is considering whether to establish a threshold manufacturing (or loan deficiency) risk tolerance. Such a standard might set a maximum threshold for the percent of loans with defects, or unacceptable patterns of recurring defects that, when surpassed, would automatically subject that lender to additional oversight, or trigger enforcement action.

4. *Statistical sampling.* FHA is also considering whether to establish a process to review a statistically significant random sample of loans for each mortgagee within a prescribed time frame after loan endorsement. Lenders would receive feedback on findings within an established timeframe. FHA would use the statistical sample, to estimate the defect rate on each lender's overall FHA portfolio and then extrapolate the origination defect rate to all lender originations during the sampled time period, and thus have the lender compensate FHA for the estimated total risk to FHA resulting from the lender's origination processes. The purpose of this process would be to

[1] See Chapter 7 of FHA's Mortgagee Approval Handbook (4060.1) at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/handbooks/hsgh/4060.1.*

increase the efficiency of FHA's post-endorsement review process. HUD invites comment on the use of and optimal methodology for a statistically significant random sample, including the nature of the loans that should be included or excluded from the sample.

While FHA specifically seeks comment on the four areas identified above, FHA welcomes comment on all issues related to its QAP and how this process may be improved. Based on information received in response to this solicitation, FHA will decide what, if any, action may be appropriate with regard to FHA's Single Family Quality Assurance practices.

Dated: July 3, 2013.

Carol J. Galante,

Assistant Secretary for Housing–Federal Housing Commissioner.

[FR Doc. 2013–16483 Filed 7–8–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT92230–13–L51100000–GA0000–LVEMJ12CJ580, UTU–88953]

Notice of Availability of the Environmental Assessment and Notice of Public Hearing for Federal Coal Lease Application, UTU–88953, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Notice of Public Hearing.

SUMMARY: In accordance with Federal coal management regulations, the Wasatch Natural Resources, LLC, Federal Coal Lease-By-Application (LBA) Environmental Assessment (EA) is available for public review and comment. The United States Department of the Interior, Bureau of Land Management (BLM) Price Field Office will hold a public hearing to receive comments on the EA, Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources for the Long Canyon Coal Lease Tract, serial number UTU–88953.

DATES: The public hearing will be held at the Price Field Office on July 31, 2013 at 7:00 p.m. Written comments should be received no later than August 8, 2013.

ADDRESSES: The public hearing will be held at the BLM Price Field Office, 125 South 600 West, Price, Utah 84501. Copies of the EA and the unsigned Finding of No Significant Impact (FONSI) are available at the Price Field Office. The hearing will be advertised in the Sun Advocate located in Price, Utah. Written comments on the EA should be sent to: Steve Rigby at the Price Field Office address above. Written comments on the FMV and MER should be sent to Jeff McKenzie, BLM, Utah State Office, Division of Lands and Minerals, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101. Please note ''Coal Lease By Application UTU–88953'' in the subject line for all emails or mailing envelops.

FOR FURTHER INFORMATION CONTACT: Jeff McKenzie at 801–539–4038, *jmckenzi@blm.gov* or Mr. Steve Rigby, 435–636–3604, *swrigby@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 to contact the above individual(s) during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: Wasatch Natural Resources, LLC, submitted the coal lease application. The EA addresses the cultural, socioeconomic, environmental and cumulative impacts that would likely result from leasing these coal lands. The lands included in the Long Canyon Coal Lease Tract are located in Carbon County, Utah, approximately 1 mile north and east of Scofield, Utah, on private surface with federally-administered minerals and are described as follows:

Salt Lake Meridian

T. 12 S., R 7 E.,
Sec. 28, E½E½;
Sec. 33, E½NE¼;
T. 13 S., R 7 E.,
Sec. 1, SW¼NW¼;
Sec. 2;
Sec. 3, lots 1, 2, and 5 to 10, inclusive, and SE¼NE¼, N½SW¼;
Sec. 9, NE¼, S½NW¼, E½SW¼, E½SE¼;
Sec. 10, and 11;
Sec. 12, W½W½;
Sec. 13, W½W½;
Sec. 14, and 15;
Sec. 16, E½E½;
Sec. 23;
Sec. 24, W½NW¼, NW¼SW¼.

The areas described containing approximately 5,586.90 acres.

The Long Canyon Coal Lease Tract has two minable coal beds; the Hiawatha and the UP beds. The minable portions of the coal beds in this area average 10½ feet in thickness for the Hiawatha and average six feet in thickness for the UP. The applicant has proposed to mine the underground coal reserves with continuous mining equipment. The tract is estimated to contain around 40.5 million tons of recoverable high-volatile B bituminous coal. The average coal quality, on an ''as received basis,'' in the (1) Hiawatha coal bed is as follows: 12,056 Btu/lb., 9.50 percent moisture, 6.10 percent ash, 40.80 percent volatile matter, 46.00 percent fixed carbon and 0.65 percent sulfur, and (2) UP coal bed is as follows: 12,200 Btu/lb., 9.50 percent moisture, 5.90 percent ash, 40.40 percent volatile matter, 45.60 percent fixed carbon and 0.60 percent sulfur. The public is invited to make public and/or written comments on the environmental implications of leasing the proposed tract, and also to submit comments on the FMV and the MER of the tract.

Proprietary data marked as confidential may be submitted to the BLM in response to the solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing confidentiality of such information. A copy of the comments submitted by the public on the EA, FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the BLM, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah, during regular business hours (7:45 a.m.– 4:30 p.m.), Monday through Friday.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments on the FMV and MER should address, but not necessarily be limited to, the following information:

1. The quality of the coal resource;
2. The method of mining to be employed to obtain MER of the coal, including specifications of seams to be mined, and timing and rate of production;
3. Whether this tract is likely to be mined as part of an existing mine and therefore should be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;
4. Whether the tract should be evaluated as part of a potential larger mining unit and revaluated as a portion

of a new potential mine (i.e., a tract which does not in itself form a logical mining unit);

5. Restrictions to mining that may affect coal recovery;

6. The price that the mined coal would bring when sold;

7. Costs, including mining and reclamation, of producing the coal;

8. The timing and annual production tonnage(s);

9. The percentage rate at which anticipated income streams should be discounted, either with inflation or in the absence of inflation, in which case, the anticipated rate of inflation should be given;

10. Depreciation, depletion, amortization and other tax accounting factors;

11. The value of any surface estate where held privately;

12. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and,

13. Any comparable sales data of similar coal lands, mining conditions, and coal quantities.

Authority: 43 CFR parts 3422 and 3425.

Jenna Whitlock,

Associate State Director.

[FR Doc. 2013–16486 Filed 7–8–13; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–MWR–SLBE–13148; PPMWSLBES0–PPMPSPD1Z.YM0000]

Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Interior.

ACTION: Notice of Concurrent Jurisdiction.

SUMMARY: On behalf of the United States, the National Park Service has accepted concurrent legislative jurisdiction from the State of Michigan over lands and waters administered by the National Park Service within the boundaries of Sleeping Bear Dunes National Lakeshore.

DATES: *Effective Date:* Concurrent legislative jurisdiction within Sleeping Bear Dunes National Lakeshore became effective on May 2, 2013.

FOR FURTHER INFORMATION CONTACT: Phil Akers, Chief Ranger, Sleeping Bear Dunes National Lakeshore, 9922 Front Street, Empire, Michigan 49630; telephone (231) 326–5135.

SUPPLEMENTARY INFORMATION: On May 2, 2013, acting in accordance with the provisions of 16 U.S.C. 1a–3, 40 U.S.C. 3112, and Michigan Compiled Laws 3.905 (2010), Jonathan B. Jarvis, Director of the National Park Service, accepted concurrent legislative jurisdiction from the Honorable Rick Snyder, Governor of the State of Michigan, over lands and waters administered by the National Park Service within the boundaries of Sleeping Bear Dunes National Lakeshore.

Dated: June 25, 2013.

Jonathan B. Jarvis,

Director, National Park Service.

[FR Doc. 2013–16458 Filed 7–8–13; 8:45 am]

BILLING CODE 4310–MA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–13359; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before June 15, 2013. Pursuant to § 60.13 of 36 CFR Part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by July 24, 2013. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 19, 2013.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALASKA

Southeast Fairbanks Borough—Census Area

Alaska—Canada Military Highway, W. of Alaska Hwy., approx. 37 mi. SE. of Delta Junction, Delta Junction, 13000543

ARIZONA

Maricopa County

Tempe Municipal Building, 31 E. 5th St., Tempe, 13000544

Pima County

Bell, Maynard and Evelyn, House, (Residences of Thomas Gist in Southern Arizona MPS) 5880 N. Cerrada Circa, Tucson, 13000546

Casa Juan Paisano, 3300 E. Camino Juan Paisano, Tucson, 13000545

Miller, Steve and Elizabeth, House, (Residences of Thomas Gist in Southern Arizona MPS) 12650 E. 5th St., Tucson, 13000547

Riecke House, (Residences of Thomas Gist in Southern Arizona MPS) 835 N. Barbara Worth Dr., Tucson, 13000548

Stevens House, (Residences of Thomas Gist in Southern Arizona MPS) 525 W. Golf View Dr., Oro Valley, 13000549

Von Isser House, (Residences of Thomas Gist in Southern Arizona MPS) 4949 E. Glenn St., Tucson, 13000550

CALIFORNIA

Los Angeles County

Women's Twentieth Century Club of Eagle Rock, 5105 Hermosa Ave., Los Angeles, 13000551

Tulare County

Visalia Fox Theater, 308 W. Main St., Visalia, 13000552

COLORADO

Chaffee County

Brown's Canyon Bridge, (Highway Bridges in Colorado MPS) Cty. Rd. 191 crossing the Arkansas R., Salida, 13000554

ILLINOIS

Cook County

Hyatt House Hotel, 4500 W. Touhy Ave., Lincolnwood, 13000553

West Argyle Street Historic District (Boundary Increase), N. Broadway & E. block face of N. Sheridan Rd. between W. Argyle St. & W. Winona Ave., Chicago, 13000555

KENTUCKY

Daviess County

Krahwinkel, Thomas, House, 10501 US 60, Owensboro, 13000556

Franklin County

South Frankfort Neighborhood Historic District (Boundary Increase), Roughly bounded by US 60, Taylor Ave., Kentucky

R. & Tanglewood Subdivision, Frankfort, 13000557

Jefferson County

Abbott, Leslie V., House, 2401 Newburg Rd., Louisville, 13000558
Hogan's Fountain Pavilion, Address Restricted, Louisville, 13000559
Kurfees Paint Company, 201 E. Market St., Louisville, 13000560
University of Louisville Library, 2200 S. First Street Walk, Louisville, 13000561

Kenton County

Lincoln—Grant School, 824 Greenup St., Covington, 13000562

Letcher County

Little Creek Pictographs, (Prehistoric Rock Art Sites in Kentucky MPS) Address Restricted, Hemphill, 13000563

McCracken County

Paducah Coca-Cola Bottling Plant, 3121 Broadway, Paducah, 13000564

Rockcastle County

Great Saltpetre Cave, 237 Saltpetre Cave Rd., Mt. Vernon, 13000565

Scott County

Sadieville Historic District, 100–326 College, 100–245 Main, 350–714 Pike, 216 Church, 204 Cunningham & 100–247 Vine Sts., 109–123 Gano Ave., Sadieville, 13000566

Wayne County

Wayne County High School, 80 A.J. Lloyd Cir., Monticello, 13000567

MISSOURI

St. Louis Independent city

Bevo Mill Historic District, 4648–5003 Gravois Ave., 4719–4767 Morgan Ford Rd., St. Louis (Independent City), 13000568

RHODE ISLAND

Newport County

First Baptist Church of Tiverton, 7 Old Stone Church Rd., Tiverton, 13000569

SOUTH DAKOTA

Bennett County

Inland Theater, 306 Main, Martin, 13000570

Butte County

First Congregational United Church of Christ, 717 Jackson, Belle Fourche, 13000571

Campbell County

Wientjes Barn and Ranch Yard, 11703 299th Ave., Mound City, 13000572

Gregory County

Gregory National Bank, 524 Main, Gregory, 13000573

[FR Doc. 2013–16353 Filed 7–8–13; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–873–875, 878–880, and 882 (Second Review)]

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on July 2, 2012 (77 FR 39254) and determined on October 5, 2012 that it would conduct full reviews (77 FR 64127, October 18, 2012). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on December 3, 2012 (77 FR 71631). The hearing was held in Washington, DC, on April 25, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on July 2, 2013. The views of the Commission are contained in USITC Publication 4409 (July 2013), entitled *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine: Investigation Nos. 731–TA–873–875, 878–880, and 882 (Second Review).*

By order of the Commission.

Issued: July 3, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–16398 Filed 7–8–13; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioners Daniel R. Pearson and Meredith M. Broadbent dissenting with respect to Indonesia, Latvia, and Poland. Commissioner Daniel R. Pearson dissenting with respect to Belarus, Moldova, and Ukraine.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–819]

Certain Semiconductor Chips With Dram Circuitry, and Modules and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review-in-part the final initial determination issued by the presiding administrative law judge in the above-captioned investigation on March 26, 2013. The Commission has determined not to review the final initial determination of no violation with respect to U.S. Patent No. 7,659,571, and the investigation is terminated with respect to that patent. The Commission requests certain briefing from the parties on the issues under review, as indicated in this notice. The Commission also requests briefing on the issues of remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 21, 2011, based on a complaint filed by Elpida Memory, Inc., of Tokyo, Japan and Elpida Memory (USA) Inc. of Sunnyvale, California

(collectively, ''Elpida''). 76 *FR* 79215 (Dec. 21, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on infringement of several U.S. patents. The notice of investigation named Nanya Technology Corporation of TaoYuan, Taiwan and Nanya Technology Corporation, U.S.A. of Santa Clara, California (collectively, ''Nanya''), as respondents. The Office of Unfair Import Investigations did not participate in the investigation.

On March 26, 2013, the presiding administrative law judge (''ALJ'') issued a final ID finding a violation of section 337 based on infringement of five patents and no violation with respect to a sixth patent. In particular, the ALJ found a violation based on infringement of claims 8–11 and 17–18 of U.S. Patent No. 6,150,689 (''the '689 patent''); claims 4, 14, and 20 of U.S Patent No. 6,635,918 (''the '918 patent''); claim 27 of 7,495,453 (''the '453 patent''); claims 5–6 of U.S. Patent No. 7,713,828 (''the '828 patent''); and claims 1–2 of U.S. Patent No. 7,906,809 (''the '809 patent''). The ALJ found no infringement of and no domestic industry for articles protected by 7,659,571 (''the '571 patent'') and accordingly found no violation of section 337 with respect to that patent. The ALJ also found claims 17 and 18 of the '453 patent to be invalid. The ALJ issued a recommended determination (''RD'') on remedy and bonding. The ALJ recommended a limited exclusion order be issued against Nanya barring entry of infringing DRAM articles. The ALJ recommended additional briefing on an appropriate bond, or alternatively that the bond be set at one percent.

On April 8, 2013, complainant Elpida filed a petition for review of the ALJ's determination that claims 17 and 18 of the '453 patent are invalid. The same day Nanya filed a petition for review of a number of the determinations in the ID that were adverse to it. Nanya also presented a contingent petition for review of the validity of the '571 patent in the event that Elpida petitioned for review of the ALJ's non-infringement and no domestic industry determinations with respect to that patent.

Having examined the record of this investigation, including the ID, the petitions for review, and the responses thereto, the Commission has determined to review the ALJ's determination of violation with respect to the '689 patent, the '918 patent, the '453 patent, the '828 patent, and the '809 patent. The Commission has determined not to review the ALJ's determination of no violation with respect to the '571 patent, and the investigation is terminated with respect to that patent.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record, including intrinsic patent evidence and expert testimony. In connection with its review, the Commission is particularly interested in the following issues:

1. With respect to the validity of the '453 patent, please address the following:

a. What record evidence suggests that the ODT-leg portion of the circuit and the non-ODT-leg portion of the circuit in U.S. Patent Publication No. 2006/0126401 to Ba (RX–107) should or should not have the same number of legs?

b. What impedance are the ODT legs of Ba attempting to match? What impedance are the non-ODT legs of Ba attempting to match? Does any disclosure in Ba suggest that ODT-leg portion of the circuit and the non-ODT-leg portion of the circuit should be impedance-matched to each other?

c. Does the two-chip embodiment found in paragraph 10 of Ba have any relevance to the question of whether the ODT-leg portion of the circuit and the non-ODT-leg portion of the circuit should or should not have the same number of legs?

d. What record evidence supports a conclusion that the claimed ''output control circuit'' in the '453 patent, which ''activates a first number of unit buffers in common when an ODT impedance is set to a first value and activates a second number of unit buffers in common when the ODT impedance is set to a second value,'' would have been obvious in view of Ba?

e. What record evidence supports a conclusion that one ODT leg described in Ba corresponds to a ''unit buffer'' as described in the asserted claims of the '453 patent? What record evidence, including expert testimony, supports a conclusion that two or more ODT legs in Ba correspond to a ''unit buffer''?

2. With respect to the '828 patent, please address the following, including whether arguments relating to any of the following have been waived:

a. Elpida's complaint alleges, *inter alia,* that the ''sale,'' ''importation,'' and ''use'' of Nanya semiconductors constitutes infringement of the asserted ''method of forming'' claims of the '828 patent. What legal support exists for the propositions that (1) the sale of an article infringes a method claim; (2) the importation of an article infringes a method claim; or (3) the use of an article infringes a claim to a ''method of forming'' the article?

b. Elpida's complaint alleges a violation of 19 U.S.C. § 1337(a)(1)(B)(i) based on the importation, sale for importation, and sale after importation of Nanya semiconductors. What is Elpida's theory of infringement under that statutory subsection?

c. Of what relevance, if any, is 19 U.S.C. 1337(a)(1)(B)(ii) to the allegations in Elpida's complaint concerning the asserted claims of the '828 patent?

d. Is a cause of action under 19 U.S.C. 1337(a)(1)(B)(i) mutually exclusive to a cause of action under 19 U.S.C. 1337(a)(1)(B)(ii)? Why or why not?

e. What evidence in the record, if any, indicates where Nanya allegedly performs the method steps of the asserted claims of the '828 patents? Do those processes occur entirely outside the United States? Of what relevance is the location where a method is performed to the infringement analysis here?

f. What evidence in the record, if any, indicates where Elpida allegedly performs the method steps of the asserted claims of the '828 patent? Do those processes occur entirely outside the United States?

g. What evidence in the record, if any, shows that Elpida has met its burden to show the existence of a domestic industry ''relating to the articles protected by'' the claims of '828 patent? Can a ''method of forming'' claim ''protect'' an ''article'' under 19 U.S.C. 1337(a)(2) and (3)? How is satisfaction of this statutory requirement similar to or different from an infringement analysis? Of what relevance is the location where the method is performed to a domestic industry analysis?

h. With respect to the validity of the '828 patent, of what relevance is the disclosure of ''formation of a silicon growth layer 9 in the source/drain region'' on page 14 of the Yamada prior art reference (RX–0027.014)? Is element 9 part of the source/drain region? What record evidence informs the answer to these questions?

i. With respect to the validity of the '828 patent, the Yamada prior art reference discloses at RX–0027.006 ''MOSFET source/drain regions 10 comprising n+ diffusion layers are raised up by a silicon growth layer 9, with the n+ diffusion layer 10 formed from the surface of the silicon growth layer 9 which is raised up.'' What is the significance of the phrase ''raised up,'' used twice in this disclosure? Does this support a conclusion that element 9 is part of the source/drain region? What record evidence informs the answer to these questions?

3. With respect to the '809 patent, please address the following:

a. Is there any support in the '809 patent specification for the claim phrase ''substantially the same'' other than passages that use the phrase ''substantially in agreement''? Is there any significance to the fact that the applicants of the '809 patent distinguished proposed claims that used the phrase ''substantially in agreement'' by stating the prior art electrodes were ''substantially wider'' (*see* JXM–12 at 7–10)? Does this statement influence a proper understanding of the phrase ''substantially in agreement'' as it is used in the '809 patent specification? Should that understanding of the specification also apply to claims that use the phrase ''substantially the same''? Does the term ''wider'' connote a comparison of size?

b. Must the claim terms ''formed in a semiconductor substrate'' and ''formed on the semiconductor substrate'' be given mutually exclusive meanings, or may the terms overlap in meaning? Please identify all evidence, including evidence from the patent figures, indicating how a person of ordinary skill in the art would interpret these two phrases at the time of the invention.

c. What are the implications for infringement and domestic industry if the Commission were to adopt Nanya's proposed construction of the claim phrase, ''upper surface which is substantially the same as the lower surface and aligned with the lower surface''?

d. Has Nanya presented a sufficiently detailed petition to preserve an argument that the ALJ's technical prong determination is erroneous with respect to the '809 claim term ''wherein a cross-sectional area of each elevated source and drain region in any plane parallel to the substrate is greater than the area of the upper or lower surfaces thereof''? What would be the consequence of adopting Nanya's proposed interpretation of that term with respect to infringement and domestic industry?

4. With respect to bonding, Nanya is requested to submit and summarize relevant evidence of license agreements referred to in the ALJ's RD at page 5. Elpida is requested to submit and summarize relevant bonding evidence referred to in the RD at page 6. The parties are both requested to present arguments concerning an appropriate bond based on record evidence and appropriate legal authorities.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on all of the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommendation on remedy and bonding set forth in the RD. Complainant Elpida is also requested to submit proposed remedial orders for the Commission's consideration. Elpida is also requested to state the dates that each of the asserted patents are set to expire and the HTSUS numbers under which the accused products are imported. Initial written submissions and proposed remedial orders must be filed no later than close of business on Friday, July 19, 2013. Initial written submissions by the parties shall be no more than 75 pages, excluding exhibits. Reply submissions must be filed no later than the close of business on Friday, July 26, 2013. Reply submissions by the parties shall be no more than 40 pages, excluding exhibits. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–819'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR § 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: July 2, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–16363 Filed 7–8–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0084]

Agency Information Collection Activities; Collection; Comments Requested: Application for Approval as a Nonprofit Budget and Credit Counseling Agency

ACTION: 30-Day notice.

The Department of Justice, Executive Office for United States Trustees, will be submitting the following application to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The application is published to obtain comments from the public and affected agencies. This application was previously published in the **Federal Register**, Volume78, Number 87, page 26394, on May 6, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment August 8, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the application are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the application is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the Information

Type of information collection	Application form.
The title of the form/collection	Application for Approval as a Nonprofit Budget and Credit Counseling Agency.
The agency form number, if any, and the applicable component of the department sponsoring the collection.	No form number.
	Executive Office for United States Trustees, Department of Justice.
Affected public who will be asked or required to respond, as well as a brief abstract.	Primary: Agencies who wish to offer credit counseling services.
	Other: None.
	Congress passed a bankruptcy law that requires any individual who wishes to file for bankruptcy to, within 180 days of filing for bankruptcy relief, first obtain credit counseling from a nonprofit budget and credit counseling agency that has been approved by the United States Trustee.
An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply.	It is estimated that 175 respondents will complete the application; initial applicants will complete the application in approximately ten (10) hours, while renewal applicants will complete the application in approximately four (4) hours.
An estimate of the total public burden (in hours) associated with the collection.	The estimated total annual public burden associated with this application is 808 hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: July 3, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–16412 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0085]

Agency Information Collection Activities; Collection; Comments Requested: Application for Approval as a Provider of a Personal Financial Management Instructional Course

ACTION: 30-Day notice.

The Department of Justice, Executive Office for United States Trustees, will be submitting the following application to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The application is published to obtain comments from the public and affected agencies. This application was previously published in the **Federal Register**, Volume 78, Number 87, page 26397, on May 6, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment August 8, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the application are encouraged. Your comments should

address one or more of the following four points:

1. Evaluate whether the application is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of the Information:

Type of information collection	Application form.
The title of the form/collection	Application for Approval as a Provider of a Personal Financial Management Instructional Course.
The agency form number, if any, and the applicable component of the department sponsoring the collection.	No form number.
	Executive Office for United States Trustees, Department of Justice.
Affected public who will be asked or required to respond, as well as a brief abstract.	Primary: Individuals who wish to offer instructional courses to student debtors concerning personal financial management.
	Other: None.
	Congress passed a bankruptcy law that requires individuals who file for bankruptcy to complete an approved personal financial management instructional course as a condition of receiving a discharge.
An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply.	It is estimated that 275 respondents will complete the application; initial applicants will complete the application in approximately ten (10) hours, while renewal applicants will complete the application in approximately four (4) hours.
	It is estimated that approximately 1,368,450 debtors will complete a survey evaluating the effectiveness of an instructional course in approximately one (1) minute.
An estimate of the total public burden (in hours) associated with the collection.	The estimated total annual public burden associated with this application is 24,075.5 hours; the applicants' burden is 1,268 hours and the debtors' burden is 22,807.5 hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 1407B, Washington, DC 20530.

Dated: July 3, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–16411 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On July 2, 2013, the Department of Justice lodged a proposed Consent Decree (''Consent Decree'') with the United States District Court for the Western District of Arkansas in the lawsuit entitled *United States et al.* v. *Arkansas Egg Company, Inc.,* Civil Action No. 5:13–cv–05127–JLH.

In this action the United States, acting on behalf of the U.S. Environmental Protection Agency, and joined by the State of Arkansas, acting on behalf of the Arkansas Department of Environmental Quality, filed a complaint against Arkansas Egg Company, Inc., an owner and operator of a chicken egg facility in Summers, Arkansas, seeking civil penalties and injunctive relief for unpermitted discharges of pollutants into waters of the United States and the State, in violation of Section 301(a) of the Clean Water Act (CWA), 33 U.S.C. 1311(a), and the Arkansas Water and Air Pollution Control Act, Ark. Code Ann. section 8–4–101 *et seq.* The Consent Decree resolves the Complaint's allegations and requires the Settling Defendant, Arkansas Egg Company, Inc., to pay a $10,000 civil penalty to the United States and the State of Arkansas, which is based on a limited ability to pay. Additionally, under the Consent Decree Arkansas Egg Company, Inc., will remove the contents of and permanently close two on-site lagoons; monitor groundwater during and after the lagoon closure process; and dispose of egg washwater under a state permit for an on-site septic and leach field system.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Arkansas Egg Company, Inc.,* D.J. Ref. No. 90–5–1–1–09991. All comments must be submitted no later than thirty (30) days after the publication date of this notice.

Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ–ENRD P.O. Box 7611 Washington, D.C. 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to:

Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $46.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $14.50.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–16356 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0235]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Bureau of Justice Assistance Application Form: Bulletproof Vest Partnership (BVP) Extension of Currently Approved Collection

ACTION: 30-Day notice.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. This proposed information was previously published in the **Federal Register** Volume 78, Number 87 page 26396, on May 6, 2013, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact C. Casto at 1–202–353–7193, Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice, 810 7th Street NW., Washington, DC, 20531 or by email at *Chris.Casto@usdoj.gov*. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Bulletproof Vest Partnership Application.

(3) *The agency form number, if any, and the applicable component of the Departmentsponsoring the collection:* None. Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Jurisdictions and law enforcement agencies with armor vest needs.

Abstract: The Bulletproof Vest Partnership (BVP), created by the Bulletproof Vest Partnership Grant Act of 1998, is a unique U.S. Department of Justice initiative designed to provide a critical resource to state, tribal and local law enforcement agencies. The purpose of this program is to help protect the lives of law enforcement officers by helping states and units of local and tribal governments equip their officers with armor bulletproof vests. The collection of information is necessary to verify the eligibility of an applicant's jurisdiction for partial reimbursement of costs (up to 50%) associated with the purchase of the armored bulletproof vests. The data provided in the application will determine the need and funding level and provide bank account information for electronic payments. This program is administered in accordance with BULLETPROOF VEST PARTNERSHIP GRANT ACT OF 1998, Public Law 105–181, 42 USC 3796ll.

Others: None.

(5) *An estimate of the total number of respondents and the amount of time needed for an average respondent to respond is as follows:* It is estimated that no more than 4,500 respondents will apply each year. Each application takes approximately 1 hour to complete.

(6) An estimate of the total public burden (in hours) associated with the collection is 4,500 hours. Total Annual Reporting Burden: 4,500 × 1 hour per application = 4,500 hours.

If additional information is required, please contact, Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC, 20530.

Dated: July 3, 2013.

Jerri Murray,

Justice Management Division, United States Department of Justice.

[FR Doc. 2013–16410 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Video Production: Direct Supervision Jails

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for a 12-month period to begin no later than September 15, 2013. Work under this cooperative agreement will involve the production of a 20- to 25-minute, high-end broadcast-quality DVD that introduces podular direct-supervision to a varied audience. The DVD will illustrate direct supervision through narration, interviews, graphics, and footage shot in jails. This project will be a collaborative venture with the NIC Jails Division.

NIC Opportunity Number: 13JD05. This number should appear in the reference line in your cover letter, on Standard Form 424 in section 11 with the title of your proposal, and in the right justified header of your proposal.

Number of Awards and Funds Available: Under this solicitation, one award will be made. Funds awarded under this solicitation may only be used for activities directly related to the project as described herein unless otherwise amended in writing by NIC.

Applications: All applications must be submitted electronically via *http://www.grants.gov.* Hand delivered, mailed, faxed, or emailed applications will not be accepted. However, three copies of two sample video productions specifying the applicant's role in each production must be submitted before the application due date. To ensure timely delivery of the video please send via a commercial carrier (e.g., FedEx, UPS, DHL, etc.) directly to NIC c/o Danny Downes at 500 First Street NW., Washington, DC 20534.

DATES: Application must be submitted before midnight on Thursday, July 25, 2013.

Authority: Public Law 93–415.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

SUPPLEMENTARY INFORMATION:

Background: Inmate violence and vandalism have been pervasive in American jails. This is a result of our traditional approach to detention, which focuses primarily on physically containing inmates with the use of locks, steel doors, security glass, and bars. In traditional jails, physical barriers separate staff and inmates. As a result, inmates receive little supervision and are essentially left to their own devices. This creates a dangerous environment for both inmates and staff. Podular direct supervision combines a physical plant design with inmate management techniques to shift control of the jail from inmates to staff, which can significantly reduce inmate violence, vandalism, and other problematic behaviors. NIC provides training, technical assistance, and information to local jails on podular direct supervision. Scope of Work: The production company will see the DVD production through from beginning to end. The company will provide staff, equipment, and other resources necessary for all aspects of DVD production. The company will provide music, professional voice-over narration, and other talent necessary for the complete production.

Project Director

The production company will assign one staff to oversee the project and work with NIC on all production phases.

NIC Oversight and Approval

NIC will work closely with the production company throughout the project to ensure personnel understand podular direct supervision and that it is portrayed accurately in every detail of the DVD. NIC will be available for questions and quality assurance through all project phases. Each step of the production process will require NIC's approval.

Meetings

Production company staff must be readily available for up to 5 face-to-face meetings with NIC staff when necessary. These meetings will take place at the NIC offices in Washington, DC, or other agreed upon location. NIC will make provisions for telephone conferences or meetings through electronic media as needed.

The project kickoff meeting will take place shortly after the cooperative agreement is awarded. During this meeting, production company staff and NIC will discuss direct supervision and all project activities.

Scriptwriting

NIC anticipates using the script from a previous NIC video on this subject as a basis for the new DVD. This script may need revision, but it covers all concepts to be included in the DVD. Working with NIC, the production company will produce the final written script for the video.

Talent

The production company will provide a professional voice-over narrator for the video and other talent deemed necessary during the scripting process. NIC does not anticipate hiring professional actors for filming. NIC will arrange for individuals to participate in filmed interviews and staged events, such as meetings.

Filming Locations

Filming and interviews will take place at up to 5 jails throughout the United States. The production company will film inside jails, including inmate housing units, booking rooms, administrative areas, and meeting rooms. NIC will identify and confirm all filming sites. NIC staff will accompany the film crew to the filming sites.

Audio

The company will provide all music for the video as approved by NIC.

Voice Over

The company will provide professional talent for voice-over narration. NIC must approve all voices used for narration.

Graphics/Effects

The awardee will produce graphics, artwork, animation, and lettering for the DVD. The awardee also will produce digital effects for the transition between DVD segments.

Production Activities

The major activities required to complete the project are listed below. Project activities will begin upon award of this agreement and must be completed 12 months after the award date. The project activity schedule should include the following, at a minimum:

—Production company attends kickoff meeting with NIC
—Production company reviews materials on direct supervision provided by NIC
—NIC develops outline of key concepts to be included in video, with suggestions for illustrating concepts
—Working with NIC, production company develops initial treatment and/or storyboard
—Production company writes script and presents to NIC for review
—Production company completes script revisions and submits to NIC for approval
—Production company prepares complete shot list
—NIC schedules filming and interviews at jails
—Production company completes filming
—Production company begins offline editing
—Production company and NIC screen offline edit and select shots to be used
—Production company creates graphics
—NIC reviews and approves or asks for changes
—Production company hires professional talent for online narration
—Production company completes online edit
—Production company and NIC staff complete online screening
—NIC reviews and approves final edit
—Production company delivers final products to NIC

Deliverables: Once the production is complete and has been approved in writing by NIC, the production company will deliver (1) one 20- to 25-minute master copy suitable for duplicating, 2) various high-definition files (including prores and h.264) for play on computers, tablets, and smartphones and online delivery through YouTube and Vimeo, and (3) all video/b-roll used in this production.

FOR FURTHER INFORMATION CONTACT: All technical or programmatic questions concerning this announcement should be directed to Danny Downes, Correctional Program Specialist, National Institute of Corrections who may be reached by email at *d2downes@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names or affiliations of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation.

Application Requirements: Application Requirements: Applications should be typed, double spaced, in 12-point font, and reference the project by the ''NIC Opportunity Number'' (13JD05) and title in this announcement,

''Video Production: Direct Supervision Jails.'' The package must include: A cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a concisely written program narrative, not to exceed 30 numbered pages, in response to the statement of work, and a detailed budget with a budget narrative explaining projected costs. Applicants may submit a description of the project teams' qualifications and expertise relevant to the project, but should not attach lengthy resumes. Large attachments to the proposal describing the organization or examples of other past work are discouraged. Applicants must also attach 2 samples of a video production completed by the applicant. The applicant organization must specify its role in the production of the sample videos. As noted above, the three copies of 2 sample videos must also be submitted before the application due date (to ensure timely delivery of the video please send via a commercial carrier (e.g., FedEx, UPS, DHL, etc.) directly to NIC c/o Danny Downes at 500 First Street NW., Washington, DC 20534. Attachments should not exceed 5MB.

The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at (*http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://nicic.gov/Downloads/General/certif-frm.pdf.*

Failure to supply all required forms with the application package may result in disqualification of the application from consideration.

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CCR Web site: *http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. Proposals which fail to provide sufficient information to allow evaluation under the criteria below may be judged non-responsive and disqualified.

The criteria for the evaluation of each application will be as follows:

Programmatic (40%)

Are all of the project tasks adequately discussed? Is there a clear statement of how each task will be accomplished to include the overall project goal(s), major tasks to achieve the goals(s), the strategies to be employed in completing the tasks, required staffing, and other required resources? Are there any approaches, techniques, or design aspects proposed that are new to NIC and will enhance the project?

Organizational (35%)

Do the proposed project staff members possess the skills, knowledge, and expertise necessary to complete the tasks listed under the scope of work as evidenced in the sample video? Does the applicant organization, group, or individual have the organizational capacity to achieve all project tasks? Does the proposal contain project management and staffing plans that are realistic and sufficient to complete the project within the project time frame?

Project Management/Administration (25%)

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project, and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide a sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Specific Requirements: Documents or other media that are produced under this award must follow these guidelines: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's Writer/Editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. For all awards in which a document will be a deliverable, the awardee must follow the guidelines listed herein, as well as follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *www.nicic.gov/cooperativeagreements.*

All final documents and other materials submitted under this project must meet the federal government's requirement for Section 508 accessibility, including those provisions outlined in 1194 Subpart B, Technical Provisions, Subpart C, Functional Performance Criteria; and Subpart D, Documentation and Support, NIC's government product accessibility template (see *www.nicic.gov/section508*) outlines the agency's minimum criteria for meeting this requirement; a completed form attesting to the accessibility of project deliverables should accompany all submissions.

Note Concerning Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance (CFDA) should be entered into box 10 of the SF 424. The CFDA number for this solicitation is 16.603—Technical Assistance/Clearinghouse. You are subject to the provisions of Executive Order 12372. The order allows states the option of setting up a system for reviewing applications from within their states for assistance under certain Federal programs. You must notify the Single State Point of Contact in your state, if it exists, of this application before NIC can make an award. Applicants (other than Indian tribal governments recognized by the Federal government) should contact their State Single Point of Contact (SPOC), a list of which can be found at *http://www.whitehouse.gov/omb/grants_spoc.* Check the appropriate box in section 16 of the SF–424.

Robert M. Brown, Jr.,

Acting Director, National Institute of Corrections.

[FR Doc. 2013–16482 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Children of Incarcerated Parents: Arrest Through Pre-Adjudication

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for an 18-month period to begin no later than September 15, 2013. Work under this cooperative agreement will involve the development of a guiding framework document of promising practices regarding children

of incarcerated parents. This project will examine the points of the criminal justice continuum from arrest and jail incarceration through the pre-adjudication phase; including: Pretrial, release, diversion, guilty adjudication, and reentry from local jails and how each of the decisions made throughout the pre-adjudication phase in the criminal justice system impacts this population. The project will further identify and highlight innovations and promising practices that have shown to positively impact children of incarcerated parents. This project will be a collaborative venture with the NIC Community Services Division.

NIC Opportunity Number: 13CS22. This number should appear in the reference line in your cover letter, on Standard Form 424 in section 11 with the title of your proposal, and in the right justified header of your proposal.

Number of Awards and Funds Available: Under this solicitation, one (1) award will be made. The total amount of funds available under this solicitation is $150,000.00. Funds awarded under this solicitation may only be used for activities directly related to the project as described herein unless otherwise amended in writing by NIC.

Applications: All applicants must be submitted electronically via *http://www.grants.gov*. Hand delivered, mailed, faxed, or emailed applications will not be accepted.

DATES: Application must be submitted before midnight on Wednesday, July 31, 2013.

Authority: Pub. L. 93–415.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

SUPPLEMENTARY INFORMATION:

Background

NIC has worked closely with Federal, state and local jails, prisons, community corrections on a broad range of projects ranging from operational to research and innovation. Regarding Children of Incarcerated Parents, in December, 2000, Congress appropriated funds to the Department of Justice (DOJ), National Institute of Corrections (NIC) ''to work with cooperative agreements to fund private sector or not for profit groups that have effective, tested programs to help children of prisoners.'' To prepare for this solicitation, NIC convened a Children of Prisoner's planning meeting, inviting federal and state government, association, academic, and private provider representatives. Solicitations were announced in five (5) categories and eleven (11) awards were made. At the completion of the project, the National Council on Crime and Delinquency (NCCD) conducted an overall process evaluation and identified a series of recommendations specific to program development delivery and sustainability. Throughout the past decade rates of incarceration have increased and the sheer number of children impacted by parental incarceration has risen. A number of organizations and individuals have focused attention on this issue, however, less so from the criminal justice perspective. This solicitation for cooperative agreement will examine the points of the criminal justice continuum from arrest and jail incarceration through the pre-adjudication phase; including: Pretrial, release, diversion, guilty adjudication, and reentry from local jails and how each of the decisions made throughout, impact children of incarcerated parents. We are seeking organizations, groups, or individuals to identify and address the gaps of information that is in the local criminal justice system(s) in a document that can be used to improve practices during pre-adjudication and jail reentry.

Scope of Work: The intent of this solicitation is for the awardee to develop a guiding framework document of promising practices regarding children of incarcerated parents, from a criminal justice perspective. It is anticipated that in developing the framework document, the applicant will have strong familiarity with the criminal justice and social service systems. The awardee will demonstrate in the application the ability to complete all tasks outlined in the deliverables and project management and staffing plans commensurate with the project time frame. If consultants or partnerships are proposed, provide reasonable justification for inclusion. The proposed budget should be realistic and provide an adequate cost detail outline that represents accurate value in relation to the anticipated results. In addition, the awardee will research and identify up to four (4) sites that have demonstrated success with promising practices that can be incorporated into the framework document. This document will serve as a guideline for stakeholders, e.g., law enforcement, correctional agencies, court system, prosecutors, pretrial officers, and social services which demonstrate the importance of collaboration and highlight innovative practices for children of incarcerated parents from the point of arrest through the pre-adjudication phase of the continuum. The awardee will also create relevant materials to be used for educating stakeholders through the NIC Web site or at conference workshops and training sessions. Upon being awarded this solicitation, the awardee will meet with the project manager to discuss the expectations of the project and provide answers to any questions pertaining to the scope of work.

Deliverables: Project deliverables include (1) Conduct a review of existing literature and current research for Children of Incarcerated Parents and identify best and or promising practices; (2) Research and identify up to 4 sites that have demonstrated measured success with innovative and promising practices for Children of Incarcerated Parents. While onsite, engage stakeholders and translate lessons learned into the framework document. Stakeholders may include, but not be limited to: Law enforcement agencies, correctional agencies, court systems, prosecutors, pre-trial officers, and social services. The awardee is responsible for making and funding travel arrangements for onsite travel; (3) Development of a framework document that guides criminal justice organizations and related stakeholders with developing and implementing policies and practices to strengthen the bonds between criminal justice involved parents and children, i.e., a reentry process, that will focus on the decision points throughout the continuum from arrest through pre-adjudication to release and the impact on children at each of these points. Ensure that materials submitted are within guidelines listed at the end of this document; and (4) Prepare a PowerPoint presentation and other relevant materials that can be utilized at conference workshops or in local jurisdictions. The awardee will be required to provide project updates through scheduled quarterly meetings with NIC via conference call.

FOR FURTHER INFORMATION CONTACT: All technical or programmatic questions concerning this announcement should be directed to Greg Crawford, Correctional Program Specialist, National Institute of Corrections who may be reached by email at *gcrawford@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names or affiliations of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation.

Application Requirements: Application Requirements: Applications should be typed, double spaced, in 12-point font, and reference the project by the ''NIC Opportunity Number'' 13CS22 and title in this announcement, ''Children of Incarcerated Parents: Arrest Through Pre-Adjudication''. The package must include: A cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a concisely written program narrative, not to exceed 30 numbered pages, in response to the statement of work, and a detailed budget with a budget narrative explaining projected costs. Applicants may submit a description of the project teams' qualifications and expertise relevant to the project, but should not attach lengthy resumes. Attachments to the proposal describing your organization or examples of other past work beyond those specifically requested above are discouraged. These attachments should not exceed 5MB.

The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://nicic.gov/Downloads/General/certif-frm.pdf.* Failure to supply all required forms with the application package may result in disqualification of the application from consideration.

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CCR Web site: *http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. Proposals which fail to provide sufficient information to allow evaluation under the criteria below may be judged non-responsive and disqualified.

The criteria for the evaluation of each application will be as follows:

Programmatic (40%)

Are all of the project tasks adequately discussed? Is there a clear statement of how each task will be accomplished, to include the overall project goal(s), major tasks to achieve the goal(s), the strategies to be employed in completing the tasks, required staffing, and other required resources? Are there any approaches, techniques, or design aspects proposed that are innovative and will enhance the project?

Organizational (35%)

Do the proposed project staff members possess the skills, knowledge, and expertise necessary to complete the tasks listed under the scope of work? Does the applicant organization, group, or individual have the organizational capacity to complete all project tasks? Does the proposal contain project management and staffing plans that are realistic and sufficient to complete the project within the project time frame?

Project Management/Administration (25%)

Does the applicant identify reasonable objectives and/or milestones that reflect the key tasks, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project, and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide a sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Specific Requirements: Documents or other media that are produced under this award must follow these guidelines: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's Writer/Editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. For all awards in which a document will be a deliverable, the awardee must follow the guidelines listed herein, as well as follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which can be found on our Web site at *www.nicic.gov/cooperativeagreements.*

All final documents and other materials submitted under this project must meet the federal government's requirement for Section 508 accessibility, including those provisions outlined in 1194 Subpart B, Technical Provisions, Subpart C, Functional Performance Criteria; and Subpart D, Documentation and Support, NIC's government product accessibility template (see *www.nicic.gov/section508*) outlines the agency's minimum criteria for meeting this requirement; a completed form attesting to the accessibility of project deliverables should accompany all submissions.

The Catalog of Federal Domestic Assistance (CFDA) should be entered into box 10 of the SF 424. The CFDA number for this solicitation is 16.602, Research and Policy Formulation. You are not subject to Executive Order 12372 and should check box b under section 16.

Robert M. Brown, Jr.,

Acting Director, National Institute of Corrections.

[FR Doc. 2013–16484 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Support Services for Community Services Division Networks

AGENCY: National Institute of Corrections, U.S., Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for an 18-month period to begin no later than September 15, 2013. Work under this cooperative agreement will provide support services to NIC Community Services Division sponsored networks. The networks are designed for NIC to assist in meeting the needs of the field of community corrections by serving defined groups of members. Each of the networks typically meets twice per fiscal year, for a total of up to ten meetings. The purpose of this cooperative agreement is for the awardee to provide specific support services to each of the network managers. Some of the potential tasks include attending network meetings to keep track of meeting minutes accurately, provide support to the network manager, prepare a summary report for the network participants, prepare a detailed report for the network manager, create a quarterly report on the ''Hot Topics'' from all the networks

combined that may benefit the field at large, and other administrative duties relevant to each network meeting. This project will be a collaborative venture with the NIC Community Services Division.

NIC Opportunity Number: 13CS19. This number should appear in the reference line in your cover letter, on Standard Form 424 in section 11 with the title of your proposal, and in the right justified header of your proposal.

Number of Awards and Funds Available: Under this solicitation, 1 (one) award will be made. NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds awarded under this solicitation may be used only for activities directly related to the project as described herein unless otherwise amended in writing by NIC.

Applications: All applicants must be submitted electronically via *http://www.grants.gov.* Hand delivered, mailed, faxed, or emailed applications will not be accepted.

DATES: Application must be submitted before midnight on Tuesday, July 30, 2013.

Authority: Public Law 93–415.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual or team with expertise in the described areas.

SUPPLEMENTARY INFORMATION:

Background: NIC works closely with federal, state, and local corrections agencies on a broad range of projects, from operational issues to research and innovative practices. Part of that work has included the formation of networks that promote the sharing of vital information between peers, training opportunities, and the NIC's access to key agency leaders in defining and planning future NIC work. Networks typically focus on hot topics and trends in the field and the development of evidence-based and promising practices. The NIC Community Services Division currently sponsors 5 networks: (1) Community Corrections Collaborative Network (CCCN), which has 10 members and comprises the leading associations that represent probation, parole, pretrial, and treatment professionals around the country (i.e., APPA, APAI, ICCA, NAPSA, and NAPE); (2) Executive Directors of Paroling Authorities, which comprises executives from state parole board agencies with offender release authority; (3) Executives of Probation and Parole, which has approximately 30 members and comprises executive leaders at the state agency level responsible for both probation and parole supervision; (4) Pretrial Executives Network, which has 15 members and comprises executives from some of the most established evidence-based pretrial services programs; and (5) Urban Chiefs Network, which has 15 members and comprises community corrections executives representing jurisdictions that are local and urban. The network meetings occur periodically throughout the year and are of 2 to 2.5 days in duration.

Scope of Work: The intent of this solicitation is for the awardee to provide support services to each of the NIC Community Services Division sponsored networks. Support services may include attendance at network meetings, detailed note taking, collection of supplementary materials and preparation of a summary report for distribution to network members, preparation of a final report for the network manager, and post-network meeting reports, such as policy briefs or issue papers. In providing support services to each of the networks, the applicant should be organized, flexible, and able to multitask during network meetings. The applicant should have strong writing and editing skills. It is also preferred that the applicant have experience working with executive-level staff. The applicant should also demonstrate the skills, knowledge, and expertise necessary to provide the deliverables described in this solicitation. If applicant proposes to include consultants or partnerships, the application should contain detailed justification for their inclusion. The awardee may perform some or all of the deliverables listed in this solicitation for each of the network meetings. The network managers will coordinate with the awardee prior to a network meeting and determine the deliverables that are being requested for that particular network meeting. If support services are being requested by the network manager, the awardee may be asked to provide some or all of the deliverables listed in this solicitation. The proposed budget should outline each of the services listed under the project deliverables and the cost associated with each service. The network manager will select individual services based on the need of the network manager and meeting. The network manager will then coordinate with the awardee prior to the event and ensure the awardee is clear about what services are needed for that network meeting. Upon being awarded this solicitation, the awardee will meet with the project manager to discuss the expectations of each of the network managers and provide answers to any questions pertaining to the scope of work.

Deliverables: (1) Provide support services at each of the NIC sponsored network meetings, which includes but is not limited to distributing meeting materials to network members, taking note of proceedings, producing a copy of the meeting minutes, developing an appropriately edited and formatted summary report for electronic distribution to participants and a detailed report for the network manager's use; (2) develop a quarterly bulletin of ''Hot Topics'' from information gathered across the network meetings. Hot topics should be taken from the agenda topics or discussions from each of the network meetings and put into a bulletin format. The bulletin will be developed in collaboration with the network managers; (3) develop other written materials as assigned, e.g., training materials to be used at conference workshops or training sessions; and (4) consult with the NIC network managers regarding special projects. Special projects may include developing a 3- to 5-page policy brief or issue paper based on the network meetings.

FOR FURTHER INFORMATION CONTACT: All technical or programmatic questions concerning this announcement should be directed to Gregory Crawford, Correctional Program Specialist, National Institute of Corrections who may be reached by email at *gcrawford@bop.gov*. In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *www.nicic.gov* for public review (the names or affiliations of those submitting questions will not be posted). The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation.

Application Requirements: Applications should be typed, double spaced, in 12-point font, and reference the project by the ''NIC Opportunity Number'' 13CS19 and title in this announcement, ''Support Services for Community Services Division Networks.'' The package must include: A cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a concisely written program narrative, not to exceed 30 numbered pages, in response to the statement of work, and a detailed budget with a

budget narrative explaining projected costs. Applicants may submit a description of the project teams' qualifications and expertise relevant to the project, but should not attach lengthy resumes. Attachments to the proposal describing your organization or examples of other past work beyond those specifically requested above are discouraged. These attachments should not exceed 5MB.

The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424A, Budget information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (these forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://nicic.gov/Downloads/General/certif-frm.pdf*. Failure to supply all required forms with the application package may result in disqualification of the application from consideration.

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.bpn.gov/ccr.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. Proposals which fail to provide sufficient information to allow evaluation under the criteria below may be judged non-responsive and disqualified. The criteria for the evaluation of each application will be as follows:

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All final documents and other materials submitted under this project must meet the federal government's requirement for Section 508 accessibility, including those provisions outlined in 1194 Subpart B, Technical Provisions, Subpart C, Functional Performance Criteria; and Subpart D, Documentation and Support, NIC's government product accessibility template (see *www.nicic.gov/section508*) outlines the agency's minimum criteria for meeting this requirement; a completed form attesting to the accessibility of project deliverables should accompany all submissions.

Note Concerning Catalog of Federal Domestic Assistance Number: The Catalog of Federal Domestic Assistance (CFDA) should be entered into box 10 of the SF 424. The CFDA number for this solicitation is 16.601, Training and Staff Development. You are not subject to Executive Order 12372 and should check box b under section 16.

Robert M. Brown, Jr.,

Acting Director, National Institute of Corrections.

[FR Doc. 2013–16475 Filed 7–8–13; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Exemption From Certain Prohibited Transaction Restrictions

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). This notice includes the following: 2013–08, Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency'', D–11718.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No.

4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) [1] and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Amendment to Prohibited Transaction Exemption 2007–05, 72 FR 13130 (March 20, 2007), Involving Prudential Securities Incorporated, et al., To Amend the Definition of ''Rating Agency'' [Prohibited Transaction Exemption 2013–08; Exemption Application No. D–11718]

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (76 FR 66637, 66644, October 27, 2011) and based upon the entire record, the Department amends the following individual Prohibited Transaction Exemptions (PTEs), as set forth below: PTE 89–88, 54 FR 42582 (October 17, 1989); PTE 89–89, 54 FR 42569 (October 17, 1989); PTE 89–90, 54 FR 42597 (October 17, 1989); PTE 90–22, 55 FR 20542 (May 17, 1990); PTE 90–23, 55 FR 23144 (June 6, 1990); PTE 90–24, 55 FR 20548 (May 17, 1990); PTE 90–28, 55 FR 21456 (May 24, 1990); PTE 90–29, 55 FR 21459 (May 24, 1990); PTE 90–30, 55 FR 21461 (May 24, 1990); PTE 90–31, 55 FR 23144 (June 6,1990); PTE 90–32, 55 FR 23147 (June 6, 1990); PTE 90–33, 55 FR 23151 (June 6, 1990); PTE 90–36, 55 FR 25903 (June 25, 1990); PTE 90–39, 55 FR 27713 (July 5, 1990); PTE 90–59, 55 FR 36724 (September 6, 1990); PTE 90–83, 55 FR 50250 (December 5, 1990); PTE 90–84, 55 FR 50252 (December 5, 1990); PTE 90–88, 55 FR 52899 (December 24, 1990); PTE 91–14, 56 FR 7413 (February 22, 1991); PTE 91–22, 56 FR 03277 (April 18, 1991); PTE 91–23, 56 FR 15936 (April 18, 1991); PTE 91–30, 56 FR 22452 (May 15, 1991); PTE 91–62, 56 FR 51406 (October 11, 1991); PTE 93–31, 58 FR 28620 (May 5, 1993); PTE 93–32, 58 FR 28623 (May 14, 1993); PTE 94–29, 59 FR 14675 (March 29, 1994); PTE 94–64, 59 FR 42312 (August 17, 1994); PTE 94–70, 59 FR 50014 (September 30, 1994); PTE 94–73, 59 FR 51213 (October 7, 1994); PTE 94–84, 59 FR 65400 (December 19, 1994); 95–26, 60 FR 17586 (April 6, 1995); PTE 95–59, 60 FR 35938 (July 12, 1995); PTE 95–89, 60 FR 49011 (September 21, 1995); PTE 96–22, 61 FR 14828 (April 3, 1996); PTE 96–84, 61 FR 58234 (November 13, 1996); PTE 96–92, 61 FR 66334 (December 17, 1996); PTE 96–94, 61 FR 68787 (December 30, 1996); PTE 97–05, 62 FR 1926 (January 14, 1997); PTE 97–28, 62 FR 28515 (May 23, 1997); PTE 97–34, 62 FR 39021 (July 21, 1997); PTE 98–08, 63 FR 8498 (February 19, 1998); PTE 99–11, 64 FR 11046 (March 8, 1999); PTE 2000–19, 65 FR 25950 (May 4, 2000); PTE 2000–33, 65 FR 37171 (June 13, 2000); PTE 2000–41, 65 FR 51039 (August 22, 2000); PTE 2000–55, 65 FR 37171 (November 13, 2000); PTE 2002–19, 67 FR 14979 (March 28, 2002); PTE 2003–31, 68 FR 59202 (October 14, 2003); PTE 2006–07, 71 FR 32134 (June 2, 2006); PTE 2008–08, 73 FR 27570 (May 13, 2008); PTE 2009–16, 74 FR 30623 (June 26, 2009); and PTE 2009–31, 74 FR 59003 (November 16, 2009), each as subsequently amended by PTE 97–34, 62 FR 39021 (July 21, 1997) and PTE 2000–58, 65 FR 67765 (November 13, 2000) and for certain of the exemptions, amended by PTE 2002–41, 67 FR 5487 (August 22, 2002) (collectively, the Underwriter Exemptions).

In addition, the Department also notes that it is granting individual exemptive relief for: Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Final Authorization Number (FAN) 97–03E (December 9, 1996); Credit Lyonnais Securities (USA) Inc., FAN 97–21E (September 10, 1997); ABN AMRO Inc., FAN 98–08E (April 27, 1998); Ironwood Capital Capital Partners Ltd., FAN 99–31E (December 20, 1999) (supersedes FAN 97–02E (November 25, 1996)); William J. Mayer Securities LLC, FAN 01–25E (October 15, 2001); Raymond James & Associates Inc. & Raymond James Financial Inc. FAN 03–07E (June 14, 2003); WAMU Capital Corporation, FAN 03–14E (August 24, 2003); Barclays Bank PLC & Barclays Capital Inc., FAN 04–03E (February 4, 2004); Terwin Capital LLC, FAN 04–16E (August 18, 2004); BNP Paribas Securities Corporation, FAN 07–06E (July 7, 2007); SunTrust Robinson Humphrey, Inc., FAN 08–03E (March 10, 2008); Jefferies & Company Inc., FAN 09–03E (March 9, 2009); NatCity Investments, Inc., FAN 09–06E (March 28, 2009); Amherst Securities Group, LLC, FAN 09–12E (September 14, 2009); Cantor Fitzgerald & Company, FAN 11–05E (June 6, 2011); and Cortview Capital Securities LLC, FAN 11–08E (October 10, 2011); which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62, 67 FR 44622 (July 3, 2002).

I. Transactions

A. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Issuers and Securities evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between the Sponsor or Underwriter and an employee benefit plan when the Sponsor, Servicer, Trustee or Insurer of an Issuer, the Underwriter of the Securities representing an interest in the Issuer, or an Obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.A.(1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for the acquisition or holding of a Security on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of that Excluded Plan.[2]

B. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) of the Code, shall not apply to:

(1) The direct or indirect sale, exchange or transfer of Securities in the initial issuance of Securities between

[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] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 of the Act for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) of the Act, and regulation 29 CFR 2510.3–21(c).

the Sponsor or Underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the Securities is (a) an Obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the Issuer, or (b) an Affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of Securities in connection with the initial issuance of the Securities, at least 50 percent of each class of Securities in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the Issuer is acquired by persons independent of the Restricted Group;

(iii) A plan's investment in each class of Securities does not exceed 25 percent of all of the Securities of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the Securities, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in Securities representing an interest in an Issuer containing assets sold or serviced by the same entity.[3] For purposes of this paragraph (iv) only, an entity will not be considered to service assets contained in an Issuer if it is merely a Subservicer of that Issuer;

(2) The direct or indirect acquisition or disposition of Securities by a plan in the secondary market for such Securities, provided that the conditions set forth in paragraphs (i), (iii) and (iv) of subsection I.B.(1) are met; and

(3) The continued holding of Securities acquired by a plan pursuant to subsection I.B.(1) or (2).

C. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of an Issuer, including the use of any Eligible Swap transaction; or the defeasance of a mortgage obligation held as an asset of the Issuer through the substitution of a new mortgage obligation in a commercial mortgage- backed Designated Transaction, provided:

(1) Such transactions are carried out in accordance with the terms of a binding Pooling and Servicing Agreement;

(2) The Pooling and Servicing Agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase Securities issued by the Issuer;[4] and

(3) The defeasance of a mortgage obligation and the substitution of a new mortgage obligation in a commercial mortgage-backed Designated Transaction meet the terms and conditions for such defeasance and substitution as are described in the prospectus or private placement memorandum for such Securities, which terms and conditions have been approved by a Rating Agency and does not result in the Securities receiving a lower credit rating from the Rating Agency than the current rating of the Securities.

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a Servicer of the Issuer from a person other than the Trustee or Sponsor, unless such fee constitutes a Qualified Administrative Fee.

D. Effective for transactions occurring on or after April 5, 2006, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act or section 4975(e)(2)(F), (G), (H) or (I) of the Code), solely because of the plan's ownership of Securities.

II. General Conditions

A. The relief provided under section I. is available only if the following conditions are met:

(1) The acquisition of Securities by a plan is on terms (including the Security price) that are at least as favorable to the plan as they would be in an arm's-length transaction with an unrelated party;

(2) The rights and interests evidenced by the Securities are not subordinated to the rights and interests evidenced by other Securities of the same Issuer, unless the Securities are issued in a Designated Transaction;

(3) The Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the three (or in the case of Designated Transactions, four) highest generic rating categories;

(4) The Trustee is not an Affiliate of any member of the Restricted Group, other than an Underwriter. For purposes of this requirement;

(a) The Trustee shall not be considered to be an Affiliate of a Servicer solely because the Trustee has succeeded to the rights and responsibilities of the Servicer pursuant to the terms of a Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by the Servicer; and

(b) Subsection II.A.(4) will be deemed satisfied notwithstanding a Servicer becoming an Affiliate of the Trustee as the result of a merger or acquisition involving the Trustee, such Servicer and/or their Affiliates which occurs after the initial issuance of the Securities, provided that:

(i) Such Servicer ceases to be an Affiliate of the Trustee no later than six months after the date such Servicer became an Affiliate of the Trustee; and

(ii) Such Servicer did not breach any of its obligations under the Pooling and Servicing Agreement, unless such breach was immaterial and timely cured in accordance with the terms of such agreement, during the period from the closing date of such merger or acquisition transaction through the date the Servicer ceased to be an Affiliate of the Trustee;

(5) The sum of all payments made to and retained by the Underwriters in connection with the distribution or placement of Securities represents not more than Reasonable Compensation for underwriting or placing the Securities; the sum of all payments made to and

[3] For purposes of this Underwriter Exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[4] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the securities were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions. For purposes of this exemption, references to ''prospectus'' include any related prospectus supplement thereto, pursuant to which Securities are offered to investors.

retained by the Sponsor pursuant to the assignment of obligations (or interests therein) to the Issuer represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the Servicer represents not more than Reasonable Compensation for the Servicer's services under the Pooling and Servicing Agreement and reimbursement of the Servicer's reasonable expenses in connection therewith;

(6) The plan investing in such Securities is an ''accredited investor'' as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933; and

(7) In the event that the obligations used to fund an Issuer have not all been transferred to the Issuer on the Closing Date, additional obligations of the types specified in subsection III.B.(1) may be transferred to the Issuer during the Pre-Funding Period in exchange for amounts credited to the Pre-Funding Account, provided that:

(a) The Pre-Funding Limit is not exceeded;

(b) All such additional obligations meet the same terms and conditions for determining the eligibility of the original obligations used to create the Issuer (as described in the prospectus or private placement memorandum and/or Pooling and Servicing Agreement for such Securities), which terms and conditions have been approved by a Rating Agency.

Notwithstanding the foregoing, the terms and conditions for determining the eligibility of an obligation may be changed if such changes receive prior approval either by a majority vote of the outstanding securityholders or by a Rating Agency;

(c) The transfer of such additional obligations to the Issuer during the Pre-Funding Period does not result in the Securities receiving a lower credit rating from a Rating Agency upon termination of the Pre-Funding Period than the rating that was obtained at the time of the initial issuance of the Securities by the Issuer;

(d) The weighted average annual percentage interest rate (the average interest rate) for all of the obligations held by the Issuer at the end of the Pre-Funding Period will not be more than 100 basis points lower than the average interest rate for the obligations which were transferred to the Issuer on the Closing Date;

(e) In order to ensure that the characteristics of the receivables actually acquired during the Pre-Funding Period are substantially similar to those which were acquired as of the Closing Date, the characteristics of the additional obligations will either be monitored by a credit support provider or other insurance provider which is independent of the Sponsor or an independent accountant retained by the Sponsor will provide the Sponsor with a letter (with copies provided to the Rating Agency, the Underwriter and the Trustee) stating whether or not the characteristics of the additional obligations conform to the characteristics of such obligations described in the prospectus, private placement memorandum and/or Pooling and Servicing Agreement. In preparing such letter, the independent accountant will use the same type of procedures as were applicable to the obligations which were transferred as of the Closing Date;

(f) The Pre-Funding Period shall be described in the prospectus or private placement memorandum provided to investing plans; and

(g) The Trustee of the Trust (or any agent with which the Trustee contracts to provide Trust services) will be a substantial financial institution or trust company experienced in trust activities and familiar with its duties, responsibilities and liabilities as a fiduciary under the Act. The Trustee, as the legal owner of the obligations in the Trust or the holder of a security interest in the obligations held by the Issuer, will enforce all the rights created in favor of securityholders of the Issuer, including employee benefit plans subject to the Act;

(8) In order to insure that the assets of the Issuer may not be reached by creditors of the Sponsor in the event of bankruptcy or other insolvency of the Sponsor:

(a) The legal documents establishing the Issuer will contain:

(i) Restrictions on the Issuer's ability to borrow money or issue debt other than in connection with the securitization;

(ii) Restrictions on the Issuer merging with another entity, reorganizing, liquidating or selling assets (other than in connection with the securitization);

(iii) Restrictions limiting the authorized activities of the Issuer to activities relating to the securitization;

(iv) If the Issuer is not a Trust, provisions for the election of at least one independent director/partner/member whose affirmative consent is required before a voluntary bankruptcy petition can be filed by the Issuer; and

(v) If the Issuer is not a Trust, requirements that each independent director/partner/member must be an individual that does not have a significant interest in, or other relationships with, the Sponsor or any of its Affiliates; and

(b) The Pooling and Servicing Agreement and/or other agreements establishing the contractual relationships between the parties to the securitization transaction will contain covenants prohibiting all parties thereto from filing an involuntary bankruptcy petition against the Issuer or initiating any other form of insolvency proceeding until after the Securities have been paid; and

(c) Prior to the issuance by the Issuer of any Securities, a legal opinion is received which states that either:

(i) A ''true sale'' of the assets being transferred to the Issuer by the Sponsor has occurred and that such transfer is not being made pursuant to a financing of the assets by the Sponsor; or

(ii) In the event of insolvency or receivership of the Sponsor, the assets transferred to the Issuer will not be part of the estate of the Sponsor;

(9) If a particular class of Securities held by any plan involves a Ratings Dependent or Non-Ratings Dependent Swap entered into by the Issuer, then each particular swap transaction relating to such Securities:

(a) Shall be an Eligible Swap;

(b) Shall be with an Eligible Swap Counterparty;

(c) In the case of a Ratings Dependent Swap, shall provide that if the credit rating of the counterparty is withdrawn or reduced by any Rating Agency below a level specified by the Rating Agency, the Servicer (as agent for the Trustee) shall, within the period specified under the Pooling and Servicing Agreement:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty which is acceptable to the Rating Agency and the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to establish any collateralization or other arrangement satisfactory to the Rating Agency such that the then current rating by the Rating Agency of the particular class of Securities will not be withdrawn or reduced.

In the event that the Servicer fails to meet its obligations under this subsection II.A.(9)(c), plan securityholders will be notified in the immediately following Trustee's periodic report which is provided to securityholders, and sixty days after the receipt of such report, the exemptive relief provided under section I.C. will prospectively cease to be applicable to any class of Securities held by a plan which involves such Ratings Dependent

Swap; provided that in no event will such plan securityholders be notified any later than the end of the second month that begins after the date on which such failure occurs.

(d) In the case of a Non-Ratings Dependent Swap, shall provide that, if the credit rating of the counterparty is withdrawn or reduced below the lowest level specified in section III.GG., the Servicer (as agent for the Trustee) shall within a specified period after such rating withdrawal or reduction:

(i) Obtain a replacement swap agreement with an Eligible Swap Counterparty, the terms of which are substantially the same as the current swap agreement (at which time the earlier swap agreement shall terminate); or

(ii) Cause the swap counterparty to post collateral with the Trustee in an amount equal to all payments owed by the counterparty if the swap transaction were terminated; or

(iii) Terminate the swap agreement in accordance with its terms; and

(e) Shall not require the Issuer to make any termination payments to the counterparty (other than a currently scheduled payment under the swap agreement) except from Excess Spread or other amounts that would otherwise be payable to the Servicer or the Sponsor;

(10) Any class of Securities, to which one or more swap agreements entered into by the Issuer applies, may be acquired or held in reliance upon this Underwriter Exemption only by Qualified Plan Investors; and

(11) Prior to the issuance of any debt securities, a legal opinion is received which states that the debt holders have a perfected security interest in the Issuer's assets.

B. Neither any Underwriter, Sponsor, Trustee, Servicer, Insurer or any Obligor, unless it or any of its Affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire Securities, shall be denied the relief provided under section I., if the provision of subsection II.A.(6) is not satisfied with respect to acquisition or holding by a plan of such Securities, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of Securities, the Trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's Securities) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6).

III. Definitions

For purposes of this exemption:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which the Underwriter is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent.

B. ''Issuer'' means an investment pool, the corpus or assets of which are held in trust (including a grantor or owner Trust) or whose assets are held by a partnership, special purpose corporation or limited liability company (which Issuer may be a Real Estate Mortgage Investment Conduit (REMIC) or a Financial Asset Securitization Investment Trust (FASIT) within the meaning of section 860D(a) or section 860L, respectively, of the Code); and the corpus or assets of which consist solely of:

(1)(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association); and/or

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, Qualified Equipment Notes Secured by Leases); and/or

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and/or commercial real property (including obligations secured by leasehold interests on residential or commercial real property); and/or

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or Qualified Motor Vehicle Leases; and/or

(e) Guaranteed governmental mortgage pool certificates, as defined in 29 CFR 2510.3–101(i)(2); and/or

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this subsection B.(1).

(1) Notwithstanding the foregoing, residential and home equity loan receivables issued in Designated Transactions may be less than fully secured, provided that: (i) The rights and interests evidenced by the Securities issued in such Designated Transactions (as defined in section III.DD.) are not subordinated to the rights and interests evidenced by Securities of the same Issuer; (ii) such Securities acquired by the plan have received a rating from a Rating Agency at the time of such acquisition that is in one of the two highest generic rating categories; and (iii) any obligation included in the corpus or assets of the Issuer must be secured by collateral whose fair market value on the Closing Date of the Designated Transaction is at least equal to 80% of the sum of: (I) The outstanding principal balance due under the obligation which is held by the Issuer and (II) the outstanding principal balance(s) of any other obligation(s) of higher priority (whether or not held by the Issuer) which are secured by the same collateral.

(2) Property which had secured any of the obligations described in subsection III.B.(1);

(3)(a) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are made to securityholders; and/or

(b) Cash or investments made therewith which are credited to an account to provide payments to securityholders pursuant to any Eligible Swap Agreement meeting the conditions of subsection II.A.(9) or pursuant to any Eligible Yield Supplement Agreement; and/or

(c) Cash transferred to the Issuer on the Closing Date and permitted investments made therewith which:

(i) Are credited to a Pre-Funding Account established to purchase additional obligations with respect to which the conditions set forth in paragraphs (a)–(g) of subsection II.A.(7) are met; and/or

(ii) Are credited to a Capitalized Interest Account; and

(iii) Are held by the Issuer for a period ending no later than the first distribution date to securityholders occurring after the end of the Pre-Funding Period.

For purposes of this paragraph (c) of subsection III.B.(3), the term ''permitted investments'' means investments which: (i) are either: (x) direct obligations of, or obligations fully guaranteed as to timely payment of principal and interest by,

the United States or any agency or instrumentality thereof, provided that such obligations are backed by the full faith and credit of the United States or (y) have been rated (or the Obligor has been rated) in one of the three highest generic rating categories by a Rating Agency; (ii) are described in the Pooling and Servicing Agreement; and (iii) are permitted by the Rating Agency.

(4) Rights of the Trustee under the Pooling and Servicing Agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship, Eligible Yield Supplement Agreements, Eligible Swap Agreements meeting the conditions of subsection II.A.(9) or other credit support arrangements with respect to any obligations described in subsection III.B.(1).

Notwithstanding the foregoing, the term ''Issuer'' does not include any investment pool unless: (i) The assets of the type described in paragraphs (a)–(f) of subsection III.B.(1) which are contained in the investment pool have been included in other investment pools, (ii) Securities evidencing interests in such other investment pools have been rated in one of the three (or in the case of Designated Transactions, four) highest generic rating categories by a Rating Agency for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption, and (iii) Securities evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of Securities pursuant to this Underwriter Exemption.

C. ''Underwriter'' means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc, Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd., William J. Mayer Securities LLC, Raymond James & Associates Inc. & Raymond James Financial Inc., WAMU Capital Corporation, and Terwin Capital LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62); (2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity; or (3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) is a manager or co-manager with respect to the Securities.

D. ''Sponsor'' means the entity that organizes an Issuer by depositing obligations therein in exchange for Securities.

E. ''Master Servicer'' means the entity that is a party to the Pooling and Servicing Agreement relating to assets of the Issuer and is fully responsible for servicing, directly or through Subservicers, the assets of the Issuer.

F. ''Subservicer'' means an entity which, under the supervision of and on behalf of the Master Servicer, services loans contained in the Issuer, but is not a party to the Pooling and Servicing Agreement.

G. ''Servicer'' means any entity which services loans contained in the Issuer, including the Master Servicer and any Subservicer.

H. ''Trust'' means an Issuer which is a trust (including an owner trust, grantor trust or a REMIC or FASIT which is organized as a Trust).

I. ''Trustee'' means the Trustee of any Trust which issues Securities and also includes an Indenture Trustee. ''Indenture Trustee'' means the Trustee appointed under the indenture pursuant to which the subject Securities are issued, the rights of holders of the Securities are set forth and a security interest in the Trust assets in favor of the holders of the Securities is created. The Trustee or the Indenture Trustee is also a party to or beneficiary of all the documents and instruments transferred to the Issuer, and as such, has both the authority to, and the responsibility for, enforcing all the rights created thereby in favor of holders of the Securities, including those rights arising in the event of default by the Servicer.

J. ''Insurer'' means the insurer or guarantor of, or provider of other credit support for, an Issuer. Notwithstanding the foregoing, a person is not an insurer solely because it holds Securities representing an interest in an Issuer which are of a class subordinated to Securities representing an interest in the same Issuer.

K. ''Obligor'' means any person, other than the Insurer, that is obligated to make payments with respect to any obligation or receivable included in the Issuer. Where an Issuer contains Qualified Motor Vehicle Leases or Qualified Equipment Notes Secured by Leases, ''Obligor'' shall also include any owner of property subject to any lease included in the Issuer, or subject to any lease securing an obligation included in the Issuer.

L. ''Excluded Plan'' means any plan with respect to which any member of the Restricted Group is a ''plan sponsor'' within the meaning of section 3(16)(B) of the Act.

M. ''Restricted Group'' with respect to a class of Securities means:

(1) Each Underwriter;

(2) Each Insurer;

(3) The Sponsor;

(4) The Trustee;

(5) Each Servicer;

(6) Any Obligor with respect to obligations or receivables included in the Issuer constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the Issuer, determined on the date of the initial issuance of Securities by the Issuer;

(7) Each counterparty in an Eligible Swap Agreement; or

(8) Any Affiliate of a person described in subsections III.M.(1)–(7).

N. ''Affiliate'' of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

O. ''Control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.

P. A person will be ''independent'' of another person only if:

(1) Such person is not an Affiliate of that other person; and

(2) The other person, or an Affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

Q. ''Sale'' includes the entrance into a Forward Delivery Commitment, provided:

(1) The terms of the Forward Delivery Commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's-length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the Forward Delivery Commitment; and

(3) At the time of the delivery, all conditions of this Underwriter Exemption applicable to sales are met.

R. ''Forward Delivery Commitment'' means a contract for the purchase or sale of one or more Securities to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the Securities) and optional contracts (which give one party the right but not the obligation to deliver Securities to, or demand delivery of Securities from, the other party).

S. ''Reasonable Compensation'' has the same meaning as that term is defined in 29 CFR 2550.408c–2.

T. ''Qualified Administrative Fee'' means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the Obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The Servicer may not charge the fee absent the act or failure to act referred to in subsection III.T.(1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the Pooling and Servicing Agreement; and

(4) The amount paid to investors in the Issuer will not be reduced by the amount of any such fee waived by the Servicer.

U. ''Qualified Equipment Note Secured By A Lease'' means an equipment note:

(1) Which is secured by equipment which is leased;

(2) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(3) With respect to which the Issuer's security interest in the equipment is at least as protective of the rights of the Issuer as the Issuer would have if the equipment note were secured only by the equipment and not the lease.

V. ''Qualified Motor Vehicle Lease'' means a lease of a motor vehicle where:

(1) The Issuer owns or holds a security interest in the lease;

(2) The Issuer owns or holds a security interest in the leased motor vehicle; and

(3) The Issuer's security interest in the leased motor vehicle is at least as protective of the Issuer's rights as the Issuer would receive under a motor vehicle installment loan contract.

W. ''Pooling and Servicing Agreement'' means the agreement or agreements among a Sponsor, a Servicer and the Trustee establishing a Trust. ''Pooling and Servicing Agreement'' also includes the indenture entered into by the Issuer and the Indenture Trustee.

X. ''Rating Agency'' means a credit rating agency that:

(i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO);

(ii) Has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and

(iii) Has had, within a period not exceeding 12 months prior to the initial issuance of the securities, at least three (3) ''qualified ratings engagements. A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is made public to investors generally; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

Y. ''Capitalized Interest Account'' means an Issuer account: (i) Which is established to compensate securityholders for shortfalls, if any, between investment earnings on the Pre-Funding Account and the interest rate payable under the Securities; and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

Z. ''Closing Date'' means the date the Issuer is formed, the Securities are first issued and the Issuer's assets (other than those additional obligations which are to be funded from the Pre-Funding Account pursuant to subsection II.A.(7)) are transferred to the Issuer.

AA. ''Pre-Funding Account'' means an Issuer account: (i) Which is established to purchase additional obligations, which obligations meet the conditions set forth in paragraph (a)–(g) of subsection II.A.(7); and (ii) which meets the requirements of paragraph (c) of subsection III.B.(3).

BB. ''Pre-Funding Limit'' means a percentage or ratio of the amount allocated to the Pre-Funding Account, as compared to the total principal amount of the Securities being offered, which is less than or equal to 25 percent.

CC. ''Pre-Funding Period'' means the period commencing on the Closing Date and ending no later than the earliest to occur of: (i) The date the amount on deposit in the Pre-Funding Account is less than the minimum dollar amount specified in the Pooling and Servicing Agreement; (ii) the date on which an event of default occurs under the Pooling and Servicing Agreement; or (iii) the date which is the later of three months or ninety days after the Closing Date.

DD. ''Designated Transaction'' means a securitization transaction in which the assets of the Issuer consist of secured consumer receivables, secured credit instruments or secured obligations that bear interest or are purchased at a discount and are: (i) Motor vehicle, home equity and/or manufactured housing consumer receivables; and/or (ii) motor vehicle credit instruments in transactions by or between business entities; and/or (iii) single-family residential, multi-family residential, home equity, manufactured housing and/or commercial mortgage obligations that are secured by single-family residential, multi-family residential, commercial real property or leasehold interests therein. For purposes of this section III.DD., the collateral securing motor vehicle consumer receivables or motor vehicle credit instruments may include motor vehicles and/or Qualified Motor Vehicle Leases.

EE. ''Ratings Dependent Swap'' means an interest rate swap, or (if purchased by or on behalf of the Issuer) an interest rate cap contract, that is part of the structure of a class of Securities where the rating assigned by the Rating Agency to any class of Securities held by any plan is dependent on the terms and conditions of the swap and the rating of the counterparty, and if such Security rating is not dependent on the existence of the swap and rating of the counterparty, such swap or cap shall be referred to as a ''Non-Ratings Dependent Swap''. With respect to a Non-Ratings Dependent Swap, each Rating Agency rating the Securities must confirm, as of the date of issuance of the Securities by the Issuer, that entering into an Eligible Swap with such counterparty will not affect the rating of the Securities.

FF. ''Eligible Swap'' means a Ratings Dependent or Non-Ratings Dependent Swap:

(1) Which is denominated in U.S. dollars;

(2) Pursuant to which the Issuer pays or receives, on or immediately prior to the respective payment or distribution date for the class of Securities to which the swap relates, a fixed rate of interest, or a floating rate of interest based on a publicly available index (e.g., LIBOR or the U.S. Federal Reserve's Cost of Funds Index (COFI)), with the Issuer receiving such payments on at least a quarterly basis and obligated to make separate payments no more frequently than the counterparty, with all simultaneous payments being netted;

(3) Which has a notional amount that does not exceed either: (i) The principal balance of the class of Securities to which the swap relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3);

(4) Which is not leveraged (i.e., payments are based on the applicable notional amount, the day count fractions, the fixed or floating rates designated in subsection III.FF.(2), and the difference between the products thereof, calculated on a one to one ratio and not on a multiplier of such difference);

(5) Which has a final termination date that is either the earlier of the date on which the Issuer terminates or the related class of securities is fully repaid; and

(6) Which does not incorporate any provision which could cause a unilateral alteration in any provision described in subsections III.FF.(1) through (4) without the consent of the Trustee.

GG. ''Eligible Swap Counterparty'' means a bank or other financial institution which has a rating, at the date of issuance of the Securities by the Issuer, which is in one of the three highest long-term credit rating categories, or one of the two highest short-term credit rating categories, utilized by at least one of the Rating Agencies rating the Securities; provided that, if a swap counterparty is relying on its short-term rating to establish eligibility under the Underwriter Exemption, such swap counterparty must either have a long-term rating in one of the three highest long-term rating categories or not have a long-term rating from the applicable Rating Agency, and provided further that if the class of Securities with which the swap is associated has a final maturity date of more than one year from the date of issuance of the Securities, and such swap is a Ratings Dependent Swap, the swap counterparty is required by the terms of the swap agreement to establish any collateralization or other arrangement satisfactory to the Rating Agencies in the event of a ratings downgrade of the swap counterparty.

HH. ''Qualified Plan Investor'' means a plan investor or group of plan investors on whose behalf the decision to purchase Securities is made by an appropriate independent fiduciary that is qualified to analyze and understand the terms and conditions of any swap transaction used by the Issuer and the effect such swap would have upon the credit ratings of the Securities. For purposes of the Underwriter Exemption, such a fiduciary is either:

(1) A ''qualified professional asset manager'' (QPAM),[6] as defined under Part V(a) of PTE 84–14, 49 FR 9494, 9506 (March 13, 1984), as amended by 70 FR 49305 (August 23, 2005);

(2) An ''in-house asset manager'' (INHAM),[7] as defined under Part IV(a) of PTE 96–23, 61 FR 15975, 15982 (April 10, 1996); or

(3) A plan fiduciary with total assets under management of at least $100 million at the time of the acquisition of such Securities.

II. ''Excess Spread'' means, as of any day funds are distributed from the Issuer, the amount by which the interest allocated to Securities exceeds the amount necessary to pay interest to securityholders, servicing fees and expenses.

JJ. ''Eligible Yield Supplement Agreement'' means any yield supplement agreement, similar yield maintenance arrangement or, if purchased by or on behalf of the Issuer, an interest rate cap contract to supplement the interest rates otherwise payable on obligations described in subsection III.B.(1). Such an agreement or arrangement may involve a notional principal contract provided that:

(1) It is denominated in U.S. dollars;

(2) The Issuer receives on, or immediately prior to the respective payment date for the Securities covered by such agreement or arrangement, a fixed rate of interest or a floating rate of interest based on a publicly available index (e.g., LIBOR or COFI), with the Issuer receiving such payments on at least a quarterly basis;

(3) It is not ''leveraged'' as described in subsection III.FF.(4);

(4) It does not incorporate any provision which would cause a unilateral alteration in any provision described in subsections III.JJ.(1)-(3) without the consent of the Trustee;

(5) It is entered into by the Issuer with an Eligible Swap Counterparty; and

(6) It has a notional amount that does not exceed either: (i) the principal balance of the class of Securities to which such agreement or arrangement relates, or (ii) the portion of the principal balance of such class represented solely by those types of corpus or assets of the Issuer referred to in subsections III.B.(1), (2) and (3).

IV. Modifications

For the Underwriter Exemptions provided to Residential Funding Corporation, Residential Funding Mortgage Securities, Inc., et al. and GE Capital Mortgage Services, Inc. and GECC Capital Markets (the Applicants) (PTEs 94–29 and 94–73, respectively);

A. Section III.A. of this exemption is modified to read as follows:

A. ''Security'' means:

(1) A pass-through certificate or trust certificate that represents a beneficial ownership interest in the assets of an Issuer which is a Trust and which entitles the holder to payments of principal, interest and/or other payments made with respect to the assets of such Trust; or

(2) A security which is denominated as a debt instrument that is issued by, and is an obligation of, an Issuer; with respect to which (i) one of the Applicants or any of its Affiliates is the Sponsor, [and] an entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption, is the sole underwriter or the manager or co-manager of the underwriting syndicate or a selling or placement agent or (ii) one of the Applicants or any of its Affiliates is the sole underwriter or the manager or co-manager of the underwriting syndicate, or a selling or placement agent.

B. Section III.C. of this exemption is modified to read as follows:

C. Underwriter means:

(1) An entity defined as an Underwriter in subsection III.C.(1) of each of the Underwriter Exemptions that are being amended by this exemption. In addition, the term Underwriter includes Deutsche Bank AG, New York Branch and Deutsche Morgan Grenfell/C.J. Lawrence Inc., Credit Lyonnais Securities (USA) Inc., ABN AMRO Inc., Ironwood Capital Partners Ltd., William J. Mayer Securities LLC, Raymond James & Associates Inc. & Raymond James Financial Inc., WAMU Capital Corporation, and Terwin Capital LLC (which received the approval of the Department to engage in transactions substantially similar to the transactions described in the Underwriter Exemptions pursuant to PTE 96–62);

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such entity;

(3) Any member of an underwriting syndicate or selling group of which a person described in subsections III.C.(1) or (2) above is a manager or co-manager with respect to the Securities; or

(4) Any entity which has received from the Department an individual prohibited transaction exemption relating to Securities which is similar to this exemption.

Technical Correction to the Notice

In order to correct an inadvertent omission, the Department is adopting a correction to the Notice on its own motion. At footnote 13 on page 76773 of the Notice, the following organization and Final Authorization Number (FAN) is included in the list of organizations that the Department is granting individual relief for, after the phrase

''(August 24, 2003);'' ''Barclays Bank PLC & Barclays Capital Inc., FAN 04–03E (February 4, 2004)''.

Description of Proposed Amendment

On December 28, 2012, the Department published the Notice at 77 FR 76773. As set forth in the Notice, the Department proposed to revise the definition of ''Rating Agency,'' as set forth in section III.X of the Underwriter Exemptions, by eliminating any specific reference to a particular credit rating agency, and substituting instead the following:

Section III.X:

Effective as of the date of publication of a final amendment to the Underwriter Exemptions in the **Federal Register**, the term ''Rating Agency'' means a credit rating agency that: (i) Is currently recognized by the U.S. Securities and Exchange Commission (SEC) as a nationally recognized statistical ratings organization (NRSRO); (ii) has indicated on its most recently filed SEC Form NRSRO that it rates ''issuers of asset-backed securities''; and (iii) has had, within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements.'' A ''qualified ratings engagement'' is one (i) requested by an issuer or underwriter of securities in connection with the initial offering of the securities; (ii) for which the credit rating agency is compensated for providing ratings; (iii) which is a public rating; and (iv) which involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.

Written Comment

The Department invited all interested persons to submit written comments and requests for a hearing with respect to the Notice by February 11, 2013. Prior to the deadline, Barbara Klippert of Bingham McCutchen LLP made a request for an extension of the comment period on behalf of herself and a group of 11 other attorneys from various law firms (together with Ms. Klippert, the Commenters) collaboratively working on a comment letter (the Comment) because additional time was needed to coordinate all of the attorney comments.[5] Accordingly, the Department granted the Commenters a three-day extension of the comment period, and the Comment was received via email on February 14, 2013. No other comments were received during the comment period, and there were no requests for a public hearing.

The Commenters expressed general support for the modifications described in the Notice and requested certain clarifications and/or changes regarding: (1) Footnote 23 of the Notice; (2) the 12-month period described in clause (iii) of the definition of ''Rating Agency;'' (3) the term ''public rating,'' as set forth in sub-clause (iii) of the definition of a ''qualified ratings engagement;'' and (4) sub-clause (iv) of the definition of a ''qualified ratings engagement'' and certain preamble language relating thereto. The Comment and the Department's responses thereto are described in further detail below.

1. *Requested Clarification of Footnote 23.* Footnote 23 of the Notice states that ''[p]lan fiduciaries are responsible for confirming that any rating given for a certificate acquired pursuant to an Underwriter Exemption was issued by a credit rating agency that has met the Rating Agency criteria set forth herein. In that regard, plan fiduciaries may demonstrate that they have fulfilled their fiduciary responsibilities to the plan by accepting representations from credit rating agencies that the foregoing criteria have been met.'' The Commenters indicate that footnote 23 can have the unintended consequence of requiring a plan fiduciary to obtain representations directly from a rating agency in order to rely upon a rating agency's representation that it has met the Rating Agency criteria set forth in the Notice. The Commenters explain that the offering documents pursuant to which Securities[6] that are intended to qualify under the Underwriter Exemption are issued take a position as to whether the conditions of the applicable Underwriter Exemption are met or may be met, which involves a determination by legal counsel as to whether a credit rating agency satisfies the definition of Rating Agency. The Commenters further explain that plan fiduciaries would in the normal course review such disclosures in the offering documents in making a decision, consistent with their fiduciary responsibilities, to invest in securities. The Commenters propose that the representation to the plan fiduciaries referred to in footnote 23 could, for example, be accomplished indirectly by means of a representation by the rating agency made to the Sponsor,[7] depositor, Issuer,[8] Underwriter[9] or other appropriate party to the securitization transaction (for example in the engagement letter retaining the rating agency to rate the securities). The Commenters state that counsel to the Issuer, counsel to the Underwriter, and plan fiduciaries, in making their respective determinations as to the applicability of an Underwriter Exemption would be able to take into account any relevant representations provided by the rating agencies in the engagement letters discussed above.

The Commenters also state that they did not read footnote 23 and the accompanying text as intending to limit the alternatives that are available for determining that a rating agency has met the Rating Agency criteria under the Notice or that a representation to plans by a rating agency is the sole means by which a rating agency could demonstrate that it has met the Rating Agency criteria set forth in the Notice. The Commenters, however, express their belief that if the Department were to confirm that additional alternative methods could be used to ascertain whether a rating agency has, in fact, met the Rating Agency criteria, this would greatly facilitate transactions being able to proceed under the Notice when finalized.

The Department, in stating that plan fiduciaries ''may accept representations from credit rating agencies to confirm that the Rating Agency criteria have been met,'' sought to identify direct representations by credit rating agencies

[5] The attorneys that signed the Comment are: Micah Bloomfield of Stroock & Stroock & Lavan LLP; Susan M. Camillo of Dechert LLP; Sarah Downie of Orrick, Herrington & Sutcliffe LLP; Richard Gilbert of Trucker Huss, APC; Tae Jeon of Ashurst, LLP; Barbara D. Klippert of Bingham McCutchen LLP; Lennine Occhino of Mayer Brown LLP; Leslie Okinaka of Hunton & Williams LLC; David C. Olstein of Skadden, Arps, Slate, Meagher & Flom LLP; Andrew L. Oringer of Dechert LLP; Steven W. Rabits of Stroock & Stroock & Lavan LLP; and Kathleen Wechter of Kaye Scholer LLP.

The Commenters explained that they submitted the Comment in the hope that their experience in working with the Underwriter Exemptions would be of assistance to the Department in finalizing the Notice. Specifically, the Commenters stated that in the course of their practices, they (i) may represent various Sponsors, Underwriters or plans regarding whether securitization transactions and the securities issued in such transactions meet the conditions of the Underwriter Exemptions and are thus eligible to be purchased or sold by the plans and; (ii) may also be called upon to render legal opinions as to whether the offering documents relating to the securities accurately describe matters of law relating to the Act, which by definition include their conclusions as to whether securities intended to be eligible to be purchased by plans pursuant to the Underwriter Exemptions are so eligible. In addition, the Commenters stated that a number of the attorneys listed as signatories of the Comment have represented Underwriters in their application and receipt of Underwriter Exemptions and amendments thereto from the Department, which Underwriter Exemptions would be amended by the Notice.

[6] The term ''Security'' is defined in section III.A of the Underwriter Exemptions.

[7] The term ''Sponsor'' is defined in section III.D of the Underwriter Exemptions.

[8] The term ''Issuer'' is defined in section III.B of the Underwriter Exemptions.

[9] The term ''Underwriter'' is defined in section III.C of the Underwriter Exemptions.

to plans as one of the possible means by which plan fiduciaries may confirm that the Rating Agency criteria have been met. In this regard, the Department acknowledges that it is possible for plan fiduciaries, consistent with their duties under section 404 of ERISA, to alternatively rely on material, indirect representations in making such confirmations. Accordingly, the Department agrees with the Commenters that the reference in footnote 23 that plan fiduciaries ''may accept representations from credit rating agencies to confirm that the Rating Agency criteria have been met'' should not be viewed as precluding plan fiduciaries from relying on material, indirect representations by rating agencies when confirming whether such agencies have met the Rating Agency criteria set forth in the Underwriter Exemptions.

2. *Requested Modification of Clause (3) of the Definition of Rating Agency.* The Commenters note that clause (iii) of the definition of ''Rating Agency'' refers to the rating agency having had ''within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) ''qualified ratings engagements.'' The definition of ''qualified ratings engagement,'' meanwhile, refers to one ''requested by an issuer or underwriter of securities in connection with the initial offering of the securities.'' The Commenters believe that confusion may be created because the reference to 12 months prior to the ''closing of the current transaction'' could be taken to include a secondary market transaction. The Commenters state that such a requirement would be extremely difficult for investors in the secondary market to confirm. Therefore, the Commenters suggest that once a rating agency qualifies as a Rating Agency as of the initial offering of a securitization transaction, it should remain qualified as a Rating Agency for purposes of the particular securities issued in that transaction when such securities are purchased in the secondary market. The Commenters state that security ratings are requested by an Issuer or an Underwriter of securities with respect to a structured finance transaction in the following circumstances: A rating agency may be asked to rate securities issued on the Closing Date; [10] or if the securities are not rated or the Issuer or Underwriter is not able to sell the securities, a new rating agency may be asked to rate the securities at a later date. Such securities rated at a later date are considered to be sold as part of the initial offering as they have not yet been sold to any party other than the Underwriter. As part of a rating agency's engagement, it agrees to update its rating periodically over the life of the security. The Issuer or Underwriter would not retain another rating agency to rate the securities upon a secondary market transfer. Accordingly, the Commenters suggest that the reference in clause (iii) of the definition of ''Rating Agency'' to the rating agency having had ''within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) 'qualified ratings engagements' '' could be changed to avoid confusion to read that the rating agency has had ''within a period not exceeding 12 months prior to either, the Closing Date or the initial issuance of the securities, at least three (3) 'qualified ratings engagements.' ''

Upon consideration of the comment above, the Department agrees that clause (iii) of the definition of Rating Agency should be modified. The Department has modified the relevant portion of clause (iii) of the Rating Agency definition to require that a Rating Agency, ''has had, within a period not exceeding 12 months prior to the initial issuance of the securities, at least three (3) 'qualified ratings engagements.' '' Given the Commenters' representation that an Issuer or Underwriter would not retain another rating agency to rate the securities upon a secondary market transfer, the Department believes that once a rating agency qualifies as a Rating Agency as of the initial offering of a securitization transaction, it should remain qualified as a Rating Agency for purposes of the particular securities issued in that transaction to the extent that the rating agency is still updating its rating of the security. However, while a Rating Agency's rating of securities sold as part of an initial offering of securities may be counted as a ''qualified ratings engagement,'' subsequent updates of the same security by such Rating Agency may not be counted as a ''qualified ratings engagement'' for purposes of determining whether the Rating Agency has had ''within a period not exceeding 12 months prior to the closing of the current transaction, at least three (3) 'qualified ratings engagements,' '' as described in clause (iii) of the definition of ''Rating Agency.''

3. *Requested Clarification of Sub-Clause (iii) of the Definition of a ''qualified ratings engagement.''* The Commenters note that sub-clause (iii) of the definition of ''qualified ratings engagement'' set forth in the Notice refers to the term ''public rating.'' The Commenters believe that it would be helpful to clarify that this term refers to a rating which is made public to investors generally, as opposed to one that is made available only to certain investors. The Commenters suggest that the Department clarify that the nature of the type of a securities offering should not be determinative of whether a rating was ''public.'' The Commenters believe, for example, that securities issued pursuant to a private placement using a private placement memorandum as the offering document should be covered, provided the rating is available to the public. The Commenters also note that, at this time, many more securities of the type that would be granted relief under the Underwriter Exemptions are sold in private placements than are sold in public offerings.

The Department, in proposing to describe a ''qualified ratings engagement'' as, among other things, a ''public rating,'' intended that such rating be a rating that is made public to investors. Accordingly, the Department did not intend that such term refers to a rating that is available only to a controlled number of investors. The Department notes that a rating may be made public to investors generally in addition to being set forth in an offering document, such as a private placement memorandum, that is received by a controlled number of recipients. To clarify the views above, the Department is changing the term ''public rating'' as it appears in sub-clause (iii) of the definition of ''qualified ratings engagement,'' to read ''rating that is made public to investors generally.''

4. *Requested Clarification of Sub-Clause (iv) of the Definition of a ''qualified ratings engagement.''* The Commenters seek two clarifications relating to sub-clause (iv) of the definition of a ''qualified ratings engagement.'' First, the Commenters note that sub-clause (iv) of the definition of a ''qualified ratings engagement'' provides that during the applicable 12-month period such engagement ''involves the offering of securities of the type that would be granted relief by the Underwriter Exemptions.'' The Commenters further note that, in contrast, the Department's reference to this requirement in the preamble to the Notice reads: ''. . . the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.'' [11] The Commenters state that the term ''similar transactions,'' as set forth in the

[10] The term ''Closing Date'' is defined in section III.Z of the Underwriter Exemptions.

[11] See Representation 4 of the Notice on page 76775.

preamble, is substantively narrower than the phrase ''securities of the type that would be granted relief under the Underwriter Exemptions,'' as set forth in sub-clause (iv) of the definition of a ''qualified ratings engagement.'' The Commenters believe that this distinction creates uncertainties regarding which ''transactions'' are ''similar'' in nature. The Commenters also state that in the current market conditions, few asset-backed and mortgage-backed securities of the type covered under the Underwriter Exemptions are being offered. The Commenters opine that this creates fewer opportunities for the rating agencies to rate the necessary securities over a rolling 12-month period, and that this in turn could prevent securities of the type that would otherwise be granted relief under the Underwriter Exemptions from being available to be purchased by plans. The Commenters believe that it is the Department's intent, as reflected in the text of the Notice, and more consistent with the general approach of the Underwriter Exemptions, that any security that is backed by the type of receivable that would be granted relief under the Underwriter Exemption would be satisfactory. Accordingly, the Commenters seek clarification that reference to ''similar transactions'' includes any offering of securities of the type that would be granted relief by the Underwriter Exemptions even if the securities were backed by different types of obligations (or combinations thereof), were issued as certificates or notes or were issued in transactions having different structures.

Regarding this first issue, the Department notes that the term ''similar transactions,'' as found in the preamble to the Notice, was not intended to narrow the scope of the express definition of a ''qualified ratings engagement,'' which, as noted above, involves ''the offering of securities of the type that would be granted relief by the Underwriter Exemptions.'' The Department agrees with the Commenters that the term ''similar transactions'' is intended to reference an offering of securities of the type that has been granted relief under the Underwriter Exemptions, including where the securities are backed by a different type of obligation (or types of obligations), or were issued as certificates or notes, or were issued in transactions having different structures. In this last regard, however, the Department emphasizes that such different structure(s) must be of a type that is currently permitted by the Underwriter Exemptions.

The second clarification sought by the Commenters relates to the same preamble language described above, that that ''the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months.'' [12] The Commenters seek clarification regarding whether the word ''selected'' means the date the rating agency is engaged to rate the securities, as set forth in the rating agency's engagement letter, or the date such securities are first issued. The Commenters state that otherwise, the term ''selected'' could be subject to differing interpretations. In addition, the Commenters state that there can be considerable lag time between the date the rating agency is engaged and the date the securities it rates are actually issued, which can arbitrarily affect whether the three-engagement requirement has been met. The Commenters opine that this could prevent securities of the type that would otherwise be granted relief under the Underwriter Exemptions from being eligible to be purchased by plans.

Regarding this second issue raised by the Commenters, the Department notes that the three-engagement requirement is intended to ensure that a qualified rating agency is ''seasoned.'' As between the date that a rating agency is first selected and the date that the securities it rates are issued, the Department believes that the more relevant date is the date that the securities are issued. It is the view of the Department, therefore, that the preamble phrase, ''. . . the NRSRO must demonstrate that it has been selected to rate at least three similar transactions during the preceding 12 months,'' refers to the date that the securities are issued.

Accordingly, after giving full consideration to the entire record, including the Comment Letter, the Department has determined to grant the exemption as modified herein. For a more complete statement of the facts and representations supporting the Department's decision to amend the Underwriter Exemptions, refer to the notice of proposed exemption (the Notice) that was published on December 28, 2012 in the **Federal Register** at 77 FR 76773. For further information regarding the Comment and other matters discussed herein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11718) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

[12] Id.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

General Information

The attention of the interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of July, 2013.

Lyssa E. Hall,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2013–16386 Filed 7–8–13; 8:45 am]

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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–11640, Wells Fargo Bank, N.A. (the Applicant or the Bank); D–11772, UBS AG (UBS or the Applicant); and D–11739, D–11740, & D–11741, Sears Holdings Savings Plan (the Savings Plan), Sears Holdings Puerto Rico Savings Plan (the PR Plan) and The Lands' End, Inc. Retirement Plan (the Lands' End 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.

[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).

Wells Fargo Bank, N.A. (the Applicant or the Bank) Located in Sioux Falls, South Dakota

[Application No. D–11640]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the proposed exemption is granted, the restrictions of sections 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A), (D), and (E) of the Code, shall not apply, effective September 8, 2009, to the cash sale by four employee benefit plans (the Plans), whose assets were invested in the Bank's collateral pools (the Collateral Pools), of certain interests (the Interests) in two medium-term notes (the Notes), for the aggregate purchase price (the Purchase Price) of $375,182, to the Bank, a party in interest with respect to the Plans, provided that the following conditions were met:

(a) The sale was a one-time transaction for cash;

(b) Each Plan received an amount which was equal to the greater of either: (1) The current cost of its Interests in the Notes (i.e., the original purchase price less distributions received by the Plan through the purchase date (the Purchase Date)); or (2) the fair market value of its Interests in the Notes, as determined by a valuation of the underlying assets performed by Stone Tower Debt Advisors LLC (the Enforcement Manager), an unrelated party, there being no market for the Notes at the time of sale;

(c) The Plans did not pay any commissions or other expenses in connection with the sale;

(d) The Bank, in its capacity as securities lending agent and manager of the Collateral Pools, determined that the sale of the Plans' Interests in the Notes was appropriate for and in the interests of the Plans at the time of the transaction;

(e) The Bank took all appropriate actions necessary to safeguard the interests of the Plans in connection with the transaction, given that the Plans were not eligible to participate in an exchange offer (the Exchange Offer) and the Purchase Price was substantially higher than the fair market value of the Plans' Interests in the Notes;

(f) If the exercise of any of the Bank's rights, claims or causes of action in

connection with its ownership of the Notes (including the notes received in the Exchange Offer) results in the Bank recovering from Stanfield Victoria Finance Ltd., the issuer of the Notes (Stanfield Victoria), or any third party, an aggregate amount that is more than the sum of:

(1) The Purchase Price paid by the Bank to the Plans for the Interests in the Notes; and

(2) The interest that would have been payable on the Notes from and after the date the Bank purchased the Plans' Interests in the Notes, at the rate specified in the Notes, the Bank will refund such excess amounts promptly to the Plans (after deducting all reasonable expenses incurred in connection with the recovery);

(g) The Bank and its affiliates, as applicable, maintain, or cause to be maintained, for a period of six (6) years from the date of any covered transaction such records as are necessary to enable the persons described below in paragraph (h)(i), to determine whether the conditions of this exemption have been met, except that—

(1) No party in interest with respect to a Plan which engages in the covered transactions, other than the Bank and its affiliates, as applicable, shall be subject to a civil penalty under section 502(i) of the Act or the taxes imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required, below, by paragraph (h)(i); and

(2) A separate prohibited transaction shall not be considered to have occurred solely because, due to circumstances beyond the control of the Bank or its affiliate, as applicable, such records are lost or destroyed prior to the end of the six-year period.

(h)(1) Except as provided, below, in paragraph (h)(2), and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to, above, in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the Securities Exchange Commission; or

(B) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(C) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the covered transactions, or any authorized employee or representative of these entities; or

(D) Any participant or beneficiary of a plan that engages in the covered transactions, or duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described above, in paragraph (h)(1)(B)–(D) shall be authorized to examine trade secrets of the Bank and its affiliates, as applicable, or commercial or financial information which is privileged or confidential; and

(E) Should the Bank and its affiliates, as applicable, refuse to disclose information on the basis that such information is exempt from disclosure, the Bank and its affiliates, as applicable, shall, by the close of the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Effective Date: If granted, this exemption will be effective as of September 8, 2009.

Summary of Facts and Representations

1. The Bank is a national bank subsidiary of Wells Fargo & Company, a diversified financial services company. Headquartered in Sioux Falls, South Dakota, the Bank is subject to regulation by the Comptroller of Currency. As of December 31, 2012, the Bank served as securities lending agent, custodian or directed trustee to approximately 35 clients, including certain ERISA-covered plans. Also as of December 31, 2012, the Bank's total fiduciary assets under management were $159,716,000,000. Of that total, $23,223,000,000 represented employee benefit and retirement-related trust and agency accounts.

2. The Bank's securities lending program involves the lending of securities held by certain of its clients, including the Plans referred to herein, and the investment of collateral received from the borrowers in Collateral Pools maintained on behalf of each client pursuant to securities lending agreements with such clients.[2] The Bank has discretionary investment management responsibility over the Collateral Pools. The Collateral Pools are generally invested in a diversified portfolio of investment grade short-term debt instruments, including, without limitation, commercial paper (including paper issued under Section 3(a)(3), Section 4(2) and Rule 144A of the Securities Act of 1933), notes, repurchase agreements and other evidences of indebtedness which are payable on demand or which have a maturity date not exceeding 36 months from the date of purchase.

Neither the Bank nor its affiliates served as fiduciaries with respect to each affected Plan's decision to participate in the Bank's securities lending program. Instead, unrelated Plan fiduciaries were responsible for making such decisions. The disclosures provided by the Bank to its securities lending customers, including the Plans, explained the risks associated with the securities lending program, including the risk of loss relating to the investment of collateral received from borrowers under the program, and the Bank's obligation to return the collateral to such borrowers upon the termination of the loan of securities.

3. The Notes comprising the Collateral Pools were corporate bonds that were issued by Stanfield Victoria, an unrelated party. The Notes were purchased by the Bank on behalf of the Collateral Pools for a total purchase price of $848,859. The Notes included two CUSIP numbers: 85431AGX9 (CUSIP 1) purchased on September 6, 2006, with a maturity date of March 6, 2008, and 85431AHY6 (CUSIP 2) purchased on November 3, 2006, with a maturity date of November 3, 2008. A total of 67 investors invested in the Notes. Among the investors were the Plans, none of which were sponsored by the Bank or its affiliates. The Plans' Collateral Pools acquired the Interests in CUSIP 1 for $303,449 and in CUSIP 2 for $202,359, for a total amount of $505,808. Interest on the Notes was payable quarterly at a variable rate which was reset each quarter based upon the three-month London Interbank Offered Rate.

4. Stanfield Victoria, a structured investment vehicle, raised capital primarily by issuing various types and classes of notes, including the Notes and commercial paper. The capital raised was then utilized by Stanfield Victoria to purchase various financial assets, including other asset-backed securities and mortgage-backed securities. The assets acquired by Stanfield Victoria were pledged to secure payment of certain of the debt instruments issued by Stanfield Victoria, including the Notes, pursuant to a security agreement with an independent bank, Deutsche Bank Trust Company Americas, serving

[2] Prior to September 22, 2008, the Bank invested securities lending collateral it received on behalf of its clients in a commingled fund. At that time, each client received a pro rata interest in the assets held by the commingled fund, including the Notes. On and after September 22, 2008, a Collateral Pool was established by the Bank for each securities lending client to hold a direct, pro rata interest in the Notes and other securities maintained by the Bank. The percentage of all of the Collateral Pools attributable to the Plans was approximately 11.1964%, as of September 22, 2008.

as collateral agent (the Collateral Agent). This security agreement provided that, as a general rule, upon the occurrence of an ''Enforcement Event,'' as defined in the agreement (the Enforcement Event), the Collateral Agent was required to sell all of Stanfield Victoria's assets and distribute the proceeds thereof.

5. The decision to invest Collateral Pool assets in the Notes was made by the Bank in its capacity as securities lending agent. Prior to the investment, the Bank conducted an investigation of the potential investment, examining and considering the economic and other terms of the Notes. The Bank represents that the Plans' investments in the Notes were consistent with the investment policies and objectives of the Collateral Pools when made. At the time the Plans acquired their Interests in the Notes, the Notes were rated ''AAA'' by Standard & Poor's Corporation (S&P) and ''Aaa'' by Moody's Investor Services, Inc. (Moody's).

Based on its consideration of the relevant facts and circumstances, the Bank states that it was prudent and appropriate for the Plans to acquire their Interests in the Notes.[3]

6. On November 7, 2007, S&P placed a ''negative watch'' on the Notes. On December 21, 2007, Moody's downgraded the rating of the Notes to ''Baa3.'' On January 7, 2008, S&P downgraded the rating of the Notes to ''B−.'' Responding to these events, the Bank, on behalf of the Plans, (together with the majority of other investors in the Notes) consented to the execution of an amendment to the security agreement governing the Notes on January 7, 2008. Pursuant to this amendment, by providing notice (Election Notice) on or before January 17, 2008, the Bank could elect to have the pro rata share of the collateral assets (i.e., the assets then held by Stanfield Victoria as collateral supporting the Notes) allocable to Interests in the Notes held by the Collateral Pools maintained on behalf of the Plans excluded from any asset sale by the Collateral Agent that would otherwise occur immediately upon the occurrence of an Enforcement Event.

7. On January 8, 2008, as a result of the foregoing ratings downgrades, an Enforcement Event occurred. On January 10, 2008, Stanfield Victoria did not repay certain notes maturing on that date. On January 14, 2008, the Bank submitted an Election Notice to the Collateral Agent instructing the Collateral Agent to exclude its securities lending clients' pro rata share of Stanfield Victoria's assets from the asset sale triggered by the occurrence of the Enforcement Event on January 8, 2008.

The Bank's election was based on its determination that the market for the collateral assets securing the Notes was severely distressed and that the intrinsic value of such assets was substantially greater than the price that could have been obtained if such assets were then sold by the Collateral Agent. Accordingly, the Bank determined that it was in the best interest of its securities lending clients, including the Plans, to exclude such assets from a current sale. On January 15, 2008, Moody's further downgraded its rating of the Notes to ''B2.'' On January 17, 2008, S&P further downgraded its rating of the Notes to ''D.''

8. Stanfield Victoria was placed under the control of the Enforcement Manager on January 8, 2008. At that time, all payments of principal and interest to holders of its Notes and commercial paper were immediately suspended. However, income and principal payments on many of Stanfield Victoria's underlying securities continued to accrue through December 2008, at which point the Collateral Agent determined to pay the accumulated cash solely to the senior creditors of Stanfield Victoria, which included the Plans. The first such payment was made on December 23, 2008. In March 2009, the Collateral Agent began making monthly payments to the senior creditors. Through September 1, 2009, these payments on the Notes totaled approximately 26% of the initial purchase price paid by the Bank's securities lending customers. In the case of the Plans, the total payments received with respect to the Notes was $130,626 ($79,204 for CUSIP 1 and $51,422 for CUSIP 2).

9. During this period, an unrelated group created ''NewCo,'' a private entity formed to acquire the Notes of Stanfield Victoria in exchange for notes issued by NewCo. NewCo intended to use all Notes that it acquired in the Exchange Offer as the basis for a credit bid in the anticipated foreclosure auction of Stanfield Victoria's assets to be conducted by the Enforcement Manager.

Through the credit bid process, NewCo received a pro rata share of the underlying assets of Stanfield Victoria based on the Notes it acquired through the Exchange Offer. Stanfield Victoria's senior creditor committee, an informal committee comprised of holders of Stanfield Victoria's senior securities, determined that it would be in the senior creditors' best interests to accept the Exchange Offer. The NewCo exchange period commenced on August 13, 2009 and closed on September 11, 2009 (the Exchange Period). The Bank was required by September 8, 2009 to elect, on behalf of each of its securities lending clients, whether to accept the Exchange Offer for the Notes.[4]

Shortly before the beginning of the Exchange Period, however, NewCo's organizers concluded that it would not register interests in NewCo under either the Securities Act of 1933 (the 1933 Act) or the Investment Company Act of 1940 (the 1940 Act). As a result, participation in NewCo was limited to those institutional investors who were both ''accredited investors,'' as that term is defined in Rule 501 of Regulation D (see 17 CFR 230.501(a)) promulgated under the 1933 Act and ''qualified purchasers,'' as defined in Section 2(a)(51) of the 1940 Act.

Participation in the exchange with NewCo was further restricted by establishment of a minimum denomination size of $100,000. NewCo would not issue notes in an amount below that minimum size to any

[3] The Department is expressing no opinion in this proposed exemption regarding whether the acquisition and holding by the Plans of Interests in the Notes through the Collateral Pools violated any of the fiduciary responsibility provisions of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that a fiduciary of a plan act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. Section 404(a) of the Act also states that a plan fiduciary should diversify the investments of a plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

Moreover, the Department is not providing any opinion as to whether a particular category of investments or investment strategy would be considered prudent or in the best interests of a plan as required by section 404 of the Act. The determination of the prudence of a particular investment or investment course of action must be made by a plan fiduciary after appropriate consideration of those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including a plan's potential exposure to losses and the role the investment or investment course of action plays in that portion of the plan's portfolio with respect to which the fiduciary has investment duties (see 29 CFR 2550.404a–l). The Department also notes that in order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Thus, a particular investment by a plan, which is selected in preference to other alternative investments, would generally not be prudent if such investment involves a greater risk to the security of a plan's assets than other comparable investments offering a similar return or result.

[4] The Bank states that the Exchange Offer expired on September 11, 2009. However, to ensure that its election to accept the offer would clear the election process established by NewCo in a timely way, the Bank established its own deadline of September 8, 2009 to submit any acceptance of the Exchange Offer.

investors. Those holders of the Notes who did not accept the NewCo Exchange Offer were to receive directly a pro rata distribution of each of Stanfield Victoria's underlying assets, which comprised more than 370 separate securities. The small pro rata interests in the underlying securities generally would be below the minimum denomination size necessary to permit sales to other purchasers or transfers of any kind. Thus, any such investors would be required to hold each of the underlying securities until their maturity or redemption.

In addition, investors who took distributions of these nontransferable assets would be subject to substantial administrative charges imposed by the custodian (unrelated to the Bank) so long as any nontransferable asset remained outstanding. Accordingly, the Bank elected on behalf of each eligible securities lending client (that is, each securities lending client that was a ''qualified purchaser'' holding at least $100,000 in Stanfield Victoria) to accept the NewCo Exchange Offer.

10. Some of the Bank's securities lending customers were ineligible to hold interests in NewCo (the Ineligible Clients) because they were not ''qualified purchasers'' or they held Interests [5] of less than $100,000 in Stanfield Victoria, or both. These investors included the four Plans and five other investors, which were institutional investors, such as non-ERISA employee benefit plans and private foundations. Therefore, the Bank determined that it would be appropriate and in the best interests of the Plans to purchase the Interests in the Notes for their current cost (calculated as the original purchase price less distributions that were treated as distributions of principal through the date of sale). However, to avoid a pro rata distribution of more than 370 illiquid securities, any such sale would be required to be made prior to the expiration of the Exchange Period.

The Bank decided to purchase the Interests in the Notes that were held by the Ineligible Clients for cash in order to participate in the Exchange Offer with respect to any Interests in the Notes that the Ineligible Clients chose to sell to the Bank. Moreover, the Bank determined that its purchase of the Interests held by the Ineligible Clients would be permissible under applicable banking law.

11. The current cost of the Notes was substantially higher than the fair market value of the Notes. Because there was essentially no market for the Notes, they could be valued only by valuing the underlying assets of Stanfield Victoria. The Enforcement Manager was required to provide monthly mark-to-market valuations of those assets, which, due to the complexity of the valuation process for the underlying assets at a time of substantial market disruption, was generally provided approximately one month in arrears. The Bank states that, as of the close of the Exchange Period, the most recent valuation provided by the Enforcement Manager to investors, which was made as of July 31, 2009, reported that Stanfield Victoria's assets were believed to have an aggregate value equal to 46% of Stanfield Victoria's outstanding senior debt (i.e., 46 percent of the outstanding principal balance).[6]

12. On September 3, 2009, the Bank notified a representative of each of the Ineligible Clients of its proposal to purchase their Interests in the Notes. In addition, the Bank provided a written description of its proposal to each Ineligible Client by letter (the Proposal Letter) dated September 8, 2009. In its Proposal Letter, the Bank informed each Ineligible Client that, unless directed differently by 12 Noon on Wednesday, September 9, 2009, the Bank would be transferring the payment for the purchase of the Ineligible Clients' Interests in the Notes to such Ineligible Clients' segregated Collateral Pool on Thursday, September 10, 2009. The Bank obtained confirmation from each Ineligible Client, via negative consent by the close of business on September 9, 2009, that it wished to participate in the Bank's proposed purchase.[7] Accordingly, the Bank purchased each Ineligible Client's Interest in the Notes for a total cash payment of $628,952 on September 10, 2009 (the Purchase Date).[8] This sum represented the current cost of the Notes (i.e., the purchase price of the Notes less distributions treated as distributions of principal received by the Plans as of the Purchase Date). The price was determined on the same basis for each Plan as it was for the other Ineligible Clients. On the basis of the information it had obtained regarding the market for the Notes and the intrinsic value of Stanfield Victoria's underlying assets, the Bank determined that the purchase price paid by the Bank to the Ineligible Clients substantially exceeded (by approximately $392,300) the aggregate fair market value of the Ineligible Clients' Interests in the Notes as of the Purchase Date.

13. As for the Plans, the current price for CUSIP 1 was $224,245 ($303,449 purchase price minus $79,204 repayment of principal), and its estimated fair market value as of September 10, 2009 was $105,396. With respect to CUSIP 2, the current price was $150,937 ($202,359 purchase price minus $51,422 repayment of principal) and its fair market value was $70,940 as of September 10, 2009.

Accordingly, the total Purchase Price paid by the Bank for the Plans' Interests in the Notes was $375,182. The Purchase Price was allocated among the Plans pro rata based on their respective percentage Interests in the Notes.

14. The Bank, in its capacity as securities lending agent, believes that the sale of the Plans' Interests in the Notes was in the interests and protective of the Plans at the time of the transaction because the sale protected the Plans from holding illiquid securities and incurring burdensome holding costs, and, secondarily, from potential investment losses. The Bank also represents that any sale of the Plans' Interests in the Notes or pro rata interests in Stanfield Victoria's underlying assets on the open market, if possible at all, would have produced significant losses for the Plans. However, the Purchase Price paid by the Bank substantially exceeded the aggregate fair market value of the Plans' Interests in the Notes. Furthermore, the transaction was a one-time sale for cash and the Plans did not bear any brokerage commissions, fees, or other expenses in connection with the transaction. Finally, the Bank represents that it took all appropriate actions necessary to safeguard the interests of the Plans in connection with the sale of their Interests in the Notes.

[5] Unless the context suggests otherwise, the term ''the Interests'' is meant to include the interests in the Notes that were held by the Ineligible Clients that were not plans.

[6] The Applicant states that the percentage provided by the Enforcement Manager to the investors was an estimate applied to each of the Notes, separately. In addition, the Applicant states that the Bank's Capital Markets Group performed its own intrinsic value analysis and estimated the intrinsic value of the Notes as of July 31, 2009 at 47% of their remaining principal balance. Furthermore, the Applicant notes that Wells Capital Management, an affiliated investment advisor, stated that the trading price for the Notes was substantially below their assessment of the intrinsic value of the underlying assets.

[7] The Applicant represents that the Proposal Letter generally confirmed information communicated via telephone with the representative of each Ineligible Client prior to the time the Bank acted on the negative consent.

[8] To address the possibility that the election made on September 8, 2009 by the Bank (to participate in the Exchange Offer on behalf of eligible clients and to make a corresponding election to participate in the Exchange Offer with respect to Notes held by Ineligible Clients who accepted the Bank's purchase) may be deemed to raise prohibited transaction issues, the Bank has requested an effective date for the exemption of September 8, 2009.

15. The Bank represents that its purchase of the Plans' Interests in the Notes resulted in an assignment of all of the Plans' rights, claims, and causes of action against Stanfield Victoria or any third party arising in connection with or out of the issuance of the Notes. The Bank states that, if the exercise of any of the foregoing rights, claims or causes of action results in the Bank recovering from Stanfield Victoria or any third party an aggregate amount that is more than the sum of (a) the Purchase Price paid for the Plans' Interests in the Notes by the Bank and (b) the interest that would have been due on the Notes (in the absence of the exchange) from and after the Purchase Date at the rate specified in the Notes, the Bank will refund such excess amounts promptly to the Plans (after deducting all reasonable expenses incurred in connection with the recovery).

16. In summary, the Bank represents that the transaction satisfied the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale of the Plans' Interests in the Notes was a one-time transaction for cash; (b) the Plans received an amount equal to the current cost of their Interests in the Notes at the time of sale, which was greater than the aggregate fair market value of their Interests in the Notes as determined by a valuation provided by the Enforcement Manager; (c) the Plans did not pay any commissions or other expenses with respect to the sale; (d) the Bank, as securities lending agent, determined that the sale of the Plans' Interests in the Notes was in the interests of the Plans; (e) the Bank took all appropriate actions necessary to safeguard the interests of the Plans in connection with the transaction; and (f) the Bank will promptly refund to the Plans any amounts recovered from Stanfield Victoria or any third party in connection with its exercise of any rights, claims or causes of action as a result of its ownership of the Notes (including the notes received in the NewCo Exchange Offer), if such amounts are in excess of the sum of (1) the Purchase Price paid for the Plans' Interests in the Notes by the Bank, and (2) the interest that would have been due on the Plans' Interests in the Notes from and after the Purchase Date at the rate specified in the Notes.

Notice to Interested Persons

It is represented that the Bank shall provide notification of the publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register** to a representative (the Representative) of each of the four Plans by personal or express delivery to each such Representative. Such notification 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 the Representatives of their right to comment and/or to request a hearing. The Bank will provide such notification to the Representatives within five (5) days of the date of publication of the Notice in the **Federal Register**. All written comments and/or requests for a hearing must be received by the Department from the Representatives no later than 35 days after publication of the Notice 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: Anna Mpras Vaughan of the Department at (202) 693–8565. (This is not a toll-free number).

UBS AG (UBS or the Applicant), Located in Zurich, Switzerland, Exemption Application No. D–11772

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) 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).[9]

If the proposed exemption is granted, entities within UBS's Global Asset Management and Wealth Management Americas divisions that function as ''qualified professional asset managers'' (QPAMs), shall not be precluded from relying on the relief provided by Prohibited Transaction Exemption 84–14 (PTE 84–14),[10] solely due to the failure to satisfy the condition in section I(g) of PTE 84–14 as a result of their affiliation with UBS Securities Japan Co. Ltd. (UBS Securities Japan), against whom a judgment of conviction for one count of wire fraud (the Conviction) is scheduled to be entered in the District Court of Connecticut in Case Number 3:12–cr–00268–RNC, provided the following conditions are satisfied:

(a) No ERISA-covered assets were involved in, or directly affected by, the conduct of UBS Securities Japan that is the subject of the Conviction. For purposes of this paragraph, ERISA-covered assets are not considered directly affected solely because an ERISA plan held an economic interest in a security or investment product, the value of which was tied to one of the benchmark interest rates manipulated in connection with conduct by certain UBS personnel;

(b) The entities acting as QPAMs within UBS's Global Asset Management and Wealth Management Americas divisions (UBS QPAMs) did not know of, have reason to know of, participate in, or directly receive compensation in connection with, the conduct by certain UBS personnel that gave rise to the manipulation of certain benchmark interest rates;

(c) UBS Securities Japan did not provide any fiduciary services to, or act as a QPAM for, ERISA plans or otherwise exercise any discretionary control over ERISA-covered assets;

(d) UBS Securities Japan will not enter into any transactions with funds managed by UBS QPAMs or provide any services to UBS QPAMs;

(e) UBS QPAMs were insulated from UBS Securities Japan due to: (1) The independent business operations of the Wealth Management Americas and Global Asset Management divisions from UBS's other divisions, and (2) written policies and procedures which created information barriers that were in place to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, were not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(f) UBS maintains and follows written policies and procedures that create information barriers designed to ensure UBS QPAMs, and the ERISA-covered assets they manage, are not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan. UBS also develops and implements a program of training for UBS personnel regarding such written policies and procedures;

(g) UBS submits to an annual audit which meets the following requirements:

(1) An independent auditor, who has appropriate technical training and

[9] 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.

[10] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

proficiency with Title I of ERISA, shall conduct an annual written audit;

(2) The audit shall specifically require the auditor to determine whether UBS has continued to maintain and follow, and developed and implemented a training program with respect to, written policies and procedures that create information barriers designed to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, are not improperly influenced or affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(3) The audit shall test operational compliance with the training requirements and written policies and procedures requirements described in paragraph (f);

(4) The auditor shall issue a written report (the Audit Report) describing the steps performed by the auditor during the course of its examination. The Audit Report shall include the auditor's specific determinations regarding the adequacy of the training requirements and written policies and procedures requirements described in paragraph (f), the auditor's recommendations (if any) with respect to strengthening such training requirements and policies and procedures, and any instances of UBS's noncompliance with developing and implementing such training requirements and policies and procedures. Any determinations made by the auditor as a result of the audit regarding the adequacy of the training requirements and written policies and procedures requirements described in paragraph (f) and the auditor's recommendations (if any) with respect to strengthening such training requirements and policies and procedures shall be promptly addressed by UBS, and any actions taken by UBS to address such recommendations should be included in an addendum to the Audit Report. Any determinations by the auditor that UBS has developed and maintained sufficient written policies and procedures, and developed and maintained a training program regarding such policies and procedures, shall not be based solely or in substantial part on an absence of evidence indicating noncompliance;

(5) UBS shall provide notice to the Department's Office of Exemption Determinations (OED) of any instances of UBS's noncompliance reviewed by the auditor within ten (10) business days after such noncompliance is determined by the auditor, regardless of whether the audit has been completed as of that date. Upon request, the auditor shall provide OED with all of the relevant workpapers reflecting the instances of noncompliance. The workpapers should identity whether and to what extent the assets of ERISA plans were involved in the instance(s) of noncompliance and an explanation of any corrective actions taken by UBS;

(6) The yearly Audit Report will be provided to OED no later than 90 days following the 12-month period to which it relates and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, U.S. Commodity Futures Trading Commission, U.S. Department of Justice, Japanese Financial Services Authority, other relevant regulators, and any fiduciary of an ERISA plan the assets of which plan are managed by a UBS QPAM;

(7) This audit requirement in paragraph (g) herein shall continue to be applicable for five (5) years from the date of Conviction;

(h) Notwithstanding the Conviction, UBS complies with each condition of PTE 84–14, as amended;

(i) UBS imposes its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that is the subject of the Conviction, and (2) comply in all material respects with the Business Improvement Order, dated December 16, 2011, issued by the Japanese Financial Services Authority;

(j) UBS complies in all material respects with the audit and monitoring procedures imposed on UBS by the United States Commodity Futures Trading Commission Order, dated December 19, 2012;

(k) UBS maintains records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the completion date of the last audit conducted in accordance with paragraph (g); and

(l) Each sponsor of an ERISA plan the assets of which plan are managed by a UBS QPAM receives: Notice of the proposed exemption with a copy of the summary of facts that led to the Conviction, which was submitted to the Department; and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14.

Effective Date: This proposed exemption, if granted, will be effective as of the date a judgment of conviction against UBS Securities Japan for wire fraud is entered in the District Court of Connecticut in Case Number 3:12–cr–00268–RNC.

Summary of Facts and Representations

Background

1. UBS AG (UBS or the Applicant) is a financial services corporation with headquarters located in Zurich, Switzerland. UBS has banking divisions and subsidiaries around the world, including in the United States, with its United States headquarters located in New York, New York and Stamford, Connecticut. The operational structure of UBS consists of the Corporate Center and four business divisions: Wealth Management, Wealth Management Americas, Global Asset Management and the Investment Bank. Discretionary investment management services and investment consulting services utilized by ERISA plan clients are provided primarily through UBS's Global Asset Management and Wealth Management Americas divisions. According to UBS, Global Asset Management and Wealth Management Americas provide investment management services to ERISA plan clients through separately managed accounts and pooled funds that invest in most of the investable markets worldwide.[11] UBS notes that as of September 30, 2012, Global Asset Management's invested assets totaled approximately $671 billion worldwide, and Wealth Management Americas' invested assets totaled approximately $841 billion.

2. On December 19, 2012, the Fraud section of the Criminal Division of the United States Department of Justice filed a one-count criminal information (the Information) in the District Court of Connecticut (the District Court)[12] charging UBS Securities Japan Co. Ltd. (UBS Securities Japan), a wholly-owned subsidiary of UBS incorporated under the laws of Japan, with wire fraud in violation of Title 18, United States Code, sections 1343 and 2.[13] The Information accuses UBS Securities Japan, between approximately 2006 and at least 2009, of engaging in a scheme to defraud counterparties to interest rate derivatives trades executed on its behalf

[11] This includes the purchase and sale of equity and fixed income securities, derivative contracts involving exposure to such securities, financial indices, commodity interests and currencies, mutual funds, hedge funds, real estate, infrastructure and private equity funds, fund of funds and manager of managers programs.

[12] *United States of America* v. *UBS Securities Japan Co., Ltd.,* Case Number 3:12–cr–00268–RNC.

[13] Section 1343 generally imposes criminal liability for fraud, including fines and/or imprisonment, when a person utilizes wire, radio, or television communication in interstate or foreign commerce. Section 2 generally imposes criminal liability on a person as a principal if that person aids, abets, counsels, commands, induces, or willfully causes another person to engage in criminal activity.

by secretly manipulating certain benchmark interest rates (Yen LIBOR and Euroyen TIBOR), to which the profitability of those trades was tied.[14] Pursuant to a plea agreement (together with its attachments, the Plea Agreement), UBS Securities Japan entered a plea of guilty to the Information on December 19, 2012. UBS represents that it expects the District Court to enter a judgment of conviction (the Conviction) against UBS Securities Japan that will require remedies that are materially the same as set forth in the Plea Agreement. The Conviction is scheduled to be entered on or after June 27, 2013.

3. According to the Information, UBS Securities Japan's fraudulent conduct was made possible by the manner in which the benchmark interest rates were calculated. Each business day, an average benchmark interest rate (the Fix) is calculated for various maturities, ranging from one day to 12 months. Each Fix is based on submissions from banks that sit on a Contributor Panel (omitting the top and bottom 25% of submissions for Yen LIBOR and the two highest and two lowest submissions for Euroyen TIBOR).[15] The submissions for the benchmark interest rates generally represent the rate at which an individual Contributor Panel bank could borrow funds, were it to do so by asking for and then accepting inter-bank offers in a reasonable market size. UBS sits on the Contributor Panel for the Yen LIBOR and Euroyen TIBOR. Submissions from Contributor Panel members are ranked and averaged to determine each Fix. Each Fix is then published by information providers, such as Thomson Reuters.

4. According to the Plea Agreement, UBS Securities Japan employed derivatives traders who submitted rates which did not reflect UBS's honest assessment of what its submissions should have been and who influenced the submissions of other Contributor Panel banks. The UBS derivatives traders were able to accomplish this by applying pressure or bribing individuals in charge of UBS's submissions to make submissions favorable to the traders' outstanding transactions. The derivatives traders would also persuade outside brokers to spread false information to other banks in order to influence those banks' submissions, causing a more dramatic shift in a particular Fix. The derivative traders engaged in this conduct in order to benefit their trading positions by maximizing profits and minimizing their losses. These derivative traders understood that they could only achieve those goals at the expense of their counterparties, whose trading positions would be affected to the same extent but in the opposite direction. Because of the large monetary value of the derivatives trades, even a small shift in a given Fix could result in a substantial profit to UBS, which would harm the counterparties. The Applicant represents that none of the counterparties were ERISA plans or funds containing ERISA-covered assets.

Failure To Comply With Section I(g) of PTE 84–14 and Proposed Relief

5. PTE 84–14 [16] is a class exemption that permits certain transactions between a party in interest with respect to an employee benefit plan and an investment fund in which the plan has an interest and which is managed by a ''qualified professional asset manager'' (QPAM), if the conditions of the exemption are satisfied.[17] The Applicant represents that certain entities within its Global Asset Management and Wealth Management Americas divisions satisfy the definition of QPAM in PTE 84–14 (UBS QPAMs) and may rely on the relief provided therein. However, PTE 84–14 precludes a person who may otherwise meet the definition of QPAM from relying on the relief provided therein if that person or its affiliate has, within 10 years immediately preceding the transaction, been either convicted or released from imprisonment, whichever is later, as a result of certain specified criminal activity described under section I(g) of PTE 84–14.

6. UBS represents that the Conviction falls within the scope of section I(g) of PTE 84–14 and, therefore, following the Conviction, UBS QPAMs will no longer qualify for the relief provided by PTE 84–14. This exemption, if granted, will enable entities within UBS's Global Asset Management and Wealth Management Americas divisions to qualify for the relief in PTE 84–14 despite the failure to satisfy section I(g) of PTE 84–14 as a result of the Conviction, set to occur on or after June 27, 2013.[18] This proposed exemption, if granted, will not apply to any other convictions of UBS or its affiliates for crimes described in section I(g) of PTE 84–14.

Merits of the Proposed Exemption

7. The Applicant states that in exchange for its cooperation with the investigation, the Department of Justice (the DOJ) entered into a non-prosecution agreement (NPA) with UBS, dated December 18, 2012, relating to UBS's submissions for the Yen LIBOR and other benchmark interest rates. Incorporated into the NPA is a Statement of Facts (SOF) which describes in more detail the efforts by certain UBS personnel to manipulate submissions for various interest rate benchmarks and to collude with employees at other banks and cash brokers to influence certain benchmark rates, including Yen LIBOR, to benefit their trading positions. The SOF also explains that certain UBS managers and senior managers gave directions to influence UBS's submissions to avoid negative media attention and, relatedly, to avoid creating an impression that it was having difficulty obtaining funds. UBS acknowledged that the SOF was true and correct and that the wrongful acts taken by the participating employees in furtherance of the misconduct set forth above were within the scope of their employment at UBS. Furthermore, UBS acknowledged that the participating employees intended, at least in part, to benefit UBS through the actions described above.

8. Pursuant to the NPA, UBS agreed to certain undertakings, including payment of a monetary penalty of $500,000,000 and strengthening its internal controls, as required by certain other U.S. and non-U.S. regulatory agencies with direct supervisory authority to regulate the conduct that gave rise to the Conviction.[19] A

[14] Specifically, the Information charges that on or about February 25, 2009, in furtherance of such scheme, UBS Securities Japan caused the transmission of: (i) An electronic chat between a derivatives trader employed by UBS Securities Japan and a broker employed at an interdealer brokerage firm, (ii) a subsequent submission for the Yen LIBOR to Thomson Reuters, and (iii) a subsequent publication of a Yen LIBOR rate through international and interstate wires, at least one of which passed through servers located in Stamford, Connecticut.

[15] As of the date of this proposal, thirteen banks sat on the Yen LIBOR Contributor panel and seventeen banks sat on the Euroyen TIBOR Contributor panel.

[16] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

[17] Relief under the exemption is based, in part, on the expectation that a QPAM, and those who may be in a position to influence its policies, maintain a high standard of integrity. 47 FR 56945, 56947 (December 21, 1982).

[18] The Department notes that the Applicant has requested relief for UBS and its current and future affiliates. However, based on the record provided by the Applicant, the Department has been able to make its findings only with regards to the Global Asset Management and Wealth Management Americas divisions. Therefore, this proposed exemption, if granted, extends relief only to entities within those two divisions.

[19] These regulatory agencies include the U.S. Commodity Futures Trading Commission (CFTC), the United Kingdom Financial Services Authority

Continued

summary of the compliance conditions imposed by these regulators (of which several have already been implemented) are set forth as follows:

The United States Commodity Futures Trading Commission Order, dated December 19, 2012, (the CFTC Order) requires UBS to comply with significant audit and monitoring conditions that set standards for submissions related to interest rate benchmarks such as LIBOR, qualifications of submitters and supervisors, documentation, training, and firewalls. Under the CFTC Order, UBS must maintain monitoring systems or electronic exception reporting systems that identify possible improper or unsubstantiated submissions. The CFTC Order requires UBS to conduct internal audits of reasonable and random samples of its submissions every six months. Additionally, UBS must retain an independent, third-party auditor to conduct a yearly audit of the submission process for five years and a copy of the report must be provided to the CFTC. UBS states that FINMA also adopted the compliance undertakings in the CFTC Order as their own;

The Business Improvement Order, dated December 16, 2011, issued by the JFSA requires UBS Securities Japan to: (i) Develop a plan to ensure compliance with its legal and regulatory obligations and to establish a control framework that is designed to prevent recurrences of the fraudulent submissions for benchmark interest rates; and (ii) provide periodic written reports to the JFSA regarding UBS Securities Japan's implementation of the measures required by the order.

9. According to the NPA, under UBS's new senior management, UBS has made substantial and positive changes in its compliance, training, and overall approach to ensuring its adherence to the law. The NPA provides further that UBS has implemented a modified and significantly enhanced control framework for its LIBOR submission process and has expanded that program to encompass all other benchmark interest rate submissions. UBS states that it has also implemented significant remedial measures against manipulation of benchmark interest rates. UBS represents that the DOJ has received favorable reports from FINMA and the JFSA describing, respectively, (1) the positive progress that UBS has made in its approach to compliance and enforcement, and (2) UBS Securities Japan's effective implementation of the remedial measures previously imposed by the JFSA.

10. Finally, UBS notes that, in light of the active investigations by the various regulators of the conduct identified in the NPA, and the role that such regulators will continue to play in reviewing UBS's compliance standards, the DOJ determined that adequate compliance measures regarding submissions for benchmark interest rates have been and will be established. For that reason, the DOJ did not include any additional compliance conditions in the NPA.

11. The Applicant maintains that no ERISA plans managed by UBS QPAMs were directly affected by the acts that form the basis for the Conviction. Furthermore, UBS states that no ERISA plan or any fund the assets of which constitute ERISA-covered assets was a party to a transaction that was the subject of the Conviction. Notwithstanding this, UBS acknowledges that ERISA plans may have held economic interests tied to one of the benchmark interest rates affected by UBS Securities Japan's criminal conduct.

12. According to the Applicant, as an affiliate of UBS, UBS Securities Japan engages in the purchase and sale of securities, acts as an intermediary in the purchase and sale of securities and underwrites securities in Japan, advises on mergers and acquisitions, and advises on private placements of debt and equity capital. However, the Applicant states that UBS Securities Japan does not provide investment management services to ERISA plans or otherwise exercise discretionary control over ERISA-covered assets. In this regard, the Applicant states that UBS Securities Japan has occasionally provided non-discretionary cash equity services (i.e., short-term stock trading designed to generate profits from changing stock market prices) to ERISA plans managed by UBS QPAMs, in reliance on PTE 86–128.[20] The Applicant explains that UBS QPAMs, on behalf of their ERISA plan clients, may on occasion purchase Japanese securities through UBS Securities Japan, but the conduct that forms the basis for the Plea Agreement and the facts that form the basis of the NPA did not relate to the cash equity services provided by UBS Securities Japan.[21] Furthermore, the Applicant states that none of the individuals involved in the misconduct assisted in providing cash equity services to UBS QPAMs. Finally, according to the Applicant, UBS Securities Japan provided no other services to ERISA plans managed by UBS or its affiliates during the time period covered by the NPA, Information, and Plea Agreement.

13. The Applicant represents that UBS QPAMs were not involved in, and did not have knowledge of, the facts that form the basis of the NPA, Information, and Plea Agreement. UBS states that this is a result of policies and procedures that create information barriers that are, and have been, in place between UBS's four business groups to ensure compliance with applicable legal requirements and to minimize potential conflicts of interest. The Applicant explains that, for example, UBS QPAMs are part of the Global Asset Management and Wealth Management Americas divisions whereas UBS Securities Japan acts for the Investment Bank division. Furthermore, UBS notes that members of the Global Asset Management and Wealth Management Americas divisions maintain separate registrations, books and records, and accounts from the Investment Bank affiliates. Therefore, according to UBS, the Global Asset Management and Wealth Management Americas divisions operate independently of the Investment Bank division. The Applicant explains further that, generally, the policies and procedures that create information barriers prevent employees of UBS QPAMs from gaining access to insider information that an affiliate may have acquired or developed in connection with investment banking activities of the Investment Bank division. According to UBS, the policies and procedures that create information barriers apply to all employees, officers, and directors at the UBS QPAMs and were in effect during the time frame covered by the facts that form the basis of the Plea Agreement. Finally, UBS represents that business contacts between Global Asset Management and Wealth Management Americas personnel and anyone engaged in investment banking or related activities for an affiliate are prohibited, except with the prior approval of UBS's Legal and Compliance Department.

14. The proposed exemption, if granted, will require an independent auditor, who has appropriate technical training and proficiency with Title I of

(UKFSA), the Swiss Financial Market Supervisory Authority (FINMA), and the Japanese Financial Services Authority (JFSA).

[20] 51 FR 41686 (November 18, 1986) as amended at 67 FR 64137 (October 17, 2002).

[21] UBS affirms that commissions generated from the equity trades do not directly impact the compensation of employees of UBS QPAMs, but instead compensate the UBS Securities Japan brokers for the execution and settlement of the trades, in accordance with PTE 86–128. The Department is expressing no view as to whether UBS has complied with the conditions for relief under PTE 86–128.

ERISA, to conduct an annual audit. The auditor shall determine whether UBS has developed and implemented training for, and continued to maintain and follow, written policies and procedures that create information barriers designed to ensure that the UBS QPAMs, and the ERISA assets they manage, are not improperly influenced or affected by the business activities of other UBS affiliates, such as those within the Investment Bank division. The auditor shall also determine whether UBS is operationally compliant with such training and policies and procedures and whether such measures are adequate to maintain information barriers and deter improper influences. The auditor shall issue a written report (the Audit Report) describing the steps performed by the auditor during the course of the auditor's examination. The Audit Report will be provided to the Department no later than 90 days following the 12-month period to which it relates and will be unconditionally available for examination by any duly authorized employee or representative of the Department, Internal Revenue Service, CFTC, DOJ, JFSA, other relevant regulators, and any fiduciary of an ERISA plan, the assets of which plan are managed in whole or part by UBS QPAMs. The audit requirement shall continue to be applicable for five years from the date of Conviction.

Statutory Findings

15. The proposed exemption, if granted, is expected to be administratively feasible because the Department will have minimal involvement in ensuring UBS complies with this exemption. In this regard, the proposed exemption, if granted, will require an auditor to perform an audit of UBS's training and policies and procedures that create information barriers.

16. UBS represents that the requested exemption is in the interest of affected plans and their participants and beneficiaries because it will enable the plans to continue their current investment strategy with their current manager. Moreover, UBS notes that if the Department denies the requested exemption, UBS will be effectively eliminated as a viable investment manager. UBS suggests that any ERISA plan that decides to move to a new manager could incur transition costs including costs associated with identifying an appropriate manager. Additionally, according to the Applicant, ERISA plans that remain with UBS would be prohibited from engaging in certain transactions beneficial to such plans, such as the purchase and sale from a party in interest of a security without a readily ascertainable fair market value. Finally, according to the Applicant, UBS has entered into contracts on behalf of ERISA plans for certain outstanding transactions, including swaps, which require UBS to maintain its eligibility for the relief in PTE 84–14. UBS asserts that counterparties to those transactions could seek to terminate their contracts, resulting in significant losses to their ERISA plan clients. Moreover, certain derivatives transactions will automatically and immediately be terminated without notice or action in the event UBS no longer qualifies for the relief in PTE 84–14.

17. UBS maintains that the requested exemption is protective of the rights of participants and beneficiaries of affected ERISA plans because: (i) UBS Securities Japan has not been, and for the duration of this exemption, will not be involved in the provision of discretionary investment management services to ERISA plans, and (ii) there have been, and will be, in place policies and procedures that create information barriers between UBS's business groups to ensure compliance with applicable legal requirements and to minimize potential conflicts of interest. UBS will also be subject to the audit requirement, described above, to ensure that the policies and procedures effectively insulate UBS QPAMs from improper influence of other UBS affiliates.

18. In addition, UBS stresses that it has implemented and will maintain internal control procedures to prevent further improper activities regarding the setting of benchmark interest rates, and has complied (and will continue to comply) with all applicable requirements specified in the NPA, the CFTC Order, the Business Improvement Order issued by the JFSA, and any other agreements entered into by UBS with other domestic and foreign regulatory agencies in connection with the criminal conduct described above. Finally, UBS notes that all of the conditions that make PTE 84–14 protective of the rights of participants and beneficiaries of ERISA plans will be incorporated into this exemption, if granted.

Summary

19. In summary, UBS represents that the covered transactions satisfy the statutory requirements for an exemption under section 408(a) of ERISA because:

(a) No ERISA-covered assets were involved in, or directly affected by, the conduct of UBS Securities Japan that is the subject of the Conviction;

(b) The UBS QPAMs did not know of, have reason to know of, participate in, or directly receive compensation in connection with, the conduct that gave rise to the manipulation of certain benchmark interest rates;

(c) UBS Securities Japan did not provide any fiduciary services to, or act as a QPAM for, ERISA plans or otherwise exercise any discretionary control over ERISA-covered assets;

(d) UBS Securities Japan will not enter into any transactions with funds managed by UBS QPAMs or provide any services to UBS QPAMs;

(e) UBS QPAMs were insulated from UBS Securities Japan due to: (1) The independent business operations of the Wealth Management Americas and Global Asset Management divisions from UBS's other divisions, and (2) written policies and procedures which created information barriers that were in place to ensure that the UBS QPAMs, and the ERISA-covered assets they manage, were not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan;

(f) UBS will maintain written policies and procedures that create information barriers designed to ensure UBS QPAMs, and the ERISA-covered assets they manage, are not affected by the business activities of UBS affiliates within the Investment Bank division, such as UBS Securities Japan. UBS will also develop and maintain a program of training for UBS personnel regarding such written policies and procedures;

(g) UBS will submit to an annual audit in accordance with paragraph (g) of the proposed exemption;

(h) Notwithstanding the Conviction, UBS will comply with each condition of PTE 84–14, as amended;

(i) UBS will impose its internal procedures, controls, and protocols on UBS Securities Japan to: (1) Reduce the likelihood of any recurrence of conduct that is the subject of the Conviction, and (2) comply in all material respects with the Business Improvement Order issued by the JFSA;

(j) UBS will comply with the audit and monitoring procedures imposed on UBS by the CFTC Order;

(k) UBS will maintain records necessary to demonstrate that the conditions of the exemption have been met for six years following the completion date of the last audit conducted in accordance with paragraph (g) of the proposed exemption; and

(l) Each sponsor of an ERISA plan the assets of which plan are managed by a UBS QPAM will receive, along with the notice of the proposed exemption, a

copy of the summary of facts that led to the Conviction, which was submitted to the Department; and a prominently displayed statement that the Conviction results in a failure to meet a condition in PTE 84–14.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the Applicant and the Department within 3 days of the date of publication in the **Federal Register**. Such notice will contain a copy of the notice of proposed exemption, 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 interested persons of their right to comment on and to request a hearing with respect to the pending exemption. Written comments and hearing requests are due within 33 days of the publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Erin S. Hesse of the Department, telephone (202) 693–8546. (This is not a toll-free number.)

Sears Holdings Savings Plan (the Savings Plan), Sears Holdings Puerto Rico Savings Plan (the PR Plan), and The Lands' End, Inc. Retirement Plan (the Lands' End Plan) (Collectively, the Plans), Located in Hoffman Estates, IL and Dodgeville, WI

[Application Nos. D–11739, D–11740, D–11741]

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 proposed exemption is granted, effective for the period beginning September 7, 2012 and ending October 8, 2012:

(a) The restrictions of sections 406(a)(1)(A), 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)(A) and 4975(c)(1)(E) of the Code,[22] shall not apply:

(1) To the acquisition of certain subscription right(s) (the Right or Rights) by the Savings Plan and the Lands' End Plan from Sears Holdings Corporation (Holdings) in connection with an offering (the Offering) by Holdings of shares of common stock (SHO Stock) in Sears Hometown and Outlet Stores, Inc. (SHO); and

(2) To the holding of the Rights by the Savings Plan and the Lands' End Plan during the subscription period of the Offering; provided that the conditions as set forth, below, in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

(b) The restrictions of sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), 406(b)(1), 406(b)(2), and 407(a)(1)(A) of the Act[23] shall not apply:

(1) To the acquisition of the Rights by the PR Plan from Holdings in connection with the Offering by Holdings of the SHO Stock; and

(2) To the holding of the Rights by the PR Plan during the subscription period of the Offering; provided that the conditions as set forth, below, in Section II of this proposed exemption were satisfied for the duration of the acquisition and holding.

Section II Conditions

The relief provided in this proposed exemption is conditioned upon adherence to the material facts and representations set forth in the application file, and upon compliance with the conditions set forth herein.

(a) The receipt of the Rights by the Plans occurred in connection with the Offering in which all shareholders of the common stock of Holdings (Holdings Stock), including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted solely from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by an independent qualified fiduciary (the I/F);

(e) The I/F determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Capital Market; and

(f) No brokerage fees, commissions, subscription fees, or other charges: Were paid by the Plans with respect to the acquisition and holding of the Rights; or were paid to any broker affiliated with the I/F, Holdings, or SHO in connection with the sale of the Rights.

Effective Date: This proposed exemption, if granted, will be effective for the Offering period, beginning September 7, 2012 and ending October 8, 2012.

Summary of Facts and Representations

Plan Structure

1. Employees of Holdings and its affiliates participate in the Plans. The Plans consist of the Savings Plan, the PR Plan and the Lands' End Plan. The Plans are defined contribution, eligible individual account plans that are designed and operated to comply with the requirements of section 404(c) of the Act. The Plans allow participants to purchase units in certain stock funds which invest in Holdings Stock. In this regard, the Savings Plan and the PR Plan share a single stock fund (the Stock Fund) within the Sears Holdings 401(k) Savings Plan Master Trust (the Master Trust)[24] to hold shares of Holdings Stock. Similarly, the Lands' End Plan utilizes a separate stock fund (the Lands' End Trust Stock Fund) within the Lands' End Inc. Retirement Trust (the Lands' End Trust) to hold shares of Holding Stock.[25]

2. Sears, Roebuck and Co. (Sears Roebuck) and all of its wholly-owned (direct and indirect) subsidiaries (except Lands' End Inc. (Lands' End)) and Sears Holdings Management Corporation, with respect to certain employees, have adopted the Savings Plan and are employers under such plan.

As of September 7, 2012, (the Record Date), there were 25,015 participants in the Savings Plan, and the Savings Plan's share of the total assets of the Master Trust was $3,030,105,605. Also, as of the Record Date, the Savings Plan's

[22] 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.

[23] It is represented that the fiduciaries of the PR Plan have not made an election under section 1022(i)(2) of the Act, whereby such plan would be treated as a trust created and organized in the United States for purposes of tax qualification under section 401(a) of the Code. Further, it is represented that jurisdiction under Title II of the Act does not apply to the PR Plan. Accordingly, the Department, herein, is not providing any relief for the prohibitions, as set forth in Title II of the Act, for the acquisition and holding of the Rights by the PR Plan.

[24] As of December 31, 2011, the Master Trust had $3 billion in total assets. State Street Bank and Trust Company serves as the master trustee and custodian for the Master Trust. As of September 12, 2012, (the Ex-Dividend Date), the Stock Fund within the Master Trust held 1,512,678 shares of Holdings Stock with a fair market value of $92,122,090.20.

[25] The Stock Fund and the Lands' End Trust Stock Fund are, herein, collectively, referred to as the ''Stock Funds.''

allocable portion of Holdings Stock held in the Stock Fund under the Master Trust was 1,485,107 shares, and the approximate percentage of the fair market value of the total assets of the Savings Plan invested in Holdings Stock was 2.85 percent (2.85%), which amount constituted approximately 1.4 percent (1.4%) of the 106 million shares of Holdings Stock issued and outstanding.

The Savings Plan is administered by the Sears Holding Corporation Administrative Committee (the Administrative Committee), whose members are employees of Holdings. The Sears Holdings Corporation Investment Committee (the Investment Committee), whose members are officers and/or employees of Holdings and/or its subsidiaries, has authority over decisions relating to the investment of the Savings Plan's assets.

3. The PR Plan was established by Holdings for employees of Sears Roebuck de Puerto Rico Inc. (Sears Roebuck de Puerto Rico) who reside in the Commonwealth of Puerto Rico. According to Holdings, the PR Plan has not made an election under section 1022(i)(2)of the Act and is not covered by Title II of the Act. (See footnote reference regarding jurisdiction in the operative language of this proposed exemption.)

As of the Record Date, there were 935 participants in the PR Plan, and the PR Plan's share of the total assets of the Master Trust was $17,417,486. Also, as of the Record Date, the PR Plan's allocable portion of Holdings Stock held in the Stock Fund under the Master Trust was 35,584 shares, and the approximate percentage of the fair market value of the total assets of the PR Plan invested in Holdings Stock was 11.89 percent (11.89%), which amount constituted approximately 1.4 percent (1.4%) of the 106 million shares of Holdings Stock issued and outstanding.

The PR Plan is administered by the Administrative Committee, and the Investment Committee makes investment decisions for such plan. Banco Popular de Puerto Rico serves as the PR Plan trustee.

4. The Lands' End Plan is maintained by Lands' End, a retailer and a wholly owned subsidiary of Holdings. As of the Record Date, there were 242 participants in the Lands' End Plan, and the plan had total assets of $253,821,233. Also, as of the Record Date, the Lands' End Plan held through the Lands' End Trust Stock Fund 5,869 shares of Holdings Stock, representing approximately 0.1383 percent (0.1383%) of such plan, which amount constituted approximately 0.0055 percent (0.0055%) of the 106 million shares of Holdings Stock issued and outstanding. The Lands' End Plan is administered by the Lands' End, Inc. Retirement Plan Committee. Wells Fargo Bank, N.A. (Wells Fargo) is the trustee of the plan.

Holdings

5. Holdings, the sponsor of each of the Plans, is a retail merchant with full-line and specialty retail stores in the United States, Guam, Puerto Rico, the U.S. Virgin Islands, and Canada. Holdings was incorporated in the State of Delaware in 2005 in connection with the merger of Kmart Holding Company and Sears Roebuck. Holdings is the parent company of Kmart Holding Company and Sears Roebuck. The principal executive office of Holdings is located in Hoffman Estates, Illinois. According to the Form 10-(K), as of 2012 and 2011, respectively, Holdings and its subsidiaries had total assets of $21,381,000,000 and $24,360,000,000. As of January 28, 2012, subsidiaries of Holdings had approximately 264,000 employees in the United States and U.S. territories, and approximately 29,000 employees in Canada, including part-time employees.

Holdings Stock

6. Holdings Stock, par value $0.01 per share, is publicly-traded on the NASDAQ Global Select Market under the symbol, ''SHLD.'' There were 15,492 shareholders of record, as of February 29, 2012. As of the Record Date, there were 106,444,571 shares of Holdings Stock issued and outstanding.

ESL Investments, Inc. and its affiliates, (ESL), including Edward S. Lampert (Mr. Lampert) owned approximately 62 percent (62%) of Holdings Stock, issued and outstanding, as of September 10, 2012. Mr. Lampert is the Chairman of the Board of Directors of Holdings and of its Finance Committee. He is also the Chairman and CEO of ESL.

SHO

7. SHO, with corporate offices located in Hoffmann Estates, Illinois, is a national retail merchant with 11,238 stores located in all 50 states, Puerto Rico, Guam, and Bermuda. SHO operates the Sears Hometown Stores and the Sears Hardware Stores. SHO also operates the Sears Home Appliance Show Rooms and the Sears Outlet Stores.

SHO was incorporated in Delaware on April 23, 2012, as a wholly-owned subsidiary of Holdings. In such capacity, SHO did not conduct business as a separate company and had no material assets or liabilities, prior to the Offering. Holdings owned 100 percent (100%) of SHO Stock at the commencement of the Offering and continued to own 100 percent (100%) of such stock until the closing of the Offering on October 8, 2012. No public market for SHO Stock existed prior to the Offering.

The Offering

8. On February 23, 2012, Holdings announced its intention to separate from SHO. On August 31, 2012, Holdings contributed certain assets, liabilities, business, and employees to SHO. On September 6, 2012, Holdings issued the final prospectus whereby shareholders of record, including the Plans, as of the Record Date received the Rights.

Holdings communicated generally with employees regarding the separation of Holdings from SHO upon the effective date of the spin-off. Holdings also communicated through public releases at *www.searsholdings.com.* Participants in the Plans, who invested in Holdings Stock as of the Record Date, received a notification regarding the Offering, the engagement of the I/F, the fact that the Rights would be held in the Stock Funds, that the I/F would determine whether the Rights should be exercised or sold, and the means a participant could use to obtain more information.

Under the terms of the Offering, all shareholders of Holdings Stock automatically received the Rights, at no charge. The Rights entitled shareholders of Holdings Stock to purchase, through the exercise of such Rights, SHO Stock from Holdings in connection with the Offering. Under the terms of the Offering, one (1) Right was issued for each whole share of Holdings Stock held by each shareholder, including the Plans, on the Record Date.

9. Each Right permitted the holder thereof to purchase 0.218091 shares of SHO Stock at a subscription price of $15.00 per whole share. Each right also contained an over-subscription privilege to subscribe for additional shares of SHO Stock, up to the number of shares of SHO Stock that were not subscribed for by the other holders of the Rights, pursuant to such holder's basic Rights. The Plans were not eligible to participate in the over-subscription privilege because the I/F sold the Rights received by the Plans, as discussed more fully below.

10. All shareholders of Holdings Stock held the Rights until such Rights expired, were exercised, or were sold. With regard to the exercise of the Rights, it is represented that the Rights could only be exercised in whole numbers. Each shareholder of Holdings Stock

needed to have at least five (5) Rights to purchase a share of SHO Stock, because only whole shares could be purchased by the exercise of the Rights. Fractional shares or cash in lieu of fractional shares were not issued in connection with the Offering. Fractional shares of SHO Stock resulting from the exercise of basic Rights, as to any holder of such Rights were rounded down to the nearest whole number.

A shareholder had the right to exercise some, all, or none of its Rights. However, the election had to be received by October 8, 2012, by the subscription agent, Computershare Inc. The election to exercise any of the Rights was irrevocable.

11. With regard to the sale of the Rights, it is represented that the Rights were transferable. Further, it is represented that the Rights were traded on the NASDAQ Capital Market under the symbol, ''SHOSR.'' The allocation of the Rights to shareholders was handled by Depository Trust Company (DTC). DTC established an interim tracing period for the Rights from September 12, 2012 to September 16, 2012 and allocated the Rights on September 18, 2012. It is represented that the Rights began to trade on the first business day following the distribution of the Rights, and continued to trade until 4 p.m. New York City time on October 2, 2012, the fourth business day prior to the close of the Offering. It is represented that this deadline applied uniformly to all holders of the Rights.

12. The Offering closed at 5 p.m. New York City time on October 8, 2012. It is represented that 23,100,000 shares of SHO Stock were subscribed for by shareholders at a price of $15 per whole share of SHO Stock. It is further represented that holders of the Rights exercised 101,603,307 of the 105,919,060 Rights issued while the remaining 4,315,753 Rights were allowed to expire. The SHO Stock began trading in the NASDAQ Capital Market on a ''right to receive basis'' under the symbol, ''SHOS'' on Friday, October 12, 2012, and on that date opened at $30.00 and closed at $30.68 per share.

Pursuant to the Offering, Holdings disposed of all of its shares of SHO Stock through the exercise of the Rights. Accordingly, following the closing of the Offering: (a) SHO became a publicly traded company independent of Holdings; and (b) Holdings did not retain any ownership interest in SHO.

13. It is represented that Holdings conducted the Offering to obtain additional liquidity and to enhance the ability of Holdings to focus on its core business. In this regard, all of the gross proceeds (approximately $346.5 million) from the sale of the SHO Stock through the exercise of the Rights, net of any selling expenses was payable to and received by Holdings. In the opinion of Holdings, the Offering gave shareholders of Holdings Stock the ability to avoid dilution by retaining each such shareholder's ownership percentage in Holdings and in SHO.

14. It is represented that based on the ratio of one (1) Right for each share of Holdings Stock held, the Master Trust and the Land's End Trust (collectively, the Trusts) acquired, respectively, 1,512,678 and 5,874 Rights, as a result of the Offering. It is represented that the number of Rights received by the Trusts was slightly lower than the number of shares of Holdings Stock held by the Trusts on the Record Date, even though one (1) Right was issued for each share of Holdings Stock. This small difference is explained by the relationship between the Record Date and the Ex-Dividend Date. If a share of Holdings Stock was sold between the Record Date and the Ex-Dividend Date, the right to the dividend (in this case the Rights) transferred with the Holdings Stock. Here, the Trusts sold a small number of Holdings Stock between the Record Date and the Ex-Dividend Date for the Rights. As a result, the associated Right transferred with the sold Holdings Stock.

Role of the I/F

15. Evercore Trust Company (Evercore) was retained by Holdings, the Investment Committee, and by the Lands' End Committee, pursuant to an agreement (the Agreement), dated July 26, 2012, to act as the I/F on behalf of the Plans, in connection with the Offering and with the application for exemption submitted to the Department. Pursuant to the terms of the Agreement, Evercore's responsibilities were to determine when to exercise or sell each of the Plans' Rights received in the Rights Offering.

It is represented that Evercore is qualified to serve as the I/F for the Plans in connection with the Offering in that Evercore is a nationally chartered trust bank and subsidiary of Evercore Partners, Inc. Since 1987, Evercore or its successor has provided specialized investment management, independent fiduciary, and trustee services to employee benefit plans.

Evercore represents and warrants that it is independent and unrelated to Holdings. It is further represented that Evercore did not directly or indirectly receive any compensation or other consideration for its own account in connection with the Offering, except compensation from Holdings for performing services described in the Agreement. The percentage of Evercore's current revenue that is derived from any party in interest involved in the subject transaction or its affiliates is less than one percent (1%).

Evercore has represented that it understands and acknowledges its duties and responsibilities under the Act in acting as a fiduciary on behalf of the Plans in connection with the Offering.

It is represented that Evercore conducted a due diligence process in evaluating the Offering on behalf of the Plans. In addition to numerous discussions with representatives of Holdings, the Investment Committee, and the Lands' End Committee, Holdings' and representatives of the Plans' trustees, Evercore reviewed information provided by Holdings, the exemption application, various press releases, various financial and market data related to the Plans, Holdings, the Rights, and the Holdings Stock, as well as other publicly available information.

With regard to the Offering, Evercore considered four (4) options on behalf of the Plans: (a) Continue holding the Rights within the Stock Funds; (b) exercising all of the Rights and acquiring SHO Stock; (c) selling a portion of the Rights and using the proceeds to exercise the remaining Rights to acquire SHO Stock; or (d) selling all of the Rights on the NASDAQ Capital Market at the prevailing market price. Evercore, acting as the I/F on behalf of the Plans, selected option (d).

In determining to sell all of the Plans' Rights, Evercore represented that the proceeds from the sale would be invested in Holdings Stock, as per the governing documents of the Stock Funds. Evercore noted that the key risk inherent in such prompt sale was insufficient market volume to dispose of the Rights in a timely manner. However, Evercore did not view this risk as excessive, given that the Plans only received 1.4% of all Rights issued. According to Evercore, prompt sale of the Rights would allow the Stock Funds to quickly invest the proceeds in Holdings Stock and provide an opportunity to lock in a certain price for the Rights in the event the market price of the Rights fell over the course of the Offering period. Although the Plans would incur some transaction costs by selling the Rights (estimated to run from $0.0125 to $0.02 per Right traded, plus a similar expense in connection with the reinvestment of the proceeds from the sale of the Rights in shares of Holdings Stock), the Plans also realized the benefits of the Rights in a timely manner.

16. As a result of the Rights sale, the total net proceeds generated for the Savings Plan and the PR Plan was $3,490,606.15. The total net proceeds generated for the Lands' End Plan was $14,919.62. The proceeds from the sale of the Rights were credited to each of the Stock Funds and the unit value of each participant's account balance reflected the addition of assets credited to such funds.

The trading period for the sale of the Rights ended on October 2, 2012. Over the fifteen-day period that the Rights were traded on the NASDAQ Capital Market, the volume-weighted average price for the 56,461,050 Rights traded was $2.17 according to FactSet. Evercore noted that the disposition of the Plans' 1,518,552 Rights in blind transactions on the NASDAQ Capital Market resulted in the Plans realizing an average selling price of $2.32 per Right.

In the opinion of Evercore the actions outlined above engaged in by Evercore on behalf of the Plans were in the interest of the Plans and the Plans' participants and beneficiaries and were protective of such participants and beneficiaries of the Plans.

17. No brokerage fees, commissions, subscription fees, or other charges were paid by the Plans with respect to the acquisition and holding of the Rights, or were paid to any broker affiliated with Evercore, Holdings, or SHO in connection with the sale of the Rights. In this regard, it is represented that Evercore selected ConvergEx Group as the broker for the sale of the Rights issued to the Master Trust, based on Evercore's confidence in that broker's execution ability and an attractive fee schedule of 1.25 cents per Right traded. In connection with the sale of the Rights, the Master Trust paid $18,908.48 in commissions and $778.63 in SEC fees.[26]

Wells Fargo, trustee for the Lands' End Plan, informed Evercore that it could not accommodate an outside broker and would, at the direction of Evercore, handle trading of the Rights internally as per its standard arrangement with Holdings for the management and trading of the Lands' End Trust Stock Fund held at Wells Fargo. At 2 cents per Right traded, this fee was higher than ConvergEx Group's fee, but was reasonable in the opinion of Evercore, given the assessment of Wells Fargo's trading capabilities. In connection with the sale of the Rights, the Lands' End Trust paid $117.48 in commissions and $0.34 for SEC fees.[27]

Requested Relief

18. The application was filed by Holdings on behalf of itself and its affiliates including Lands' End. In this regard, Holdings has requested an exemption: (a) For the acquisition of the Rights by the Plans from Holdings in connection with the Offering of Rights by Holdings of SHO Stock in SHO; and (b) for the holding of the Rights by the Plans during the subscription period of the Offering.

It is represented that the Rights acquired by the Plans satisfy the definition of ''employer securities,'' pursuant to section 407(d)(1) of the Act. However, as the Rights were 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 Plans, of employer securities which are not qualifying employer securities, in violation of section 407(a) of the Act, for which Holdings has requested relief from sections 406(a)(1)(A), 406(a)(1)(E), 406(a)(2), and 407(a)(1)(A) of the Act.

The subject transactions also raise conflict of interest issues by fiduciaries of the Plans. Accordingly, Holdings has requested relief from the prohibitions of section 406(b)(1) and 406(b)(2) of the Act.

19. It is represented that the subject transactions have already been consummated. In this regard, the Plans acquired the Rights pursuant to the Offering, and held such Rights until such Rights were sold. As there was insufficient time between the dates when the Plans acquired the Rights and when such Rights were sold, to apply for and be granted an exemption, Holdings is seeking a retroactive exemption to be granted, effective as of September 7, 2012, the Record Date.

Merits of the Transactions

20. Holdings represents that the proposed exemption is administratively feasible. In this regard, Holdings explained that the acquisition and holding of the Rights by the Plans were one-time transactions that involved an automatic distribution of the Rights to all shareholders. In addition, Holdings states that it is customary for many corporations to make a rights offering available to all shareholders.

Holdings also represents that the subject transactions were in the interest of the Plans, because such transactions represented a valuable opportunity for such Plans to sell the Rights on the market. Holdings further represents that the proposed exemption provides sufficient safeguards for the protection of the participants and beneficiaries of the Plans. According to Holdings, participation in the Offering protected the Plans from having each such participant's interest in Holdings and in SHO diluted as a result of the Offering.

It is also represented that the interests of the Plans were adequately protected in that such Plans acquired and held the Rights automatically as a result of the Offering. In this regard, Holdings made the Rights available on the same terms to all shareholders of Holdings Stock, including the Plans. Holdings states that each shareholder of Holdings Stock, including the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder. Finally, Holdings notes that the Plans were protected in that Evercore, acting as the I/F on behalf of the Plans, determined to sell the Rights in blind transactions on the NASDAQ Capital Market.

Summary

21. In summary, Holdings represents that the subject transactions satisfy the statutory criteria for an exemption under of section 408(a) of the Act because:

(a) The receipt of the Rights by the Plans occurred in connection with the Offering in which all shareholders of the Holdings Stock, including the Plans, were treated in the same manner;

(b) The acquisition of the Rights by the Plans resulted solely from an independent act of Holdings, as a corporate entity;

(c) Each shareholder of Holdings Stock, including each of the Plans, received the same proportionate number of Rights based on the number of shares of Holdings Stock held by each such shareholder;

(d) All decisions with regard to the holding and disposition of the Rights by the Plans were made by Evercore, acting as the independent, qualified fiduciary on behalf of the Plans;

(e) Evercore determined that it would be in the interest of the Plans to sell all of the Rights received in the Offering by the Plans in blind transactions on the NASDAQ Capital Market;

(f) No brokerage fees, commissions, subscription fees, or other charges: Were

[26] It is represented that these services and receipt of fees are exempt under section 408(b)(2) of the Act. The Department, herein, is not providing any relief for the receipt of any commissions, fees, or expenses in connection with the sale of the Rights in blind transactions to unrelated third parties on the NASDAQ Capital Market, beyond that provided pursuant to section 408(b)(2) of the Act. In this regard, the Department is not opining as to whether the conditions as set forth in section 408(b)(2) of the Act and the Department's regulations, pursuant to 29 CFR 2550.408(b)(2) have been satisfied.

[27] *See,* footnote above.

paid by the Plans with respect to the acquisition and holding of the Rights; or were paid to any broker affiliated with Evercore, Holdings, or SHO in connection with the sale of the Rights; and

(g) The acquisition of the Rights by the Plans occurred on the same terms made available to other shareholders of Holdings Stock.

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 all participants whose accounts in the Plans were invested on the Record Date through the Trusts in the Stock Funds which held the Holdings Stock.

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. Angelena C. Le Blanc of the Department, telephone (202) 693–8551. (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 2nd day of July, 2013.

Lyssa E. Hall,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2013–16385 Filed 7–8–13; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–075]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aeronautics Committee of the NASA Advisory Council. This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Tuesday, July 30, 2013, 9:00 a.m. to 5:00 p.m.; Local Time.

ADDRESSES: NASA Headquarters, Room 6E40, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Minor, Executive Secretary for the Aeronautics Committee, NASA Headquarters, Washington, DC 20546, (202) 358–0566, or *susan.l.minor@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by WebEx and telephone should contact Ms. Susan L. Minor at (202) 358–0566 for the web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Aeronautics Research Mission Directorate (ARMD) FY 2014 President's Budget and Future Planning
- NASA Flight Research Planning
- National Research Council Autonomy Study Discussion
- Unmanned Aircraft Systems Subcommittee Outbrief
- Advanced Composites Project Planning

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Susan Minor, NASA Advisory Council Aeronautics Committee Executive Secretary, fax (202) 358–4060. U.S. citizens and Permanent Residents (green card holders) are requested to

submit their name and affiliation 3 working days prior to the meeting to Susan Minor at (202) 358–0566.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–16415 Filed 7–8–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–073]

NASA Advisory Council; Technology and Innovation Committee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Technology and Innovation Committee of the NASA Advisory Council (NAC). The meeting will be held for the purpose of reviewing status of the Space Technology Mission Directorate programs; status of activities within the Office of the Chief Technologist with an emphasis on the discussing the Agency's Grand Challenge; update on technology work in the NASA Science Mission Directorate; status update of the Cryogenic Propellant Storage and Transfer project: an overview of the technologies requirements for the proposed Asteroid Retrieval Mission; an update on NASA's Commercial Spaceflight efforts; and an overview of Aeronautics program and plans.

DATES: Tuesday, July 30, 2013, 8:00 a.m. to 5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room MIC5A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Green, Office of the Chief Technologist, NASA Headquarters, Washington, DC 20546, (202) 358–4710, fax (202) 358–4078, or *g.m.green@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 866–804–6184, passcode 3472886, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number is 994 064 646, and the password is Technology0713#.

The agenda for the meeting includes the following topics:

—Office of the Chief Technologist Update
—Discussion of the Agency Grand Challenge
—Space Technology Mission Directorate Update
—Overview of Science Mission Directorate Technology activities
—Update on the Cryogenic Propellant Storage and Transfer project
—Update on NASA's Commercial Spaceflight Development
—Overview of NASA's Aeronautics technology program.
—Overview of the Space Technology role in the proposed Asteroid Retrieval Mission (**Note:** this one-hour briefing will be presented in a joint meeting with the Human Exploration and Operation Committee in HQ room 9H40).

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign Nationals attending this meeting will be required to provide a copy of their passport and visa in addition to the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date; passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee and home address no less than 8 working days prior to the meeting by contacting Ms. Anyah Dembling via email at *anyah.b.dembling@nasa.gov* or by telephone at (202) 358–5195. U.S. Citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–16340 Filed 7–8–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–074]

NASA Advisory Council; Science Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Science Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Monday, July 29, 2013, 1:00 p.m. to 4:30 p.m.; Tuesday, July 30, 2013, 9:00 a.m. to 4:30 p.m.; and Wednesday, July 31, 2013, 8:00 a.m. to 9:30 a.m. Note all times listed are Local Time.

ADDRESSES: NASA Headquarters, Room 7H45, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting is also available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 888–790–2032, pass code ''Science Committee'' to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number on July 29 is 997 125 536, the password is *SC@July29*; the meeting number on July 30 is 990 622 345, and the password is *SC@July30*; and the meeting number on July 31 is 995 211 006, and the password is *SC@July31.* The agenda for the meeting includes the following topics:

—Subcommittee Reports
—Program Status
—2013 Science Plan

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country,

expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at *mnorris@nasa.gov* or by fax at (202) 358–3094. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–16416 Filed 7–8–13; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. NRC–2013–0117, –0118, –0119]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Forms 540 and 540A, Uniform Low-Level Radioactive Waste Manifest (Shipping Paper) and Continuation Page; NRC Forms 541 and 541A, Uniform Low-Level Radioactive Waste Manifest, Container and Waste Description, and Continuation Page; NRC Forms 542 and 542A, Uniform Low-Level Radioactive Waste Manifest, Index and Regional Compact Tabulation, and Continuation Page.

2. *Current OMB approval number:*

NRC Form 540 and 540A: OMB #3150–0164.

NRC Form 541 and 541A: OMB #3150–0166.

NRC Form 542 and 542A: OMB #3150–0165.

3. *How often the collection is required:* Forms are used by shippers whenever radioactive waste is shipped. Quarterly or less frequent reporting is made to Agreement States depending on specific license conditions. No reporting is made to the NRC.

4. *Who is required or asked to report:* All NRC or Agreement State low-level waste facilities licensed pursuant to Part 61 of Title 10 of the *Code of Federal Regulations* (10 CFR) or equivalent Agreement State regulations. All generators, collectors, and processors of low-level waste intended for disposal at a low-level waste facility must complete the appropriate forms.

5. *The number of annual respondents:*

NRC Form 540 and 540A: 220.

NRC Form 541 and 541A: 220.

NRC Form 542 and 542A: 22.

6. *The number of hours needed annually to complete the requirement or request:*

NRC Form 540 and 540A: 4,305.

NRC Form 541 and 541A: 18,480.

NRC Form 542 and 542A: 567.

7. *Abstract:* NRC Forms 540, 541, and 542, together with their continuation pages, designated by the A suffix, provide a set of standardized forms to meet Department of Transportation (DOT), NRC, and State requirements. The forms were developed by NRC at the request of low-level waste industry groups. The forms provide uniformity and efficiency in the collection of information contained in manifests which are required to control transfers of low-level radioactive waste intended for disposal at a land disposal facility. The NRC Form 540 contains information needed to satisfy DOT shipping paper requirements in 49 CFR Part 172 and the waste tracking requirements of the NRC in 10 CFR Part 20. The NRC Form 541 contains information needed by disposal site facilities to safely dispose of low-level waste and information to meet NRC and State requirements regulating these activities. The NRC Form 542, completed by waste collectors or processors, contains information which facilitates tracking the identity of the waste generator. That tracking becomes more complicated when the waste forms, dimensions, or packagings are changed by the waste processor. Each container of waste shipped from a waste processor may contain waste from several different generators. The information provided on the NRC Form 542 permits the States and Compacts to know the original generators of low-level waste, as authorized by the Low-Level Radioactive Waste Policy Amendments Act of 1985, so they can ensure that waste is disposed of in the appropriate Compact.

Submit, by September 9, 2013, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft 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 submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket Nos. NRC–2013–0117, –0118, –0119. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket Nos. NRC–2013–0117, –0118, –0119. Mail comments to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258, or by email: *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 2nd day of July, 2013.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2013–16306 Filed 7–8–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric and Gas; Change to Information in Tier 1 Table 3.3–1

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and Combined License Amendment: Issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and License Amendment No. 4 to Combined Licenses (COL), NPF–93 and NPF–94. The COLs were issued to South Carolina Electric and Gas (SCE&G) and South Carolina Public Service Authority (Santee Cooper) (the licensee), for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3 located in Fairfield County, South Carolina. The amendment changes requested improve the clarity and accuracy of the Tier 1 information located in Table 3.3–1, ''Definition of Wall Thicknesses for Nuclear Island Buildings, Turbine Buildings, and Annex Building,'' which describes wall and floor thicknesses in the plant. The granting of the exemption allows the changes asked for in the amendment. Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; 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 request for the amendment and exemption were submitted by letter dated September 26, 2012 (ADAMS Accession No. ML12275A274). The licensee supplemented this request on March 13, 2013 (ADAMS Accession No. ML13074A040).
- *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: Denise McGovern, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0681; email: *Denise.McGovern@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000,'' to Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and License Amendment No. 4 to COLs, NPF–93 and NPF–94, issued to the licensee. The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR Part 52 to allow the licensee to depart from Tier 1 information. The licensee sought to change the Tier 1 information located in Table 3.3–1 of its Updated Final Safety Analysis Report (UFSAR). These changes sought to improve the clarity and accuracy of the table so that it could be more easily inspected during Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) closure.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4. of Appendix D to 10 CFR Part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13135A316.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML13135A283 and ML13135A300. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML13135A227 and ML13135A252. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated September 26, 2012, and supplemented by a letter dated March 13, 2013, the licensee requested from the Commission an exemption from the provisions of 10 CFR Part 52, Appendix D, Section III.B, ''Design Certification Rule for the AP1000 Design, Scope, and Contents,'' as part of license amendment request 12–02, ''Tier 1 Definition of Wall Thicknesses.''

For the reasons set forth in Section 3.1, ''Evaluation of Exemption,'' of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13135A316, the Commission finds that:

A. the exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10

CFR Part 52, Appendix D, Section III.B, to allow deviations from the certified Design Control Document (DCD) Tier 1 Table 3.3–1, as described in the licensee's request dated September 26, 2012, and supplemented on March 13, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 4, which is being issued concurrently with this exemption.

3. As explained in 10 CFR 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML13135A316), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of May 30, 2013.

III. License Amendment Request

By letter dated September 26, 2012, the licensee requested that the NRC amend the COLs for VCSNS Units 2 and 3, COLs NPF–93 and NPF–94. The licensee supplemented this application on March 13, 2013. The proposed amendment would depart from the UFSAR Tier 1 material, and would revise the associated material that has been included in Appendix C of each of the VCSNS, Units 2 and 3, COLs. Specifically the requested amendment will revise the Tier 1 information located in Table 3.3–1, to correctly translate information found in Tier 1 and Tier 2 drawings. No physical changes or design changes were requested as part of this amendment, only the presentation of design information in Table 3.3–1 changed.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on November 13, 2012 (77 FR 67679). The supplements had no effect on the no significant hazards consideration determination and no comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on September 26, 2012, and supplemented by letter dated March 13, 2013. The exemption and amendment were issued on May 30, 2013 as part of a combined package to the licensee. (ADAMS Accession No. ML13135A207).

Dated at Rockville, Maryland, this 2nd day of July 2013.

For the Nuclear Regulatory Commission.

Lawrence Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2013–16432 Filed 7–8–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0146]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 13, 2013 to June 26, 2013. The last biweekly notice was published on June 25, 2013 (78 FR 38078).

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0146. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06A–44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0146 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0146.
- *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.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0146 in the subject line of your comment submission, in order to ensure

that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave

to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a

timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 26, 2013.

Description of amendment request: The proposed amendments would revise a Technical Specification (TS) surveillance requirement to verify that acceptable steady-state limits on the electrical frequency are achieved by the two Keowee Hydro Units (KHUs), which are the emergency power sources for the Oconee Nuclear Station.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment adds a new Technical Specification surveillance requirement to verify that the emergency power sources, KHUs, for the Oconee Nuclear Station achieve a steady state frequency of > 59.4 Hz and < 61.8 Hz. The proposed TS change implements a requirement already established by Selected Licensee Commitment (SLC) 16.8.5. The equipment used to collect steady state frequency data has been evaluated and will not affect the operation of the KHUs. Since the KHUs are not initiators of any accidents previously evaluated, the proposed change does not involve a significant increase in the probability of an accident previously evaluated. Since the performance of the surveillance has no effect on KHU operation, it does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adds a new TS Surveillance Requirement. Performance of the surveillance has no effect on the operation of the KHUs. The changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in methods governing normal plant operation. No installed equipment is being operated in a different manner. As such, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change adds a new TS Surveillance Requirement. The change provides an additional restriction to enhance plant safety. The change maintains requirements within the safety analyses and licensing basis. As such, no question of safety is involved.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Deputy General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202–1802.

NRC Branch Chief: Robert J. Pascarelli.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant, Units 3 and 4, Burke County, Georgia

Date of amendment request: April 25, 2013.

Description of amendment request: The proposed changes would amend Combined License numbers NPF–91 and NPF–92 for Vogtle Electric Generating Plant, Units 3 and 4 by departing from the plant-specific design control document Tier 2 and Tier 2* material related to fire area boundaries and contained within the updated final safety analysis report (UFSAR). The proposed changes would alter the layout of the Annex Building and Turbine Building, change Turbine Building Stairwell S08, and clarify a UFSAR figure of the Annex Building heating, ventilation, and air conditioning shafts.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Annex Building and Turbine Building layout changes, Turbine Building stairwell changes to support egress functions, and an Annex Building ventilation shaft Updated Final Safety Analysis Report (UFSAR) figure clarification would not affect any safety-related equipment or function. The modified configurations would continue to maintain the associated fire protection (i.e., barrier) functions. The safe shutdown fire analysis is not affected, and the fire protection analysis results remain acceptable. The affected rooms and equipment do not contain or interface with safety-related equipment. The proposed changes do not involve any accident initiating event, thus the probabilities of the accidents previously evaluated are not affected. The affected rooms do not represent a radioactive material barrier, and this activity does not involve the containment of radioactive material. The radioactive material source terms and release paths used in the safety analyses are unchanged, thus the radiological releases in the accident analyses are not affected.

Therefore, the consequences of an accident previously evaluated are not affected. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed Annex Building and Turbine Building layout changes, Turbine Building stairwell changes to support egress functions, and an Annex Building ventilation shaft UFSAR figure clarification would not change the performance of the fire barriers. Fire zone loadings and associated fire analyses remain within their acceptance limits. The affected rooms do not contain equipment whose failure could initiate an accident. The affected rooms and associated equipment do not interface with components that contain radioactive material. The fire boundary changes do not create a new fault or sequence of events that could initiate a new kind of accident or result in a radioactive material release.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No

The proposed Annex Building and Turbine Building layout changes, Turbine Building stairwell changes to support egress functions, and an Annex Building ventilation shaft

UFSAR figure clarification would not change the fire protection performance of any fire barrier. No safety or fire requirement acceptance criterion would be exceeded or challenged. The safe shutdown fire analysis is not affected. No safety-related equipment, area or function is involved. The amounts of combustible material loadings in the affected fire zones remain within their applicable limits. The proposed fire boundary changes comply with existing design codes and regulatory criteria, and do not affect any safety analysis.

Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Blach & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Lawrence Burkhart.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of amendment request: May 13, 2013.

Description of amendment request: The proposed amendments request revision of TS 4.17, ''Shock Suppressors (Snubbers),'' and the TS 4.17 Bases, as well as addition of TS 6.4.T, ''Inservice Examination, Testing, and Service Life Monitoring Program for Snubbers.'' The proposed change will revise the TS surveillance requirements for snubbers to be in accordance with ASME OM Code, Subsection ISTD, and will relocate the surveillance requirements to the Surry Units 1 and 2 Inservice Examination, Testing, and Service Life Monitoring Program Plans for Snubbers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS 4.17 to conform the TS to the revised snubber program and relocates the surveillance requirements to the Inservice Examination, Testing, and Service Life Monitoring Program for Snubbers. Snubber examination, testing and service life monitoring will meet the requirements of the ASME OM Code Subsection ISTD as allowed by 10 CFR 50.55a(b)(3)(v).

Snubber examination, testing, and service life monitoring are not initiators of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased.

Snubber operability will continue to be demonstrated by performance of a program for examination, testing, and service life monitoring in compliance with 10 CFR 50.55a. Therefore, the proposed change does not adversely affect plant operations, design functions or analyses that verify the capability of systems, structures, and components to perform their design functions. The consequences of accidents previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant equipment. The proposed change does not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change ensures snubber examination, testing, and service life monitoring will meet the requirements of the ASME OM Code Subsection ISTD as allowed by 10 CFR 50.55a(b)(3)(v). Snubbers will continue to be demonstrated operable by performance of a program for examination, testing, and service life monitoring in compliance with 10 CFR 50.55a.

The schedule for subsequent 10-year updates to the Surry snubber program will coincide with 10-year updates to the Surry IST program. The need to perform the 10-year update for the Surry snubber program is required by 10 CFR 50.55a(g).

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.

NRC Branch Chief: Robert J. Pascarelli.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: August 29, 2012, as supplemented by letters dated January 31, 2013, and April 26, 2013.

Brief description of amendments: The amendments add Technical Specification (TS) requirements for the Residual Heat Removal Drywell Spray function.

Date of issuance: June 18, 2013.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 288 and 291.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the License and TSs.

Date of initial notice in **Federal Register**: October 30, 2012 (77 FR 65723).

The letters dated January 31, 2013, and April 26, 2013, provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 18, 2013.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, Illinois

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Exelon Generation Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3,York and Lancaster Counties, Pennsylvania

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendments: July 6, 2012.

Brief description of amendments: The proposed amendment would revise TS 5.3.1/6.3.1, ''Unit (Facility) Staff Qualifications,'' to remove operator license applicant education and experience requirements and add the requirement that Licensed Operators shall comply with part 55 of Title 10 of the *Code of Federal Regulations* (10 CFR).

Date of issuance: June 17, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 173, 180, 200, 240, 233, 206, 193, 210, 171, 281, 289, 292, 251, 246 and 280.

Facility Operating License Nos.: NPF–72, NPF–77, NPF–37, NPF–66, NPF–62, DPR–19, DPR–25, NPF–11, NPF–18, NPF–39, NPF–85, DPR–16, DPR–44, DPR–56, DPR–29, DPR–30, DPR–50: The amendments revised the Technical Specifications/Licenses.

Date of initial notice in **Federal Register**: August 21, 2012.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 17, 2013.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Units 1 and 2, St. Lucie County, Florida

Date of application for amendment: August 10, 2012, supplemented by letter dated February 13, 2013.

Brief description of amendment: The amendments revised the technical specifications (TSs), specifically, the requirements of the TSs related to station direct current battery surveillance requirements for terminal connection resistances.

Date of issuance: June 18, 2013.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 215 and 165.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the License and TSs.

Date of initial notice in **Federal Register**: October 30, 2012 (77 FR 65724). The supplement letter dated February 13, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 18, 2013.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: June 25, 2012, as supplemented by letter dated March 27, 2013.

Brief description of amendment: The amendment revised the description of the Fuel Handling Accident (FHA) in Section XIV–6.4 of the Cooper Nuclear Station Updated Safety Analysis Report (USAR). The revised USAR FHA description is based on changes to the Design Basis Accident FHA dose calculation, to reflect a 24-month cycle source term using a Global Nuclear Fuels (GNF) 10 x 10 fuel array, a reduced Radial Peaking Factor, and inclusion of a calculated shine contribution to the total dose.

Date of issuance: June 26, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 246.

Renewed Facility Operating License No. DPR–46: Amendment revised the Facility Operating License and the USAR.

Date of initial notice in **Federal Register**: April 16, 2013 (78 FR 22570). The supplemental letter dated March 27, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2013.

No significant hazards consideration comments received: No.

NextEra Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit 1, Rockingham County, New Hampshire

Date of amendment request: March 1, 2013.

Description of amendment request: The amendment revised the Seabrook

Technical Specifications (TS). The amendment deletes the TS Index and makes corrections to Seabrook TS 3.4.8, ''Reactor Coolant System Specific Activity,'' and TS 6.8.1.6.a, ''Core Operating Limits Report.''

Date of issuance: June 17, 2013.

Effective date: As of its date of issuance and shall be implemented within 60 days.

Amendment No.: 137.

Facility Operating License No. NPF–86: The amendment revised the License and TS.

Date of initial notice in ***Federal Register:*** April 2, 2013 (78 FR 19752).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 17, 2013.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: June 6, 2012.

Brief description of amendments: The amendment revised the Technical Specifications (TSs) to eliminate the requirements that the average power range monitoring (APRM) system ''Upscale'' and ''Inoperative'' scram and control rod withdrawal block functions be operable in Operational Condition (OPCON) 5, refueling operations.

Date of issuance: June 26, 2013.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 194.

Facility Operating License No. NPF–57: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** March 19, 2013 (78 FR 16884).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 26, 2013.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: April 20, 2012.

Brief description of amendment: The Amendment revises the TS 3.1.7 to approve the use of an alternative method, other than the current method of the use of movable incore detectors system, to monitor the position of control rod or shutdown rod, in the event of a malfunction of the microprocessor rod position indication (MRPI) system. The use of this alternative method would reduce the required frequency of flux mapping using the movable incore detector system to determine the position of the control or shutdown rod position that is not being indicated. This will reduce the wear on the movable incore detector system that is also used to complete other required TS surveillances.

Date of issuance: June 25, 2013.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 114.

Renewed Facility Operating License No. DPR–18: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register:*** April 16, 2013 (78 FR 22572).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 25, 2013.

No significant hazards consideration comments received: No.

South Carolina Electric and Gas, Docket Nos. 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 3 and 4, Fairfield County, South Carolina

Date of amendment request: March 26, 2013.

Brief description of amendment: The amendment authorizes a departure from the Virgil C. Summer Nuclear Station Units 2 and 3 plant-specific Design Control Document (DCD) material incorporated into the Updated Final Safety Analysis Report (UFSAR) by revising the structural analysis requirements to provide alternative requirements for development of headed reinforcement bars (T-heads) within the nuclear island structures above the basemat elevation.

Date of issuance: June 6, 2013.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 2–3, and Unit 3–3.

Facility Combined Licenses No. NPF–93 and NPF–94: Amendment revised the Facility Combined Licenses.

Date of initial notice in ***Federal Register:*** April 16, 2013 (78 FR 22563).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 2013.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: June 13, 2012, as supplemented February 4, 2013.

Brief description of amendment: The proposed change will selectively implement an Alternate Source Term (AST) methodology in accordance with Regulatory Position 1.2.2 of Regulatory Guide (RG) 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors,'' by modifying the WBN, Unit 1 licensing basis for determining offsite and Control Room doses due to a Fuel Handling Accident (FHA). A license amendment is required for AST implementation in accordance with 10 CFR 50.67(b)(1).

Date of issuance: June 19, 2013.

Effective date: As of the date of issuance and shall be implemented no later than 60 days from date of issuance.

Amendment No.: 92.

Facility Operating License No. NPF–90: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register:*** September 14, 2012 (77 FR 56882). The supplement dated February 4, 2013, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment Request: May 22, 2013, as supplemented June 12, 2013.

Brief description of amendment request: The amendment revised the WBN, Unit 1 Technical Specifications (TSs) to allow a one-time extension to the Completion Time for TS Limiting Condition for Operation 3.6.6 Required Action A. 1 from 72 hours to 7 days for an inoperable Containment Spray (CS) Train B. This change is necessary to provide sufficient time to replace a leaking mechanical seal on CS Pump 1B–B. The pump repair is currently scheduled for the week of June 24, 2013. TVA requested this proposed TS change under exigent circumstances that the NRC expedite the review of the requested change to support approval by June 22, 2013. The supplemental letter dated June 12, 2013, provided additional information but did not expand the scope of the request or change the staff's original proposed NSHC determination.

Date of issuance: June 22, 2013.

Effective date: June 24, 2013.

Amendment No.: 93.

Facility Operating License No. NPF–90: Amendment revised the TSs.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. A notice

was published in June 3, 2013; 78 FR 33117. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided an opportunity to request a hearing by August 2, 2013, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after the issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated June 22, 2013.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: Jessie F. Quichocho.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 19, 2013.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 28th day of June 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–16293 Filed 7–8–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0114]

Interim Enforcement Policy for Permanent Implant Brachytherapy Medical Event Reporting

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; revision.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an interim Enforcement Policy that allows the staff to exercise enforcement discretion for certain violations of regulations for reporting medical events occurring under an NRC licensee's permanent implant brachytherapy program. This interim policy affects NRC licensees that are authorized to perform permanent implant brachytherapy.

DATES: This policy revision is effective July 9, 2013. The NRC is not soliciting comments on this revision to its Enforcement Policy at this time.

ADDRESSES: Please refer to Docket ID NRC–2013–0114 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0114. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; 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 Enforcement Policy is available in ADAMS under Accession No. ML12340A295.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The NRC maintains the *Enforcement Policy* on its Web site at *http://www.nrc.gov;* select ''Public Meetings and Involvement,'' then ''Enforcement,'' and then ''Enforcement Policy.''

FOR FURTHER INFORMATION CONTACT: Kerstun Day, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1252; email: *Kerstun.Day@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In SECY–05–0234, ''Adequacy of Medical Event Definitions in 10 CFR [Title 10 of the Code of *Federal Regulations*] 35.3045, and Communicating Associated Risks to the Public,'' (ADAMS Accession No. ML041620583), dated December 27, 2005, the staff recommended that the Commission approve the staff's plan to revise the medical event definition and the associated requirements for written directives to be source strength-based instead of dose-based. The Commission directed the staff to proceed directly with the development of a proposed rule to modify both the written directive requirements in § 35.40(b)(6) and the medical event reporting requirements in § 35.3045 for permanent implant brachytherapy. The modified medical event reporting requirements would allow the medical event criteria to be based on source strength as opposed to dose. In SRM–SECY–08–0080, ''Proposed Rule: Medical Use of Byproduct Material—Amendments/Medical Events Definitions'' (ADAMS Accession No. ML082100074), dated July 25, 2008, the Commission approved publication of a proposed rule to (1) amend sections in 10 CFR part 35 involving medical event reporting and (2) clarify requirements for permanent implant brachytherapy programs.

The proposed rule was published for public comment in the **Federal Register** on August 6, 2008 (73 FR 45635). The vast majority of commenters offered no objection to converting the medical event criteria from dose-based to source strength-based. However, following an evaluation of a number of medical events in 2008, the staff recognized that an unintended effect of the proposed rule would have been that some significant events would not be identified, categorized, and reported as medical events, which would have been contrary to the original regulatory intent. Therefore, in SECY–10–0062, ''Reproposed Rule: Medical Use of Byproduct Material—Amendments/Medical Event Definitions'' (ADAMS Accession No. ML100890121), dated May 18, 2010, the staff recommended that the NRC publish a revised proposed rule to retain dose-based criteria. However, following a Commission meeting in which members of the NRC's Advisory Committee on the Medical Use of Isotopes (ACMUI) and certain stakeholders opposed this approach, the Commission disapproved the staff's recommendation and directed the staff to work closely with the ACMUI and stakeholders to develop a revised medical event definition that would protect patients' interests and allow physicians necessary flexibility, while enabling the agency to detect failures and misapplication of byproduct materials. The staff worked closely with the ACMUI and held stakeholder workshops to discuss issues associated with the medical event definition. The meeting summaries from the stakeholder workshops are available in ADAMS under Accession Nos. ML111930470 and ML112510385.

Following these outreach efforts, the NRC staff developed recommendations

in SECY–12–0053, ''Recommendations on Regulatory Changes for Permanent Implant Brachytherapy Programs'' (ADAMS Accession No. ML12072A306), dated April 5, 2012, defining separate medical event reporting criteria exclusively for permanent implant brachytherapy and, for permanent implant brachytherapy, changing from a dose-based criterion to a hybrid definition using primarily source-strength based criteria but also retaining certain dose-based criteria for assessing whether a medical event occurred. In SRM–SECY–12–0053, ''Recommendations on Regulatory Changes for Permanent Implant Brachytherapy Programs,'' issued on August 13, 2012 (ADAMS Accession No. ML122260211), the Commission approved these recommendations and directed that modifications be developed as part of a so-called ''expanded'' rulemaking that had begun in July 2010 to amend 10 CFR part 35. The NRC staff is currently revising the regulations in 10 CFR part 35 for permanent implant brachytherapy programs which may eliminate dose-based medical event reporting requirements for treatment sites. In the interim, the NRC has developed this policy with regard to permanent implant brachytherapy for the reasons explained below in the Discussion section of this document.

Discussion

Section 35.40, *Written directives,* provides that for permanent implant brachytherapy, the written directive must contain, before implantation, the treatment site, radionuclide, and dose; and after implantation but before completion of the procedure, the radionuclide, treatment site, number of sources, and total source strength and exposure time or the total dose.

Section 35.41, *Procedures for administrations requiring a written directive,* requires that a licensee performing medical administrations must develop, implement, and maintain written procedures to provide high confidence that, among other things, each administration is in accordance with the treatment plan, if applicable, and the written directive.

Section 35.3045, *Report and notification of a medical event,* provides the criteria that must be met for a medical administration to be reported as a medical event. Among the criteria, there is a criterion for reporting a medical event involving dose to the treatment site in § 35.3045(a)(1) which specifies a threshold based on absorbed dose variance (i.e., a comparison of the dose delivered as a result of the medical administration with the prescribed dose) as measured in sieverts (Sv) or in rem, and a threshold for percent variance (i.e., the difference between delivered dose and prescribed dose measured as a percentage). Section 35.3045(a)(1) includes limits for both of these dose thresholds. If both limits are exceeded, a medical administration would be required to be reported as a medical event, based on an evaluation of the dose to the treatment site.

With regard to these criteria, § 35.3045(a)(1) does not currently provide separate criteria for permanent implant brachytherapy, and does not explicitly state whether, for permanent implant brachytherapy, the comparison of delivered dose to prescribed dose can be done with doses expressed as total source strength and exposure time for determining percent dose variance for the treatment site. The definition of prescribed dose for manual brachytherapy in § 35.2, *Definitions,* permits the doses to be expressed as total source strength and exposure time as well as absorbed dose. However, § 35.3045(a)(1) specifies the threshold for delivered absorbed dose variance from prescribed dose in sieverts (Sv) or in rem. Therefore, § 35.3045(a)(1) requires that this comparison of delivered absorbed dose to prescribed dose must be performed in terms of absorbed dose to determine whether a medical event has occurred. Section 35.3045(a)(1) therefore does not provide licensees with the option to use total source strength and exposure time instead of absorbed dose when evaluating the difference between the delivered absorbed dose and the prescribed dose.

When completing the written directive after permanent implant brachytherapy implantation, the delivered dose (for the treatment site) may be expressed as total source strength and exposure time. In such a situation, in order to allow a comparison to be made between the delivered dose and the dose prescribed in the written directive, the preimplantation entry in the written directive for prescribed dose must also have been expressed as total source strength and exposure time. However, in accordance with § 35.3045(a)(1), medical use licensees must currently perform a treatment site medical event evaluation with both the delivered dose and the prescribed dose expressed in sieverts or rem for determination of absorbed dose variance. Therefore, if the licensee specifies treatment site doses in the written directive as total source strength and exposure time, then the licensee must also provide enough information to allow for the absorbed dose calculation (in sieverts or rem) to ensure compliance with § 35.3045(a)(1). This creates an unnecessary burden for licensees.

The treatment site doses for therapeutic uses are large enough that if the percent variance of delivered dose from prescribed dose for the treatment site exceeds the threshold for reporting a medical event (i.e., 20 percent), then the threshold for absorbed dose variance for the treatment site (i.e., 0.5 Sv (50 rem)), will also be exceeded. Hence, the two linked criteria for a treatment site medical event in § 35.3045(a)(1) will both have been met. Therefore, the staff recognizes the need to provide regulatory relief to licensees from the current requirement, so a comparison of delivered dose to prescribed dose for determination of absorbed dose variance, with both doses expressed in sieverts or rem, is not necessary.

This interim enforcement policy provides enforcement discretion for both existing and future violations of the current § 35.3045(a)(1) requirement relating to treatment site dose comparisons for permanent implant brachytherapy. Under this interim enforcement policy, the staff will typically exercise enforcement discretion and not cite a violation for failure to use a dose-based calculation if the authorized treatment mode is permanent implant brachytherapy and licensees use total source strength and exposure time for evaluating the existence of a medical event. This approach will allow for an effective and objective criterion for medical event reporting. In order for enforcement discretion to be exercised, however, the event cannot result in the misapplication of byproduct material. This policy does not provide regulatory relief from complying with any other aspect of § 35.3045, including the requirements for evaluation of dose to normal tissue.

Enforcement discretion would only apply in this situation if the licensee had entered both the prescribed dose and the delivered dose into the written directive in terms of total source strength and exposure time. Also, this dose comparison could only be made if the licensee's documented procedures required under § 35.41 specify use of total source strength and exposure time as the basis for the required treatment site dose comparison.

In addition, the NRC will normally exercise enforcement discretion for violations of current § 35.3045(a)(1) when the total dose to the permanent implant brachytherapy treatment site equals or exceeds 120 percent of the

prescribed dose. This enforcement discretion would only apply if: (1) The licensee used absorbed dose to compare the dose delivered to the treatment site with the prescribed dose; (2) doses to normal tissues and structures did not exceed the regulatory dose limits for reporting medical events specified in current § 35.3045(a)(3); and (3) the total dose for the treatment site was expressed in the written directive as absorbed dose. Section 35.3045(a)(1)(i) limits the variance of delivered dose from prescribed dose to less than 20 percent, so if the delivered dose variance from prescribed dose equals 20 percent or more, the delivered dose equals 120 percent or more of the prescribed dose.

As part of the ongoing 10 CFR part 35 proposed rulemaking, stakeholders have informed the NRC that variables in post-implant dosimetry studies cause calculated absorbed dose to be an unreliable metric for regulatory purposes; however, licensees have more control over delivery of the prescribed dose when using source strength and exposure time. As a result, this enforcement discretion will not apply if the total dose for the treatment site was expressed in the written directive as total source strength and exposure time. This does not change the physician's current ability to make intraoperative adjustments in the quantity of source strength implanted based on the conditions encountered during the surgical procedure and to document such adjustments in the portion of the written directive required after implantation but before completion of the procedure.

This regulatory relief does not pose a safety concern because the NRC recognizes that the overall clinical objective of permanent implant therapies is to deliver as much radiation dose as possible to the treatment site without exceeding medically-recognized dose limits for nearby normal tissues and structures (i.e., organs at risk). Licensees using this regulatory relief must evaluate dose to nearby normal tissues and structures in accordance with the requirements in § 35.3045(a)(3) to determine if a medical event has occurred. In addition, this policy is not intended to grant discretion for doses less than 80 percent of the prescribed dose. The intent of permanent implant brachytherapy is to deliver at least a minimum dose in accordance with the physician's direction; therefore, exercising enforcement discretion for an underdose would not further this intent.

Licensees shall comply with all other requirements, as applicable, unless explicitly replaced or amended in this interim policy.

The NRC will keep this interim policy in place until the implementation date of a final rule associated with the medical event reporting requirements.

Accordingly, the NRC has revised its Enforcement Policy to read as follows:

Interim NRC Enforcement Policy

9.3 Enforcement Discretion for Permanent Implant Brachytherapy Medical Event Reporting (10 CFR 35.3045)

This section sets forth the interim policy that the NRC will use for medical event reporting violations under current 10 CFR 35.3045. Enforcement discretion will typically be exercised for reporting violations in the following scenarios, subject to criteria specified below, when the authorized treatment mode is permanent implant brachytherapy: (1) the licensee uses total source strength and exposure time for evaluating the existence of a treatment site medical event; or (2) the total absorbed dose to the treatment site equals or exceeds 120 percent of the prescribed dose. This policy does not provide regulatory relief from complying with any other aspect of §§ 35.41 or 35.3045, including the requirements related to the evaluation of dose to normal tissue.

The interim policy applies to violations that result from an otherwise appropriate use of total source strength and exposure time when determining the existence of a medical event and when the use of these values does not result in the misapplication of byproduct material by the licensee.

Specifically, under this interim Enforcement Policy, the NRC will normally not take enforcement action for using total source strength and exposure time to compare the dose delivered to the treatment site with the prescribed dose when evaluating whether a medical administration is a medical event under § 35.3045(a)(1) if the authorized treatment mode is permanent implant brachytherapy and all of the following criteria are met:

a. The licensee's documented procedures required under § 35.41 specify total source strength and exposure time as the regulatory evaluation values for treatment site dose comparisons;

b. The licensee entered both the prescribed dose and the delivered dose into the written directive as total source strength and exposure time; and

c. Per § 35.3045, the licensee timely reported the event based on that treatment site dose comparison, if applicable.

In addition, the NRC will normally not take enforcement action against a licensee for not submitting a medical event report when the permanent implant brachytherapy treatment site total dose equals or exceeds 120 percent of the prescribed dose. This enforcement discretion would only apply if: (1) The licensee used absorbed dose to compare the dose delivered to the treatment site with the prescribed dose; (2) doses to normal tissues and structures did not exceed the regulatory dose limits for reporting medical events specified in current § 35.3045(a)(3); and (3) the total dose for the treatment site was expressed in the written directive as absorbed dose.

This discretion will not be exercised for licensees using source strength and exposure time to compare the dose delivered to the treatment site with the prescribed dose, since it is expected that the licensee has more control over delivery of the prescribed dose when using source strength and exposure time. However, this is not intended to limit the physician's current ability to make intraoperative adjustments in the quantity of source strength to be implanted based on the conditions encountered during the surgical procedure and to document such adjustments in the portion of the written directive required after implantation but before completion of the procedure.

Licensees shall comply with all other requirements, as applicable, unless explicitly replaced or amended in this interim policy.

This interim policy will remain in place until the implementation date of a final rule associated with the medical event reporting requirements.

Procedural Requirements

Paperwork Reduction Act Statement

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0010 and 3150–0136.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Congressional Review Act

In accordance with the Congressional Review Act of 1996, the NRC has

determined that this action is not a major rule and has verified this determination with the OMB Office of Information and Regulatory Affairs.

Dated at Rockville, MD, this 3rd day of July, 2013.

For the Nuclear Regulatory Commission.

Rochelle C. Bavol,

Acting Secretary of the Commission.

[FR Doc. 2013–16435 Filed 7–8–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of July 8, 15, 22, 29, August 5, 12, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of July 8, 2013

Tuesday, July 9, 2013

9:30 a.m. Briefing on Security Issues (Closed—Ex. 1).

Wednesday, July 10, 2013

9:00 a.m. Briefing on NRC International Activities (Part 1) (Public Meeting) (Contact: Karen Henderson, 301–415–0202).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

10:30 a.m. Briefing on NRC International Activities (Part 2) (Closed—Ex. 1 & 9) (Contact: Karen Henderson, 301–415–0202).

Thursday, July 11, 2013

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards. (ACRS) (Public Meeting). (Contact: Ed Hackett, 301–415–7360).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of July 15, 2013—Tentative

There are no meetings scheduled for the week of July 15, 2013.

Week of July 22, 2013—Tentative

There are no meetings scheduled for the week of July 22, 2013.

Week of July 29, 2013—Tentative

There are no meetings scheduled for the week of July 29, 2013.

Week of August 5, 2013—Tentative

There are no meetings scheduled for the week of August 5, 2013.

Week of August 12, 2013—Tentative

There are no meetings scheduled for the week of August 12, 2013.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov.*

July 3, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–16575 Filed 7–5–13; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MT2013–2; Order No. 1771]

Market Test of International Merchandise Return Service

AGENCY: Postal Regulatory Commission.

ACTION: Notice

SUMMARY: The Commission is noticing a recently-filed Postal Service proposal to conduct a market test of a competitive experimental product called International Merchandise Return Service-Non-Published Rates (IMRS–NPR). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* July 15, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On July 1, 2013, the Postal Service filed a notice, pursuant to 39 U.S.C. 3641, announcing its intent to conduct a market test of a competitive experimental product called International Merchandise Return Service—Non-Published Rates (IMRS–NPR).[1] IMRS–NPR is comprised of Air Parcels or Express Mail Service packages returning to the United States that originate from a foreign territory served by another postal operator with which the Postal Service has made an arrangement for a return service. *Id.* at 2. The market test is scheduled to begin on or shortly after August 15, 2013 and continue for two calendar years. *Id.* at 6.

II. Background

IMRS–NPR items consist of returned merchandise that consumers purchased through online retailers in the United States. *Id.* at 2. IMRS–NPR will enable foreign consumers to create return labels and postage payment to return products back to the United States. *Id.* The consumer can create his or her own shipping label and send it to the merchant through the consumer's postal channel.

The Postal Service explains that many shipping companies create methods to improve ease of use by creating labels for the merchants and either sending the labels by email to their customers or providing labels for use if an item is returned. *Id.* It states that returns are an inevitable part of international online commerce, and customers consider returns as an important part of

[1] Notice of the United States Postal Service of Market Test of Experimental Product—International Merchandise Return Service—Non-Published Rates (IMRS–NPR) and Notice of Filing IMRS–NPR Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, July 1, 2013 (Notice).

international shipping. *Id.* It concludes that the IMRS–NPR market test will increase the overall value of the services the Postal Service can offer to consumers. *Id.*

Statutory authority. The Postal Service indicates that its proposal satisfies the criteria of 39 U.S.C. 3641, which imposes certain conditions on experimental products. The Postal Service asserts that IMRS–NPR is significantly different from all products offered within the past 2 years. *Id.* at 3–4; *see* 39 U.S.C. 3641(b)(1). It explains that there are only two existing international return solutions offered by the Postal Service, and neither has the same scope as IMRS–NPR. *Id.* at 4.

The Postal Service states that it does not expect IMRS–NPR, which is designed to provide U.S. merchants an international merchandise returns solution through the postal network, to create an ''unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer'' particularly with regard to small businesses. It indicates that it is unaware of any small business offering a similar return service, and that it expects small businesses to utilize the service. *Id.* at 5; *see* 39 U.S.C. 3641(b)(2). The Postal Service classifies IMRS–NPR as a competitive product because IMRS–NPR is designed for packages that do not fall under the Private Express Statutes. *Id.; see* 39 U.S.C. 3641(b)(3). It notes that FedEx, UPS, and DHL each have products for their returns. *Id.* at 6.

Duration. The Postal Service states that the market test will begin on or shortly after August 15, 2013 and run for two calendar years. *Id.* The Postal Service intends to offer negotiated service agreements to customers during the two year market test period, and the contracts will have standard one-year terms. *Id.* To the extent that negotiated service agreements have terms that extend beyond the two-year period of the market test, the Postal Service requests that the Notice serve as an application for extension under 39 U.S.C. 3641(d). *Id.* It asserts that the extension would only be requested to satisfy existing contractual obligations, and no new agreements would be initiated with merchants after the two-year period of the market test. *Id.* at 6–7.

Revenues. The Postal Service does not anticipate revenues from IMRS–NPR to exceed $10 million in any year, subject to inflation. *Id.* at 7; *see* 39 U.S.C. 3641(e). If circumstances change, the Postal Service states that it will seek further relief upon submission of an application for exemption from the $10 million limitation. *Id.* at 7.

Market test scope. The Postal Service intends to offer IMRS–NPR for returns originating in Australia and Canada pursuant to amendments to bilateral agreements with the postal operators of these countries through the air parcel stream. *Id.* It states that it may negotiate additional bilateral agreements with other foreign postal operators to offer the same service for returns from other countries using either air parcels or EMS. *Id.* If the Postal Service executes such arrangements, it intends to provide notice to the Commission and furnish updated model contract, prices, and supporting financial information in this docket. *Id.*

Data collection. The Postal Service states that data would be reported at quarterly intervals following the conclusion of the term of each agreement. *Id.* at 8. Spreadsheets would include the costs, revenues, and volumes associated with each agreement. *Id.*

III. Contents of Filing

The notice includes the following attachments:

- Attachment 1—an application for non-public treatment of materials filed under seal;
- Attachment 2—Mail Classification Schedule language for IMRS–NPR;
- Attachment 3—a redacted copy of the IMRS Management Analysis; and
- Attachment 4—a redacted copy of the IMRS model customized global agreement.

Materials filed under seal include unredacted copies of the IMRS Management Analysis, IMRS model customized global agreement, and supporting financial workpapers. *Id.* at 1. The Postal Service filed redacted versions of the financial workpapers as public Excel files.

IV. Notice of Filing

The Commission establishes Docket No. MT2013–2 to consider matters raised by the Notice. It encourages interested persons to review the Notice for more details. Interested persons may submit comments on whether the Postal Service's filing in the captioned docket is consistent with the policies of 39 U.S.C. 3641. Comments are due no later than July 15, 2013. The filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Alison J.W. MacDonald to serve as Public Representative in this docket.

V. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MT2013–2 to consider matters raised by the Notice.
2. Pursuant to 39 U.S.C. 505, Alison J.W. MacDonald is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons are due no later than July 15, 2013.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–16473 Filed 7–8–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Market Test of Experimental Product — International Merchandise Return Service—Non-Published Rates

AGENCY: U.S. Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service hereby gives notice of a market test for International Merchandise Return Service—Non-Published Rates in accordance with statutory requirements.

DATES: *As of:* August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Kate Sobel, 202–268–6932

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice pursuant to 39 U.S.C. 3641(c)(1) that it will begin a market test of its International Merchandise Return Service (IMRS) Non-published Rate (NPR) experimental product on August 15, 2013. The Postal Service has filed with the Postal Regulatory Commission a notice setting out the basis for the Postal Service's determination that the market test is covered by 39 U.S.C. 3641 and describing the nature and scope of the market test. Documents are available at *http://www.prc.gov,* Docket No. MT2013–2.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–16362 Filed 7–8–13; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 204A–1, OMB Control No. 3235–0596, SEC File No. 270–536.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 204A–1 (17 CFR 275.204A–1) under the Investment Advisers Act of 1940.'' (15 U.S.C. 80b–1 *et seq.*) Rule 204A–1 (the ''Code of Ethics Rule'') requires investment advisers registered with the SEC to (i) Set forth standards of conduct expected of advisory personnel (including compliance with the federal securities laws); (ii) safeguard material nonpublic information about client transactions; and (iii) require the adviser's ''access persons'' to report their personal securities transactions, including transactions in any mutual fund managed by the adviser. The Code of Ethics Rule requires access persons to obtain the adviser's approval before investing in an initial public offering (''IPO'') or private placement. The Code of Ethics Rule also requires prompt reporting, to the adviser's chief compliance officer or another person designated in the code of ethics, of any violations of the code. Finally, the Code of Ethics Rule requires the adviser to provide each supervised person with a copy of the code of ethics and any amendments, and require the supervised persons to acknowledge, in writing, their receipt of these copies. The purposes of the information collection requirements are to (i) Ensure that advisers maintain codes of ethics applicable to their supervised persons; (ii) provide advisers with information about the personal securities transactions of their access persons for purposes of monitoring such transactions; (iii) provide advisory clients with information with which to evaluate advisers' codes of ethics; and (iv) assist the Commission's examination staff in assessing the adequacy of advisers' codes of ethics and assessing personal trading activity by advisers' supervised persons.

The respondents to this information collection are investment advisers registered with the Commission. The Commission has estimated that compliance with rule 204A–1 imposes a burden of approximately 118 hours per adviser annually based on an average adviser having 84 access persons. Our latest data indicate that there were 10,643 advisers registered with the Commission. Based on this figure, the Commission estimates a total annual burden of 1,255,342 hours for this collection of information.

Rule 204A–1 does not require recordkeeping or record retention. The collection of information requirements under the rule is mandatory. The information collected pursuant to the rule is not filed with the Commission, but rather takes the form of communications between advisers and their supervised persons. Investment advisers use the information collected to control and assess the personal trading activities of their supervised persons. Responses to the reporting requirements will be kept confidential to the extent each investment adviser provides confidentiality under its particular practices and procedures. 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 control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16364 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17e–1;

OMB Control No. 3235–0217, SEC File No. 270–224.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''Paperwork Reduction Act''), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information described below.

Rule 17e–1 (17 CFR 270.17e–1) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') deems a remuneration as ''not exceeding the usual and customary broker's commission'' for purposes of Section 17(e)(2)(A) if, among other things, a registered investment company's (''fund's'') board of directors has adopted procedures reasonably designed to provide that the remuneration to an affiliated broker is a reasonable and fair amount compared to that received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time and the board makes and approves such changes as it deems necessary. In addition, each quarter, the board must determine that all transactions effected under the rule during the preceding quarter complied with the established procedures. Rule 17e–1 also requires the fund to (i) maintain permanently a written copy of the procedures adopted by the board for complying with the requirements of the rule; and (ii) maintain for a period of six years, the first two in an easily accessible place, a written record of each transaction subject to the rule, setting forth the amount and source of the commission, fee, or other remuneration received; the identity of the broker; the terms of the transaction; and the materials used to determine that the transactions were effected in compliance with the procedures adopted by the board. The recordkeeping requirements under rule 17e–1 enable the Commission to ensure that affiliated brokers receive compensation that does not exceed the usual and customary broker's commission. Without the recordkeeping requirements, Commission inspectors would have difficulty ascertaining whether funds were complying with rule 17e–1.

Based on an analysis of fund filings, the staff estimates that approximately 775 fund portfolios enter into subadvisory agreements each year.[1] Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 17e–1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 12d3–1, 10f–3, and 17a–10, and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 17e-1 for this contract change would be 0.75 hours.[2] Assuming that all 775 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule's contract modification requirement will result in 581 burden hours annually.

Based on an analysis of fund filings, the staff estimates that approximately 1,768 funds use at least one affiliated broker. Based on conversations with fund representatives, the staff estimates approximately 40 percent of transactions that occur under rule 17e-1 would be exempt from its recordkeeping and review requirements. This would leave approximately 1,061 funds[3] still subject to the rule's recordkeeping and review requirements. Based on conversations with fund representatives, we estimate that the burden of compliance with the review and recordkeeping requirements of rule 17e–1 is approximately 40 hours per fund per year. This time is spent, for example, reviewing the applicable transactions and maintaining records. Accordingly, we calculate the total estimated annual internal burden of complying with the review and recordkeeping requirements of rule 17e–1 to be approximately 42,440 hours,[4] and the total annual burden of the rule's paperwork requirements is 43,021 hours.[5]

Estimates of the average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms. The collection of information under rule 17e–1 is mandatory. The information provided under rule 17e–1 will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street, NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16366 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

[1] Based on information in Commission filings, we estimate that 44.4 percent of funds are advised by subadvisers.

[2] 3 hours ÷ 4 rules = 0.75 hours.

[3] 1,768 funds × 0.6 = 1,061 funds.

[4] 1,061 funds × 40 hours per fund = 42,440 hours.

[5] 581 hours + 42,440 hours = 43,021 hours.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 0–2; OMB Control No. 3235–0636, SEC File No. 270–572.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Several sections of the Investment Company Act of 1940 (''Act'' or ''Investment Company Act'')[1] give the Commission the authority to issue orders granting exemptions from the Act's provisions. The section that grants broadest authority is section 6(c), which provides the Commission with authority to conditionally or unconditionally exempt persons, securities or transactions from any provision of the Investment Company Act, or the rules or regulations thereunder, 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.[2]

Rule 0–2 under the Investment Company Act,[3] entitled ''General Requirements of Papers and Applications,'' prescribes general instructions for filing an application seeking exemptive relief with the Commission for which a form is not specifically prescribed. Rule 0–2 requires that each application filed with the commission have (a) a statement of authorization to file and sign the application on behalf of the applicant, (b) a verification of application and statements of fact, (c) a brief statement of the grounds for application, and (d) the name and address of each applicant and of any person to whom questions should be directed. The Commission uses the information required by rule 0–2 to decide whether the applicant should be deemed to be entitled to the action requested by the application.

Applicants for orders can include registered investment companies, affiliated persons of registered investment companies, and issuers seeking to avoid investment company status, among other entities. Commission staff estimates that it receives approximately 110 applications per year under the Act. Although each application typically is submitted on behalf of multiple entities, the entities in the vast majority of cases are related companies and are treated as a single respondent for purposes of this analysis.

The time to prepare an application depends on the complexity and/or novelty of the issues covered by the application. We estimate that the Commission receives 15 of the most time-consuming applications annually, 75 applications of medium difficulty, and 20 of the least difficult applications. Based on conversations with applicants, we estimate that in-house counsel would spend from ten to fifty hours helping to draft and review an application. We estimate a total annual hour burden to all respondents of 3,200 hours [(50 hours × 15 applications) + (30 hours × 75 applications) + (10 hours × 20 applications)].

[1] 15 U.S.C. 80a–1 *et seq.*

[2] 15 U.S.C. 80a–6(c).

[3] 17 CFR 270.0–2.

Much of the work of preparing an application is performed by outside counsel. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required for preparation. Based on conversations with attorneys who serve as outside counsel, the cost ranges from approximately $10,000 for preparing a well-precedented, routine application to approximately $150,000 to prepare a complex and/or novel application. This distribution gives a total estimated annual cost burden to applicants of filing all applications of $8,450,000 [(15 × $150,000) + (75 × $80,000) + (20 × $10,000)].

These estimates of average costs are made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

This collection of information is necessary to obtain a benefit and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16365 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rules 7a–15 thru 7a–37; OMB Control No. 3235–0132, SEC File No. 270–115.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Rules 7a–15 through 7a–37 (17 CFR 260.7a–15—260.7a–37) under the Trust Indenture Act of 1939 (15 U.S.C. 77aaa *et seq.*) set forth the general requirements as to form and content of applications, statements and reports that must be filed under the Trust Indenture Act. The respondents are persons and entities subject to the requirements of the Trust Indenture Act. Trust Indenture Act Rules 7a–15 through 7a–37 are disclosure guidelines and do not directly result in any collection of information. The rules are assigned only one burden hour for administrative convenience.

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 control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; or send an email to: *Shagufta_Ahmed@omb.eop.gov*; and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16367 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, July 10, 2013 at 10:00 a.m., in the Auditorium, Room L–002.

The subject matters of the Open Meeting will be:

- The Commission will consider whether to adopt amendments to eliminate the prohibition against general solicitation and general advertising in certain securities offerings conducted pursuant to Rule 506 of Regulation D under the Securities Act and Rule 144A under the Securities Act, as mandated by Section 201(a) of the Jumpstart Our Business Startups Act.
- The Commission will consider whether to propose amendments to Regulation D, Form D and Rule 156 under the Securities Act. The proposed amendments are intended to enhance the Commission's ability to evaluate changes in the market and to address the development of practices in Rule 506 offerings.
- The Commission will consider whether to adopt amendments to disqualify securities offerings involving certain ''felons and other 'bad actors''' from reliance on the exemption from Securities Act registration pursuant to Rule 506 as mandated by Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 3, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16538 Filed 7–5–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69911; File No. SR–EDGX–2013–25]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

July 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to: (1) Increase the fee to remove liquidity using Flag PR (removes liquidity from EDGX using ROUQ routing strategy) from $0.0027 to $0.0029 per share; (2) increase the fee when using Flag RQ (routing using ROUQ routing strategy) from $0.0027 to $0.0029 per share; (3) amend Footnote 1 [4] by: (i) Correcting punctuation; (ii) easing the criteria to meet the Market Depth Tier; (iii) decreasing the rebate for the current $0.0032 Mega Tier (post 0.12% of TCV); and (iv) adding a new $0.0032 Mega Step Up Tier; (4) amend the criteria for the Retail Order Tier in Footnote 4; and (5) amend Footnote 13 to: (i) Add a $0.0032 Investor Tier and (ii) make a non-substantive, corrective change. The text of the proposed rule change is attached as Exhibit 5. All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (1) Increase the fee to remove liquidity using Flag PR (removes liquidity from EDGX using ROUQ routing strategy) from $0.0027 to $0.0029 per share; (2) increase the fee when using Flag RQ (routing using ROUQ routing strategy) from $0.0027 to $0.0029 per share; (3) amend Footnote 1 by: (i) Correcting punctuation; (ii) easing the criteria to meet the Market Depth Tier; (iii) decreasing the rebate for the current $0.0032 Mega Tier (post 0.12% of TCV); and (iv) adding a new $0.0032 Mega Step Up Tier; (4) amend the criteria for the Retail Order Tier in Footnote 4; and (5) amend Footnote 13 to: (i) Add a $0.0032 Investor Tier and (ii) make a non-substantive, corrective change.

Amendment to Flag PR

The Exchange proposes to increase the fee to remove liquidity using Flag PR (removes liquidity from EDGX using the ROUQ [5] routing strategy) from $0.0027 to $0.0029 per share.

Amendment to Flag RQ

The Exchange proposes to increase the fee to route orders using Flag RQ (routed using ROUQ routing strategy) from $0.0027 to $0.0029 per share.

Ministerial Changes to Footnote 1

The Exchange proposes to make non-material changes to the first paragraph of Footnote 1 regarding the Mega Tier that provides Members with a rebate of $0.0035 per share (the ''$0.0035 Mega Tier''). These changes simply align the formatting of Footnote 1 with similar paragraphs within the Fee Schedule. The Exchange does not propose to alter the requirements Members need to satisfy to achieve the increased rebate offered by the $0.0035 Mega Tier.

The Exchange also proposes to relocate the definition of Total Consolidate Volume (''TCV'') [6] within Footnote 1 from the existing $0.0032 Mega Tier to the Mega Tier, where TCV is first mentioned.

Amendments to the Market Depth Tier

Footnote 1 of the Fee Schedule currently provides that Members may qualify for the Market Depth Tier and receive a rebate of $0.0033 per share for displayed liquidity added on EDGX if they post greater than or equal to 0.50% of the TCV in average daily trading volume (''ADV'') on EDGX in total, where at least 2,000,000 shares are Non-Displayed Orders that yield Flag HA. The Exchange proposes to amend Footnote 1 of its Fee Schedule to decrease the ADV requirement of the Market Depth Tier from 2,000,000 shares of ADV to 1,800,000 shares of ADV. The remainder of the footnote as it pertains to the Market Depth Tier rebate would remain unchanged.

Amendments to the Current $0.0032 Mega Tier (Post 0.12% of TCV)

The Exchange proposes to decrease the rebate for the current Mega Tier rebate of $0.0032 per share to $0.0030 per share in Footnote 1 of the Fee Schedule. The Exchange also proposes to rename the tier the Mega Step Up Tier. Currently, Footnote 1 of the Exchange's fee schedule provides that Members may qualify for a Mega Tier rebate of $0.0032 per share by posting 0.12% of the TCV in ADV more than their February 2011 ADV added to EDGX. The Exchange proposes to reduce the rebate offered by this tier from $0.0032 to $0.0030 per share (the ''$0.0030 Mega Step Up Tier''). The criteria required to meet the tier would remain unchanged.

Addition of the New $0.0032 Mega Step Up Tier

The Exchange proposes to add a new Mega Tier (the ''$0.0032 Mega Step Up Tier'') to provide for a rebate of $0.0032 per share if the Member: (i) Posts 0.12% of the TCV in ADV more than their February 2011 ADV added to EDGX and (ii) adds a minimum of 0.35% of the TCV on a daily basis, measured monthly.

Amendments to Retail Order Tier

Currently, Members are eligible for a rebate of $0.0034 per share if they add an ADV of Retail Orders (Flag ZA) that is 0.10% or more of the TCV on a daily basis, measured monthly. Flag ZA is

[3] ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' EDGX Rule 1.5(n).

[4] References herein to ''Footnotes'' refer only to footnotes on the Exchange's Fee Schedule and not to footnotes within the current filing.

[5] ROUQ is a routing strategy that checks the System for available shares before sending the order to other destinations on the System routing table, and if shares remain unexecuted after routing, then the shares are posted on the EDGX book unless the Member instructs otherwise. *See* Exchange Rule 11.9(b)(2)(c)(iv). The System is defined as the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. *See* Exchange Rule 1.5(cc).

[6] TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities for the month prior to the month in which the fees are calculated.

yielded for those Members that use Retail Orders [7] that add liquidity to EDGX. The Exchange now proposes to amend this criteria to also require that Members have an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85%.

Addition of $0.0032 Investor Tier

The Exchange proposes to add an additional Investor Tier to Footnote 13 of the Fee Schedule. Members would qualify for the Investor Tier and be provided a rebate of $0.0032 per share (''$0.0032 Investor Tier'') for all liquidity posted on EDGX if they: (i) add a minimum of 0.15% of the TCV on a daily basis, measured monthly; and (ii) have an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85%.

Correction to Footnote 13

Members can currently qualify for an Investor Tier and be provided a rebate of $0.0030 per share (''$0.0030 Investor Tier'') if they: (i) On a daily basis, measured monthly, posts an ADV of at least 8,000,000 shares on EDGX where added flags are defined as B, HA, V, Y, MM, RP, ZA, 3, or 4; (ii) have an ''added liquidity'' to ''removed liquidity'' ratio of at least 60% where added flags are defined as B, HA, V, Y, MM, RP, ZA, 3, or 4 and removal flags are defined as BB, MT, N, W, PI, PR, ZR, or 6; and (iii) have a message-to-trade ratio of less than 6:1. The Exchange proposes to correct an inadvertent drafting error in the criteria related to the add to remove liquidity ratio under (ii) above. Specifically, the Exchange proposes to amend the add to remove liquidity ratio language to specify that Members must have an added liquidity to added plus removed liquidity ratio. The revised criteria would read as follows:

. . . have an ''added liquidity'' to ''*added plus* removed liquidity'' ratio of at least 60% where added flags are defined as B, HA, V, Y, MM, RP, ZA, 3, or 4 and removal flags are defined as BB, MT, N, W, PI, PR, ZR, or 6 (emphasis added) . . .

The Exchange notes that its proposal conforms to an existing practice and does not modify the rebate that the Exchange has been providing its Members for achieving the tier. The Exchange notes that it will continue to calculate whether a Member satisfied criteria (ii) under Footnote 13 if its ''added liquidity'' to ''added plus removed liquidity'' ratio is at least 60%. Other than this correction, the remainder of the footnote as it pertains to the $0.0030 Investor Tier would remain unchanged.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule on July 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4),[9] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

Amendment to Flag PR

The Exchange believes that the proposed increased rate of $0.0029 from $0.0027 per share for Flag PR for orders that remove liquidity from the EDGX book using the ROUQ routing strategy is an equitable allocation of reasonable dues, fees, and other charges because the reduced rate, in comparison to the default [10] rate to remove liquidity of $0.0030 per share, is reasonable as it is consistent with similar rates charged by the Exchange's competitors.[11]

Further, the Exchange believes that the increased rate of $0.0029 per share is reasonable because it will enable the Exchange to retain additional funds to offset increased administrative, regulatory, and other infrastructure costs associated with operating an exchange. Lastly, the increased rate is non-discriminatory because it applies uniformly to all Members of the Exchange. The Exchange also believes that the rate is equitable because by utilizing the ROUQ routing strategy, Members will qualify for a $0.0001 discounted removal rate in Flag PR from the default rate to remove liquidity of $0.0030 per share as the revenue generated by executing at away destinations enables the Exchange to offer such discounted removal rate.

Amendment to Flag RQ

The Exchange believes that the proposed increased rate of $0.0029 from $0.0027 per share for Flag RQ for orders that are routed using the ROUQ routing strategy is an equitable allocation of reasonable dues, fees, and other charges because it now equals the Exchange's standard routing rate under Flag X of $0.0029 per share. Further, the Exchange believes that the increased rate of $0.0029 per share is reasonable because it will enable the Exchange to retain additional funds to offset increased administrative, regulatory, and other infrastructure costs associated with operating an exchange. Lastly, the increased rate is non-discriminatory because it applies uniformly to all Members of the Exchange.

Ministerial Changes to Footnote 1

The Exchange believes that the proposed non-material changes to the first paragraph of Footnote 1 regarding the $0.0035 Mega Tier are reasonable and non-discriminatory because the changes simply align the formatting of Footnote 1 with similar paragraphs within the Fee Schedule. The Exchange does not propose to alter the requirements Members need to satisfy to be eligible for the increased rebate to the $0.0035 Mega Tier in Footnote 1.

The Exchange also believes relocating the definition of TCV within Footnote 1 reasonable and non-discriminatory because it simply seeks to add clarity to the Fee Schedule.

Amendments to the Market Depth Tier

The Exchange believes that lowering the ADV requirements in Flag HA for the Market Depth Tier represents an equitable allocation of reasonable dues, fees, and other charges because slightly lowering the threshold to achieve the tier encourages Members to add displayed liquidity to the EDGX Book [12] each month, as only the displayed liquidity in this tier is awarded the rebate of $0.0033 per share. This tier also recognizes the contribution that non-displayed liquidity provides to the marketplace, including: (i) Adding needed depth to the EDGX market; (ii) providing price support/depth of liquidity; and (iii) increasing diversity of liquidity to EDGX. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor

[7] Footnote 4 on the Exchange's Fee Schedule defines a ''Retail Order,'' in part, as an: (i) An agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) the order does not originate from a trading algorithm or any other computerized methodology.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] ''Default'' refers to the standard rate provided to Members for orders that remove liquidity from the Exchange absent Members qualifying for additional volume tiered pricing.

[11] *See* Fee to Remove Liquidity for Routable Orders in the Nasdaq OMX PSX Price List *available at http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing* (last visited June 27, 2013) (charging similar discounted rates to remove liquidity of $0.0025 and $0.0028).

[12] The EDGX Book is the System's electronic file of orders. *See* Exchange Rule 1.5(d).

protection. In addition, the Exchange also believes that the proposed amendment to the Market Depth Tier is non-discriminatory because it applies uniformly to all Members.

Amendments to the Current $0.0032 Mega Tier (Post 0.12% of TCV)

The Exchange believes that the reduction of the rebate offered by the current $0.0032 Mega Tier from $0.0032 per share to $0.0030 per share under the $0.0030 Mega Step Up Tier represents an equitable allocation of reasonable dues, fees, and other charges because it will enable the Exchange to retain additional funds to offset increased administrative, regulatory, and other infrastructure costs associated with operating an exchange. The rebate of $0.0030 per share is reasonable when compared to the Exchanges' competitors.[13] Additionally, the Exchange believes that the reduced rebate of $0.0030 per share justifies a less stringent criterion than the $0.0032 Mega Step Up Tier discussed below. Lastly, the reduced rebate is non-discriminatory because it applies uniformly to all Members of the Exchange.

Addition of the New $0.0032 Mega Step Up Tier

The Exchange believes that the addition of the new $0.0032 Mega Step Up Tier represents an equitable allocation of reasonable dues, fees, and other charges because it incentivizes Members to add liquidity to the EDGX Book. In particular, the $0.0032 Mega Step Up Tier is designed to incentivize members to achieve preferred pricing by adding liquidity on the Exchange.

The Exchange also believes that the $0.0032 Mega Step Up Tier is reasonable and equitably allocated because such increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings and improving investor protection. Volume-based rebates such as the one proposed herein are widely utilized in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and opportunities for price improvement.

Higher Rebates are Correlated With More Stringent Criteria

Furthermore, the Exchange believes that the criteria for tiered rebates listed above represents an equitable allocation of reasonable dues, fees, and other charges because higher rebates are directly correlated with more stringent criteria.

For example, in order for a Member to qualify for the $0.0035 Mega Tier Rebate, the Member would have to add or route at least 2 million shares of ADV during pre- and post-trading hours and add a minimum of 35 million shares of ADV on EDGX in total, including during both market hours and pre- and post-trading hours in order to obtain the $0.0015 discount routing and removal rates. The criteria for this tier is the most stringent of all other tiers on the Exchange's fee schedule as fewer Members generally trade during pre- and post-trading hours because of the limited time parameters associated with these trading sessions, which generally results in less liquidity. In addition, the Exchange assigns a higher value to this resting liquidity because liquidity received prior to the regular trading session typically remains resident on the EDGX Book throughout the remainder of the entire trading day. Furthermore, liquidity received during pre- and post-trading hours is an important contributor to price discovery and acts as an important indication of price for the market as a whole considering the relative illiquidity of the pre- and post-trading hour sessions. The Exchange believes that offering a higher rebate and reduced fees for removal of liquidity and/or routing incentivizes Members to provide liquidity during these trading sessions.

In order to qualify for the next best tier, the Market Depth Tier, and receive a rebate of $0.0033 per share for displayed liquidity, such Member must post at least 0.50% of the TCV in ADV on EDGX in total, where at least 2,000,000 million (herein proposed to be amended to 1,800,000) shares are non-displayed orders that add liquidity to EDGX yielding Flag HA. This criteria is more stringent than that of the proposed $0.0032 Mega Step Up Tier because the Market Depth Tier requires a Member to post at least 0.50% of the TCV in ADV on EDGX whereas the $0.0032 Mega Step Up Tier only requires a Member to post a minimum of 0.35% of the TCV in ADV on EDGX. Based on a TCV for May 2013 of six (6) billion shares, this would amount to 30,000,000 shares for the Market Depth Tier and 21,000,000 shares for the $0.0032 Mega Step Up Tier.

In order to qualify for the next tier after the $0.0032 Mega Step Up Tier, as discussed above, the Ultra Tier, a Member must, on a daily basis, measured monthly, post 0.50% of TCV in ADV to EDGX to receive a rebate of $0.0031 per share. The criteria for this tier is less stringent than the $0.0032 Mega Step Up Tier because a Member aspiring to meet the $0.0032 Mega Step Up Tier must satisfy two criteria: (1) Post 0.12% of the TCV in ADV more than their February 2011 ADV added to EDGX; and (2) add a minimum of 0.35% of the TCV on a daily basis, measured monthly, including during both market hours and pre and post-trading hours. The Ultra Tier only requires a Member post 0.50% of TCV in ADV to EDGX. Based on a TCV for May 2013 of six (6) billion shares, this would amount to 30,000,000 shares for the Ultra Tier and 21,000,000 shares for the $0.0032 Mega Step Up Tier. While the Ultra Tier's TCV requirement is higher, Members seeking the achieve the $0.0032 Mega Step Up Tier would also be required to post 0.12% of the TCV in ADV more than their February 2011 ADV added to EDGX. The Exchange believes this additional requirement establishing a Member's February 2011 added baseline rewards liquidity provision and encourages price discovery and market transparency by incentivizing growth in liquidity over a defined baseline.

The criteria for the $0.0032 Mega Step Up Tier is also more stringent than the $0.0030 Mega Step Up Tier discussed above. While both tiers require a Member post 0.12% of the TCV in ADV more than their February 2011 ADV, the $0.0032 Mega Step Up Tier also requires Members to add a minimum of 0.35% of the TCV on a daily basis, measured monthly, including during both market hours and pre and post-trading hours. This additional requirement is designed to incentivize Members to add liquidity to the EDGX Book in order to achieve preferred pricing by adding liquidity on the Exchange.

To qualify for the next tier after the $0.0030 Mega Step Up Tier, the Super Tier, and receive a rebate of $0.0028 per share for liquidity added to EDGX, a Member must, on a daily basis, measured monthly, posts 10,000,000 shares or more of ADV to EDGX. The Exchange believes that establishing a Member's February 2011 added baseline rewards liquidity provision and encourages price discovery and market transparency by incentivizing growth in liquidity over a defined baseline. The Exchange believes the $0.0030 Mega

[13] *See* NYSE Arca Equities, Inc. Schedule of Fees and Charges for Exchange Services available at *https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_5_1_13.pdf* (last visited June 27, 2013) (Arca offers a rebate of $0.00295 and $0.0029 for its Step-Up Tier 1 and Tier 2 respectively for Tape A and C securities).

Step Up Tier will also encourage large market participants, who are not currently large adders, to grow their add volume over an established baseline in order to achieve the tier.

Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

Amendment to Retail Order Tier

The Exchange believes that its proposal to add an additional requirement to the Retail Order Tier in Footnote 4 that a Member must have an ''added liquidity'' to ''added liquidity plus removed liquidity'' ratio of at least 85% represents an equitable allocation of reasonable dues, fees, and other charges because it is designed to incentivize and further align the tier's requirements with the trading behaviors of Members that primarily represent retail customers. The Retail Order Tier is designed to encourage greater participation on EDGX by Members that represent retail customers.[14] In particular, the Exchange notes that an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85% is a characteristic of retail order flow, where retail members add substantially more liquidity than they remove. Members that primarily post liquidity are more valuable Members to the Exchange and the marketplace in terms of liquidity provision. Because retail orders are more likely to reflect long-term investment intentions than the orders of proprietary traders, they promote price discovery and dampen volatility. Accordingly, their presence on the EDGX Book has the potential to benefit all market participants. For this reason, EDGX believes that it is equitable to provide significant financial incentives to encourage greater retail participation in the market in general and on EDGX in particular. The Exchange believes that increasing the volume requirement and requiring the addition of an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85% may result in increased volume in retail orders by firms aspiring to meet the criteria of the tier and, accordingly, would lead to benefits for all market participants.

Addition of $0.0032 Investor Tier

The Exchange believes that the addition of the $0.0032 Investor Tier represents an equitable allocation of reasonable dues, fees, and other charges because it incentivizes Members to add liquidity to the EDGX Book. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide financial incentives that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. In addition, the Exchange also believes that these proposed amendments are nondiscriminatory because they apply uniformly to all Members.

Furthermore, the Exchange believes that its proposal to add a requirement that a Member must have an ''added liquidity'' to ''added liquidity plus removed liquidity'' ratio of at least 85% represents an equitable allocation of reasonable dues, fees, and other charges because it is designed to incentivize Members that represent retail customers to send order flow to the Exchange. The $0.0032 Investor Tier is designed to encourage greater participation on EDGX by Members that represent retail customers but may not be able to satisfy the requirements to achieve the Retail Order Tier in Footnote 4 above. In particular, the Exchange notes that an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85% is a characteristic of retail order flow, where retail members add substantially more liquidity than they remove. Members that primarily post liquidity are more valuable Members to the Exchange and the marketplace in terms of liquidity provision. Because retail orders are more likely to reflect long-term investment intentions than the orders of proprietary traders, they promote price discovery and dampen volatility. Accordingly, their presence on the EDGX Book has the potential to benefit all market participants. For this reason, EDGX believes that it is equitable to provide significant financial incentives to encourage greater retail participation in the market in general and on EDGX in particular. The Exchange believes that increasing the volume requirement and requiring the addition of an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85% may result in increased volume in retail orders by firms aspiring to meet the criteria of the tier and, accordingly, would lead to benefits for all market participants.

The Exchange also believes that the proposed rebate of $0.0032 per share for the $0.0032 Investor Tier and volume thresholds that require Members to add a minimum of 0.15% of the TCV on a daily basis represents an equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

For example, the tier most similar to the $0.0032 Investor Tier that offers a higher rebate than the $0.0032 Investor Tier is the $0.0035 Mega Tier. The $0.0035 Mega Tier provides a rebate of $0.0035 per share for all liquidity posted by a Member to EDGX if such Member (i) adds or routes at least 4,000,000 shares of ADV prior to 9:30 a.m. or after 4:00 p.m. (includes all flags except 6), (ii) adds a minimum of 35,000,000 shares of ADV on EDGX in total, including during both market hours and pre and post-trading hours, and (iii) has an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85% where added flags are defined as B, V, Y, 3, 4, HA, MM, RP, and ZA and removal flags are defined as N, W, 6, BB, MT, PI, PR, and ZR. In addition, for meeting the aforementioned criteria, the Member will pay a reduced rate for removing and/or routing liquidity of $0.0015 per share for Flags N, W, 6, 7, BB, PI, RT, and ZR. The Exchange believes that the criteria for the $0.0032 Investor Tier is far less onerous than that of the $0.0035 Mega Tier because the $0.0035 Mega Tier requires trading during pre- and post-trading hours, which is more stringent for Members because of the limited time parameters associated with these trading sessions, which generally results in less liquidity. Therefore, the rebate of $0.0032 offered by the Investor Tier accurately reflects the effort a Member would need to expend to

[14] *See* Securities Exchange Act Release No. 69067 (March 7, 2013), 78 FR 16003, 16004 (March 13, 2013) (SR–EDGX–2013–11) (stating that the Retail Order Tier is designed to ''encourage Members to send additional Retail Orders that add liquidity to the Exchange''). The Exchange notes that the Commission has expressed concern that a significant percentage of the orders of individual investors are executed in over-the-counter markets, that is, at off exchange markets. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission recognized the strong policy preference under the Act in favor of price transparency and displayed markets. *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission Web site) (comments of Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that nearly 30 percent of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

achieve the tier in comparison to the effort required to meet the $0.0035 Mega Tier.

The next best similar tier after the $0.0032 Investor Tier, the $0.0030 Investor Tier, provides a rebate of $0.0030 per share when qualifying Members (i) post an ADV of at least 8,000,000 shares on EDGX, (ii) have an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 60% and (iii) have a message-to-trade ratio of less than 6:1. The Exchange believes that the volume requirement of the $0.0032 Investor Tier to add a minimum of 0.15% of TCV is a more stringent volume requirement than that presented in the $0.0030 Investor Tier. Likewise, the ''added liquidity'' to ''added plus removed liquidity'' ratio of 85% in the $0.0032 Investor Tier is more stringent than the 60% requirement in the $0.0030 Investor Tier. Accordingly, the Exchange believes that, because Members aspiring to meet the $0.0032 Investor Tier are required to add more liquidity to EDGX compared to those aspiring to meet the $0.0030 Investor Tier, those Members should be rewarded with a higher rebate.

Correction to Footnote 13

The Exchange believes that correcting an inadvertent drafting error in the criteria of the $0.0030 Investor Tier with regard to the ''added liquidity'' to ''added plus removed liquidity'' ratio is reasonable because it will increase the level of transparency on the Exchange's fee schedule and improve the Exchange's ability to effectively convey the criteria necessary to achieve the $0.0030 Investor Tier. The Exchange notes that its proposal conforms to an existing practice and does not modify the rebate that the Exchange has been providing its Members for achieving the tier. The Exchange has historically in practice and will continue to calculate whether a Member satisfied criteria (ii) under Footnote 13 if its ''added liquidity'' to ''added plus removed liquidity'' ratio is at least 60%. Other than this correction, the remainder of the footnote as it pertains to the $0.0030 Investor Tier would remain unchanged. Lastly, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by any of the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange believes that the proposed changes would not impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Amendment to Flag PR

The Exchange believes the proposed increased fee from $0.0027 to $0.0029 per share for orders that yield Flag PR would increase intermarket competition between the Exchange and its competitors that offer similar discount in fees to remove liquidity associated with routing strategies.[15] The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the increased rate would apply uniformly to all Members.

Amendment to Flag RQ

The Exchange believes the proposed increased fee from $0.0027 to $0.0029 per share for orders that yield Flag RQ would increase intermarket competition between the Exchange and its competitors that offer similar routing fees.[16] The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the increased rate would apply uniformly to all Members.

Ministerial Changes to Footnote 1

The Exchange believes that the non-material changes to the first paragraph of Footnote 1 regarding the $0.0035 Mega Tier would not impose a burden on competition because it simply seeks to align the formatting of Footnote 1 with similar paragraphs within the Fee Schedule. The Exchange does not propose to alter the requirements Members need to satisfy to be eligible for the $0.0035 Mega Tier rebate in Footnote 1.

The Exchange also believes relocating the definition of TCV within Footnote 1 would not impose a burden on competition because it simply seeks to add clarity to the Fee Schedule.

Amendments to the Market Depth Tier

The Exchange believes that its proposal to decrease the ADV requirement in Flag HA in the Market Depth Tier would increase intermarket competition because the lower ADV requirement would incentive Members that could not previously meet the tier to send higher volume to the Exchange. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the rate for the Market Depth Tier would continue to apply uniformly to all Members and the ability of some Members to meet the tier would only benefit other Members by contributing to increased price discovery and better market quality at the Exchange.

Amendments to the Current $0.0032 Mega Tier (Post 0.12% of TCV)

The Exchange believes that decreasing the rebate for the current $0.0032 Mega Tier will not impose any burden on intermarket competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rebate decrease, in conjunction with the addition of the new $0.0032 Mega Step Up Tier, would contribute to increased price discovery and better market quality at the Exchange as a result of the liquidity added by those Members that aspire to meet the tier. This would make the Exchange more competitive with other market centers. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the increased rate would apply uniformly to all Members.

Addition of the New $0.0032 Mega Step Up Tier

The Exchange believes that its proposal to add the $0.0032 Mega Step Up Tier would increase intermarket competition because Members that seek to meet the tier would be required to send higher volume to the Exchange. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the rate for the $0.0032 Market Step Up Tier would continue to apply uniformly to all Members and the ability of some Members to meet the tier would only benefit other Members by contributing to increased price discovery and better market quality at the Exchange as a result of the liquidity added by those Members that aspire to meet the tier.

Amendment to Retail Order Tier

The Exchange believes that adding criteria to the Retail Order Tier that

[15] *See* Fee to Remove Liquidity for Routable Orders in the Nasdaq OMX PSX Price List *available at http://www.nasdaqtrader.com/Trader.aspx?id=PSX_Pricing (last visited June 27, 2013)* (charging similar discounted rates to remove liquidity of $0.0025 and $0.0028).

[16] *See* BATS BZX fee schedule, describing Standard Routing Pricing *available at http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf (last visited June 27, 2013)* (charging $0.0029 per share for shares executed at any other venue utilizing routing strategies ''CYCLE'', ''RECYCLE'', ''Parallel D'', and ''Parallel 2D'').

Members must also have an ''added liquidity'' to ''added plus removed liquidity'' ratio of at least 85% would increase intermarket competition because Members that seek to meet the tier would be required to send higher added volume to the Exchange. Regarding the Retail Order Tier, the Exchange believes that its proposal to amend the criteria to achieve the tier will increase competition for Retail Orders because the proposed Retail Order Tier is comparable in price and criteria to NYSE Arca, Inc. (''NYSE Arca'') and Nasdaq's retail order tier.[17]

The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the rate for the Retail Order Tier would continue to apply uniformly to all Members and the ability of some Members to meet the tier would only benefit other Members by contributing to increased price discovery and better market quality at the Exchange.

Addition of $0.0032 Investor Tier

The Exchange believes the addition of the $0.0032 Investor Tier to Footnote 13 of the Fee Schedule would increase intermarket competition because Members that seek to meet the tier would be required to send higher volume to the Exchange. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the rate for the $0.0032 Investor Tier would continue to apply uniformly to all Members and the ability of some Members to meet the tier would only benefit other Members by contributing to increased price discovery and better market quality at the Exchange, especially during pre- and post-market sessions.

Correction to Footnote 13

The Exchange believes that correcting an inadvertent drafting error in the criteria regarding the ''added to remove liquidity ratio'' would not impose a burden on intermarket competition because it simply clarifies for Members how the ratio under criteria (ii) in Footnote 13 has and will continue to be calculated by the Exchange. The Exchange has historically and will continue to calculate whether a Member satisfied criteria (ii) under Footnote 13 by dividing ''added liquidity'' by ''added plus removed liquidity'' and determining whether the ratio is at least 60%. The Exchange does not propose to amend any of the existing criteria under Footnote 13. It simply seeks to correct in its Fee Schedule how the ratio under criteria (ii) has and will continue to be calculated. The Exchange believes that its proposal would neither increase nor decrease intramarket competition because the criteria, as amended, in Footnote 13 would continue to apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and Rule 19b–4(f)(2) [19] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGX–2013–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–25. 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–EDGX–2013–25 and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16378 Filed 7–8–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69910; File No. SR–NYSEArca–2013–48]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade Shares of iShares Dow Jones-UBS Roll Select Commodity Index Trust Pursuant to NYSE Arca Equities Rule 8.200

July 2, 2013.

I. Introduction

On May 1, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant

[17] *See* NYSE Arca, NYSE Arca Equities Trading Fees—Retail Order Tier, *available at http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees* (last visited June 27, 2013). *See also* Nasdaq, Price List—Rebate to Add Displayed Designated Retail Liquidity, *available at http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2 (last visited June 27, 2013).*

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4 (f)(2).

[20] 17 CFR 200.30–3(a)(12).

to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of iShares Dow Jones-UBS Roll Select Commodity Index Trust (''Trust'') under NYSE Arca Equities Rule 8.200. On May 3, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published for comment in the **Federal Register** on May 20, 2013.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of Proposed Rule Change

The Exchange proposes to list and trade Shares of the Trust pursuant to NYSE Arca Equities Rule 8.200, Commentary .02.[5] The Shares represent beneficial ownership interests in the Trust.[6] The Trust is a Delaware statutory trust. The Trust is operated by iShares© Delaware Trust Sponsor LLC (''Sponsor''), a Delaware limited liability company and an indirect subsidiary of BlackRock, Inc. (''BlackRock''). The Sponsor is a commodity pool operator registered with the Commodity Futures Trading Commission (''CFTC'') and a member of the National Futures Association (''NFA''). BlackRock Asset Management International Inc., a Delaware corporation and an indirect subsidiary of BlackRock, is the sole member and manager of the Sponsor. BlackRock Institutional Trust Company, N.A., a national banking association, an indirect subsidiary of BlackRock, and an affiliate of the Sponsor, is the trustee of the Trust (''Trustee''). BlackRock Fund Advisors (''Adviser''),[7] a California corporation, an indirect subsidiary of BlackRock, and an affiliate of the Sponsor, serves as the commodity trading advisor of the Trust, is registered as a commodity trading advisor with the CFTC, and is a member of the NFA.[8] State Street Bank and Trust Company, a trust company organized under the laws of Massachusetts, is the administrator (''Administrator'') of the Trust.

The investment objective of the Trust will be to seek investment results that correspond generally, but are not necessarily identical, to the performance of the Dow Jones-UBS Roll Select Commodity Index Total Return (''Index''), which reflects the returns on a fully collateralized investment in the Dow Jones-UBS Roll Select Commodity Index (''DJ–UBS Roll Select CI''), before the payment of expenses and liabilities of the Trust. The DJ–UBS Roll Select CI is calculated based on the same commodities, though not always the same futures contracts, that are included in the Dow Jones-UBS Commodity Index (''DJ–UBS CI''). The DJ–UBS CI is a liquidity- and production-weighted index of the prices of a diversified group of futures contracts on physical commodities. The DJ–UBS CI forms the base commodities index from which the DJ–UBS Roll Select CI and the Index are derived.

The assets of the Trust will consist of long positions in Futures Exchange [9]-traded futures contracts of various expirations (''Index Futures'') [10] on the DJ–UBS Roll Select CI, together with cash, U.S. Treasury securities, or other short-term securities and similar securities that are eligible as margin deposits for those Index Futures positions (''Collateral Assets'').[11] The Trust is expected to roll out of existing positions and establish new positions in Index Futures on an ongoing basis.[12]

In order to collateralize its Index Futures positions and to reflect the U.S. Treasury component of the Index, the Trust will hold Collateral Assets, from which it will post margin to its clearing futures commission merchant (''Clearing FCM''), in an amount equal to the margin required by the relevant Futures Exchange, and transfer to its Clearing FCM any additional amounts that may be separately required by the Clearing FCM.[13] Any Collateral Assets not required to be posted as margin with the Clearing FCM will be held in the Trust's accounts established at its Administrator.

The Trust will be a passive investor in Index Futures and the Collateral Assets held to satisfy applicable margin requirements on those Index Futures positions. At any time when Index Futures of more than one expiration date are listed on the Futures Exchange, the Sponsor will determine, pursuant to the terms of the trust agreement, which Index Futures of a given expiration will be transferred into or out of the Trust in connection with either the creation or redemption of Shares. The Adviser will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the level of the Index or the DJ–UBS Roll Select CI or the value of the Collateral Assets.

The profit or loss on the Trust's Index Futures positions should correlate with increases and decreases in the value of the DJ–UBS Roll Select CI, although this correlation is not expected to be exact. The return on the Index Futures, together with interest on the Collateral Assets, is expected to result in a total return that corresponds generally, but is not identical, to the Index.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made a technical correction and clarified that UBS Securities has implemented a fire wall with respect to its personnel regarding access to information concerning, among other things, the calculation of the values of the Index, DJ–UBS CI, and DJ–UBS Roll Select CI (as such terms are defined below).

[4] *See* Securities Exchange Act Release No. 69573 (May 14, 2013), 78 FR 29411 (''Notice'').

[5] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[6] *See* the pre-effective amendment to the registration statement on Form S–1 for the Trust, dated February 8, 2013 (File No. 333–178376) relating to the Shares (''Registration Statement'').

[7] The Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a firewall with respect to such broker-dealer affiliate as well as procedures designed to prevent the use and dissemination of material, non-public information regarding the assets of the Trust.

[8] According to the Sponsor, the Sponsor will be responsible for the overall management of the Trust and the Trustee will be responsible for the day-to-day administration of the Trust. The Adviser will act as the commodity trading advisor for the Trust with discretionary authority to make determinations with respect to the Trust's assets, but will not engage in any activities designed to obtain a profit from, or ameliorate losses caused by, changes to the level of the underlying index. The Sponsor represents that it will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the assets of the Trust.

[9] As used herein, ''Futures Exchange'' means the Chicago Mercantile Exchange (''CME'') or one of the CME Group Inc.'s other designated contract markets, or any additional or successor designated contract markets through which the Trust trades Index Futures (as defined herein). The designated contract markets of the CME Group Inc. are the CME, Chicago Board of Trade (''CBOT''), New York Mercantile Exchange Inc. (''NYMEX'') and Commodity Exchange, Inc. (''COMEX'').

[10] The Trust's Index Futures will be subject to the rules of the relevant Futures Exchange, which will initially be CME. The Index Futures will initially trade on GLOBEX, the CME's electronic trading system, and are not expected to trade through open outcry on the floor of the CME.

[11] The Sponsor represents that the Trust will invest in Index Futures and Collateral Assets, in a manner consistent with the Trust's investment objective and not to achieve additional leverage.

[12] The Index Futures initially held by the Trust will have quarterly expirations and be listed for trading by the CME. Subsequent Index Futures held by the Trust may have longer or shorter expirations, different terms, and may be listed on other Futures Exchanges.

[13] When establishing positions in Index Futures, the Trust will be required to deposit initial margin with a value of approximately 3% to 10% of the value of each Index Futures position at the time it is established. These margin requirements are subject to change from time to time by the Exchange or the Clearing FCM. On a daily basis, the Trust will be obligated to pay, or entitled to receive, variation margin in an amount equal to the change in the daily settlement level of its Index Futures positions.

The Index, DJ–UBS CI, and DJ–UBS Roll Select CI

The Index reflects the value of the DJ–UBS Roll Select CI together with the returns on specified U.S. Treasury securities that are deemed to have been held to collateralize a hypothetical long position in the futures contracts comprising the DJ–UBS Roll Select CI.

The DJ–UBS Roll Select CI is calculated based on the same commodities, though not always the same futures contracts, that are included in the DJ–UBS CI, which is a liquidity- and production-weighted index of the prices of a diversified group of futures contracts on physical commodities. The DJ–UBS Roll Select CI seeks to minimize the effect of contango and maximize the effect of backwardation by selecting replacement futures contracts that exhibit the most backwardation or least contango among those eligible futures contracts with delivery months of up to 273 calendar days until expiration.[14]

The DJ–UBS Roll Select CI incorporates the economic effect of ''rolling'' the futures contracts included in the applicable index and the DJ–UBS CI reflects the economic effect of ''rolling'' futures contracts into front-month futures contracts. ''Rolling'' a futures contract means closing out a position in an expiring futures contract and establishing an equivalent position in a new futures contract on the same commodity.

The DJ–UBS Roll Select CI differs from the DJ–UBS CI in that it does not roll into the futures contract with the nearest designated delivery month. Rather, the DJ–UBS Roll Select CI rolls into those eligible futures contracts with delivery months of up to 273 calendar days until expiration that exhibit the most backwardation or that exhibit the least contango.

The DJ–UBS Roll Select CI, the DJ–UBS CI, and the Index are administered, calculated, and published by UBS Securities LLC (''UBS Securities'') and DJI Opco, LLC, a wholly-owned subsidiary of S&P Dow Jones Indices LLC (''S&P Dow Jones Indices'' and, together with UBS Securities, ''Index Co-Sponsors'').[15]

The DJ–UBS CI

The DJ–UBS CI, on which the DJ–UBS Roll Select CI is based, was created by AIG International Inc. in 1998 and acquired by UBS Securities in May 2009, at which time UBS Securities and Dow Jones entered into a joint marketing agreement to market the DJ–UBS CI and related indices. Dow Jones subsequently assigned its interest in the joint marketing agreement to CME Indexes. The Index Co-Sponsors are together responsible for calculating the DJ–UBS CI and related indices and sub-indices, including the Index and the DJ–UBS Roll Select CI.

The DJ–UBS CI is a benchmark index composed of futures contracts on the underlying physical commodities, the selection and weighting of which are currently determined based on the five-year average of the trading volume, adjusted by the historic U.S. dollar value of the futures contract designated for inclusion in the DJ–UBS CI, and the five-year average of production figures, adjusted by the historic U.S. dollar value of the futures contract designated for inclusion in the DJ–UBS CI. For each of the included commodities, specified futures contracts with specified delivery dates are designated for inclusion in the DJ–UBS CI. The DJ–UBS CI is reweighted and rebalanced annually, on a price-percentage basis, to reflect changes in trading volume and production figures.

The DJ–UBS CI reflects the increased or decreased return associated with ''rolling'' futures contracts. The DJ–UBS CI reflects the economic impact of the roll process by reducing the weights applied to expiring futures contracts while correspondingly increasing the weights applied to the futures contracts that are replacing such expiring futures contracts. This roll simulation is generally conducted at the beginning of each month over the course of five business days, lasting from the sixth business day until the tenth business day of each month. The DJ–UBS CI conducts its roll simulations each month by rolling out of the designated futures contracts expiring in that month and rolling into those designated futures contracts with the next closest designated delivery month.

The DJ–UBS Roll Select CI

The DJ–UBS Roll Select CI implements its rolling methodology by selecting from the eligible contracts for each commodity on its applicable ''contract selection date,'' the contract that exhibits the greatest amount of backwardation or least amount of contango, on an annualized basis, relative to the contract with the immediately preceding delivery date on the same commodity. This is accomplished by first dividing the price of each eligible contract from the price of the contract immediately preceding such eligible contract, to determine the percentage difference between the two prices. Because this price difference may be affected by the relative time between the eligible contract and its immediately preceding contract, this price difference is multiplied by 365 and divided by the number of actual days between the delivery dates of the two contracts, to arrive at a measure of the relative annualized contango/backwardation, referred to as the ''annualized spread,'' exhibited between the eligible contract and the contract immediately preceding it. Based on a comparison of these annualized spreads, the eligible contract that has the highest annualized spread relative to its immediately preceding contract is the one selected as the contract for the DJ–UBS Roll Select CI to establish new positions in. This roll selection process generally occurs every month on the fourth business day of the month, subject to changes or adjustments to this process implemented by the Index Co-Sponsors.

The Index Futures in which the Trust will invest will be based on the DJ–UBS Roll Select CI. The DJ–UBS Roll Select CI is a version of the DJ–UBS CI that tries to mitigate the effects of contango arising from the rolling process. Rather than incorporating the economic effect of rolling into futures contracts with the next closest designated delivery month, the DJ–UBS Roll Select CI incorporates the economic effect of rolling into applicable futures contracts that exhibit the least contango or, if applicable, the most backwardation, in each case relative to the contracts of the immediately preceding delivery month.

Because the DJ–UBS Roll Select CI utilizes a different designated contract selection process than the DJ–UBS CI, the futures contracts comprising the DJ–UBS Roll Select CI at any particular time may have different delivery months than those comprising the DJ–UBS CI, and the levels of the DJ–UBS Roll Select CI and the DJ–UBS CI may correspondingly differ. In addition, as a

[14] Markets for futures contracts can exhibit ''backwardation,'' which means that futures contracts with distant delivery months are priced lower than those with nearer delivery months, or can exhibit ''contango,'' which means that futures contracts with distant delivery months are priced higher than those with nearer delivery months.

[15] According to the Sponsor, S&P Dow Jones Indices and its subsidiary DJI Opco, LLC are not broker-dealers and UBS Securities is a broker-dealer. UBS Securities has implemented a fire wall with respect to its personnel regarding access to information concerning the composition and/or changes to the Index, DJ–UBS CI, and DJ–UBS Roll Select CI and the calculation of the values of the foregoing indexes, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Index, DJ–UBS CI, and DJ–UBS Roll Select CI. The Index Co-Sponsors have implemented and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the DJ–UBS Roll Select CI, the DJ–UBS CI, and the Index.

result of this difference in rolling processes, both the performance of the DJ–UBS Roll Select CI and the DJ–UBS CI and the dollar-value weights of their respective underlying futures contracts are expected to differ over time.

Determination of DJ–UBS CI Index Constituents

The Index Co-Sponsors have established a two-tier oversight structure for the DJ–UBS CI, the DJ–UBS Roll Select CI, and the Index comprised of the ''Supervisory Committee'' and the ''Advisory Committee.'' [16] The composition of the DJ–UBS CI is determined by UBS Securities each year under the supervision of, and in accordance with the procedures adopted by, the Supervisory Committee. The final composition of the DJ–UBS CI for each calendar year is subject to the approval of the Supervisory Committee in consultation with the Advisory Committee, and once this approval has been obtained, the new composition of the DJ–UBS CI is publicly announced, and takes effect in the month of January of the relevant calendar year.

The relative weight of a commodity eligible for inclusion in the DJ–UBS CI, or its commodity index percentage (''CIP''), is initially determined based on (i) the relative production percentages of the commodities eligible for inclusion in the DJ–UBS CI and (ii) the relative liquidity of the futures contracts that have been designated as the eligible reference contracts for those commodities. This initial CIP calculation is then adjusted to give effect to caps and floors on such CIPs and to adjust the weights for gold and silver, the relative production numbers of which, according to the Dow Jones-UBS Commodity Index℠ Handbook, last published by the Index Co-Sponsors as of May 2012, understate their economic significance.

The commodities and related designated futures contracts currently included in the DJ–UBS CI and their respective final CIPs for 2013 are as follows:

Commodity	Designated contract	Exchange*	Units	CIP** (percent)	Trading hours (E.T.) ***
Aluminum	High Grade Primary Aluminum.	LME	25 metric tons	4.913	First session: 6:55AM to 7:00AM, 7:55AM to 8:00AM; second session: 10:15AM to 10:20AM, 10:55AM to 11:00AM.
Coffee	Coffee ''C''	ICE Futures U.S.	37,500 lbs	2.442	3:30AM to 2:00PM.
Copper	Copper	COMEX	25,000 lbs	7.277	6:00PM to 5:15PM Next Day.
Corn	Corn	CBOT	5,000 bushels	7.053	Sun–Fri: 8:00PM to 8:45AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Cotton	Cotton	ICE Futures U.S.	50,000 lbs	1.766	9:00PM to 2:30PM Next Day.
Crude Oil	Light, Sweet Crude Oil.	NYMEX	1,000 barrels	9.206	6:00PM to 5:15PM Next Day.
	Brent Crude Oil	ICE Futures U.S.	1,000 barrels	5.794	8:00PM to 6:00PM Next Day.
Gold	Gold	COMEX	100 troy oz.	10.819	6:00PM to 5:15PM Next Day.
Heating Oil	Heating Oil	NYMEX	42,000 gallons	3.519	6:00PM to 5:15PM Next Day.
Live Cattle	Live Cattle	CME	40,000 lbs	3.283	Mon: 10:05AM to 5:00PM; Tue–Thurs: 6:00PM to 5:00PM Next Day; Fri: 6:00PM to 2:55PM Next Day.
Lean Hogs	Lean Hogs	CME	40,000 lbs	1.900	Mon: 10:05AM to 5:00PM; Tue–Thurs: 6:00PM to 5:00PM Next Day; Fri: 6:00PM to 2:55PM Next Day.
Natural Gas	Henry Hub Natural Gas.	NYMEX	10,000 mmbtu	10.424	6:00PM to 5:15PM Next Day.
Nickel	Primary Nickel	LME	6 metric tons	2.244	First session: 6:15AM to 6:20AM, 8:00AM to 8:05AM; second session: 10:25AM to 10:30AM, 11:05AM to 11:10AM.
Silver	Silver	COMEX	5000 troy oz.	3.898	6:00PM to 5:15PM Next Day.
Soybeans	Soybeans	CBOT	5,000 bushels	5.495	Sun–Fri: 8:00PM to 8:45AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Soybean Meal	Soybean Meal	CBOT	100 short tons	2.607	Sun–Fri: 8:00PM to 8:45AM Next Day.
Soybean Oil	Soybean Oil	CBOT	60,000 lbs	2.743	Mon–Fri: 9:30AM to 2:15PM; Sun–Fri: 8:00PM to 8:45AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Sugar	World Sugar No. 11	ICE Futures U.S.	112,000 lbs	3.884	2:30AM to 2:00PM.
Unleaded Gasoline	Reformulated Blendstock for Oxygen Blending.	NYMEX	42,000 gallons	3.461	6:00PM to 5:15PM Next Day.
Wheat (Chicago)	Soft Wheat	CBOT	5,000 bushels	3.433	Sun–Fri: 8:00PM to 8:45AM Next Day; Mon–Fri: 9:30AM to 2:15PM.

[16] The Supervisory Committee and the Advisory Committee are subject to procedures designed to prevent the improper use and dissemination of material, non-public information regarding the Index, DJ–UBS Roll Select CI, and DJ–UBS CI.

Commodity	Designated contract	Exchange*	Units	CIP** (percent)	Trading hours (E.T.) ***
Wheat (Kansas)	Hard Red Winter Wheat.	KCBOT	5,000 bushels	1.321	Sun–Fri: 8:00PM to 8:45AM Next Day; Mon–Fri: 9:30AM to 2:15PM.
Zinc	Special High Grade Zinc.	LME	25 metric tons	2.519	First session: 7:10AM to 7:15AM, 7:50AM to 7:55AM; second session: 10:05AM to 10:10AM, 10:45AM to 10:50AM.

* "LME" refers to the London Metal Exchange, and "ICE Futures U.S." refers to ICE Futures U.S., Inc.
** Rounded to the nearest thousandth of a percentage. May not total to 100 due to rounding.
*** Trading hours for the CME, CBOT, NYMEX, and COMEX represent weekday electronic trading hours through CME Globex (electronic platform). Trading hours for LME represent ring trading times during each of first and second sessions; excludes kerb trading times.

Calculation of the Index, DJ–UBS CI, and DJ–UBS Roll Select CI

The level of the DJ–UBS CI was set to be equal to 100 as of December 31, 1990. Subsequent levels of the DJ–UBS CI are determined by multiplying the level of the DJ–UBS CI as of the previous day by a fraction equal to (i) the weighted average value ("WAV") of the DJ–UBS CI as of the current day divided by (ii) the WAV of the DJ–UBS CI as of the previous day, subject to adjustment for roll periods as described below. The WAV of the DJ–UBS CI on any given day is calculated by summing the products of the settlement prices of the designated futures contracts for each commodity multiplied by the commodity index multiplier ("CIM") of such designated contract.

The CIMs of the designated contracts in the DJ–UBS CI are determined annually, generally on the fourth business day of each year (the date of such determination, "CIM Determination Date"). On the CIM Determination Date, initial CIMs ("ICIMs") are calculated for each designated contract by multiplying such designated contract's CIP by 1,000, then dividing such product by the designated contract's settlement price as of the CIM Determination Date. To determine the final CIM for each designated contract for the new year, each ICIM is multiplied by an adjustment factor, which is a fraction equal to (i) the WAV of the DJ–UBS CI as of the CIM Determination Date, as calculated using the CIMs from the prior year, divided by (ii) 1,000. This adjustment factor is intended to preserve WAV continuity from one year to the next.

During roll periods, which generally occur during the sixth through tenth business days of each month, the level of the DJ–UBS CI is calculated using a blended WAV formula that reflects the fact that the DJ–UBS CI is rolling out of expiring contracts and into replacement contracts. The WAV associated with the existing index components ("Old WAV") begins weighted at 100% as of the business day preceding the roll period and decreases by 20% on each subsequent business day until reduced to zero; it has no further effect on the level of the DJ–UBS CI by the fifth business day of such roll period. The WAV associated with the new index components ("New WAV") begins weighted at 0% as of the business day preceding the roll period and increases by 20% on each subsequent business day such that by the fifth business day of such roll period, the level of the DJ–UBS CI is determined based entirely on the New WAV.

Accordingly, during a roll period, the level of the DJ–UBS CI on any given day can be calculated as the product of the level of the DJ–UBS CI as of the previous day, multiplied by a fraction equal to: (i) Old WAV × (1–0.2n) + New WAV × (0.2n), using the Old WAV and New WAV values as of such day, divided by (ii) Old WAV × (1–0.2n) + New WAV × (0.2n), using the Old WAV and New WAV values as of the previous day. The variable "n" in this equation represents the number of business days that have elapsed for such roll period through and including the relevant date of determination. According to the Registration Statement, the DJ–UBS Roll Select CI will be calculated using the same general methodology as the DJ–UBS CI and using the same CIPs and CIMs used in connection with calculating the DJ–UBS CI. However, because the roll process for the DJ–UBS Roll Select CI is different from that of the DJ–UBS CI, its constituent futures contracts may differ from those included in the DJ–UBS CI. This difference is expected to cause the dollar-value weights and the weighted average value of the futures contracts included in each index to differ over time, and, as a result, cause the performance of the two indices to diverge.

The Index combines the returns of the DJ–UBS Roll Select CI with the returns of the most recent weekly auction high rate for three-month U.S. Treasury bills, as reported on the Web site *http://publicdebt.treas.gov/AI/OFBills* under the column headed "Discount Rate %" published by the Bureau of the Public Debt of the U.S. Treasury, or any successor source. The level of the Index, which was set at a hypothetical level of 100 as of December 31, 1990, can be calculated on any given day as the product of the level of the Index as of the previous day, multiplied by the sum of (i) 1.00 plus (ii) the positive or negative percentage return on the DJ–UBS Roll Select CI on such day plus (iii) the daily return based on the auction high rate for three-month U.S. Treasury bills described above.

Additional information regarding the composition of the Index, DJ–UBS Roll Select CI, DJ–UBS CI and their index methodologies is included in the Registration Statement and at the Index Co-Sponsors' Web site, *www.djindexes.com*.[17]

A more detailed description of the Shares, the Trust, the Index, and the Index Futures, as well as of the investment strategies and risks, creation and redemption procedures, and fees, among other things, is included in the Notice and the Registration Statement, as applicable.[18]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with the requirements of Section 6 of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is

[17] *See supra* note 6.

[18] *See supra* notes 4 and 6.

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Trust and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The intraday, closing prices, and settlement prices of the Index Futures held by the Trust and the futures contracts included in the Index, DJ–UBS Roll Select CI, and DJ–UBS CI are or will be readily available from the Web sites of the relevant futures exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant futures exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the Index Futures and for the underlying futures contracts in the Index, DJ–UBS Roll Select CI, and DJ–UBS CI are also available on such Web sites, as well as other financial informational sources. Information regarding the Collateral Assets will be available from the applicable exchanges and market data vendors. Further, the Trust will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the composite value of the total portfolio; the name, quantity, price, and market value of each Index Future and Collateral Asset, and the characteristics of such Index Futures and Collateral Assets; and the amount of cash held in the Trust's portfolio. This Web site disclosure of the portfolio composition of the Trust will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The intra-day indicative value (''IIV'')[23] per Share of the Trust will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (from 9:30 a.m. E.T. to 4:00 p.m. E.T.).[24] In addition, the Index Co-Sponsors will calculate and publish the value of the Index, the DJ–UBS Roll Select CI, and DJ–UBS CI continuously on each business day, with such values updated at least every 15 seconds during the Core Trading Session and disseminated by S&P Dow Jones Indices to market data vendors. The contents and percentage weighting of the Index, the DJ–UBS Roll Select CI, and DJ–UBS CI, will be available at the Index Co-Sponsors' Web site, *www.djindexes.com*, and distributed to third-party data providers. The Trustee will determine the net asset value per Share (''NAV'') as of 4:00 p.m. E.T. on each business day on which the Exchange is open for regular trading or as soon as practicable after that time.[25] The NAV will be disseminated to all market participants at the same time. The Exchange will make available on its Web site daily trading volume of the Shares and the closing prices of the Shares.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV, the Index value, or the value of the Index Futures occurs. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may halt trading in the Shares if trading is not occurring in the Index Futures, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[26] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[23] The IIV will be based on the prior day's final NAV per Share, adjusted every 15 seconds during the Core Trading Session to reflect the continuous price changes of the Trust's Index Futures and other holdings. In addition, although not likely, circumstances may arise in which the NYSE Arca Core Trading Session is in progress, but trading in Index Futures is not occurring. Such circumstances may result from reasons including, but not limited to, the applicable Futures Exchange having a separate holiday schedule than the NYSE Arca or closing prior to the close of the NYSE Arca, price fluctuation limits being reached in an Index Future, or the applicable Futures Exchange imposing any other suspension or limitation on trading in an Index Future. In such instances, the value of the applicable Index Futures held by the Trust would be static or priced by the Trust at the applicable early cut-off time of the Futures Exchange trading the applicable Index Future. Moreover, any cash held by the Trust for collateralization purposes will be invested in Collateral Assets that do not have market exposure, such that their value would not change throughout the trading day. As such, during such periods, the disseminated IIV for the Trust will be static.

[24] According to the Exchange, several major market data vendors display and/or make widely available IIVs published on CTA or other data feeds.

[25] The Trustee will value the Trust's long positions in Index Futures on the basis of that day's settlement prices for the Index Futures held by the Trust, as announced by the applicable Futures Exchange. The value of the Trust's positions in any particular Index Future will equal the product of (a) the number of such Index Futures of such expiration owned by the Trust, (b) the settlement price of such Index Futures on the date of calculation and (c) the multiplier of such Index Futures. If there is no announced settlement price for a particular Index Future contract on a business day, the Trustee will use the most recently announced settlement price unless the Trustee, in consultation with the Sponsor, determines that such price is inappropriate as a basis for valuation. The daily settlement prices for the Index Futures initially held by the Trust will be established by the CME shortly after the close of trading for such Index Futures, which is generally 2:40 p.m. E.T. The Trustee will value all other holdings of the Trust at (a) current market value, if quotations for such property are readily available, or (b) fair value, as reasonably determined by the Trustee, if the current market value cannot be determined. Once the value of the Index Futures and interest earned on the Trust's Collateral Assets has been determined, the Trustee will subtract all accrued expenses and liabilities of the Trust as of the time of calculation in order to calculate the net asset value of the Trust. The Trustee will determine the NAV by dividing the net asset value of the Trust by the number of Shares outstanding at the time the calculation is made. Any changes to NAV that may result from creation and redemption activity occurring on any business day will not be reflected in NAV until the following business day.

[26] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in the Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule in NYSE Arca Equities Rule 7.12. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

employees. The Exchange states that the Sponsor will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the assets of the Trust. The Exchange states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a firewall with respect to such broker-dealer affiliate as well as procedures designed to prevent the use and dissemination of material, non-public information regarding the assets of the Trust. The Exchange states that S&P Dow Jones Indices and its subsidiary DJI Opco, LLC are not broker-dealers, and that UBS Securities is a broker-dealer and has implemented a fire wall with respect to its personnel regarding access to information concerning the composition and/or changes to the Index, DJ–UBS CI, and DJ–UBS Roll Select CI and the calculation of the values of the foregoing indexes, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Index, DJ–UBS CI, and DJ–UBS Roll Select CI. The Exchange states that the Index Co-Sponsors have implemented and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the DJ–UBS Roll Select CI, the DJ–UBS CI, and the Index. The Exchange states that the Supervisory Committee and the Advisory Committee are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Index, DJ–UBS Roll Select CI, and DJ–UBS CI. Moreover, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders [27] acting as registered Market Makers [28] in Trust Issued Receipts to facilitate surveillance. The Commission notes that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[29] will communicate as needed regarding trading in the Shares with other markets that are members of the Intermarket Surveillance Group (''ISG'') or with which the Exchange has in place a comprehensive surveillance sharing agreement.[30]

The Commission notes that, prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin.[31] Specifically, the Exchange will remind ETP Holders that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

FINRA has issued a regulatory notice providing guidance to firms about the supervision of complex products, as described in FINRA Regulatory Notice 12–03 (January 2012) (''FINRA Regulatory Notice''). While the FINRA Regulatory Notice does not provide a definition of what constitutes a ''complex product,'' it does identify characteristics that may make a product ''complex'' for purposes of determining whether the product should be subject to heightened supervisory and compliance procedures.[32] The Trust's characteristics may raise issues similar to those raised in the FINRA Regulatory Notice. Therefore, the Exchange has represented that the Information Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of the Exchange's proposal to list and trade the Shares, the Exchange has made representations, including that:

(1) The Trust will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in creation baskets and redemption baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) how information regarding the IIV is disseminated; (e) that a static IIV will be disseminated, between the close of trading on the applicable futures exchange and the close of the NYSE Arca Core Trading Session; (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or

[27] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[28] *See* NYSE Arca Equities Rule 1.1(v) (defining Market Maker).

[29] The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[30] The Exchange states that CME, CBOT, NYMEX, and ICE Futures U.S. are members of ISG, and that the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX. In addition, the Exchange states that it has entered into a comprehensive surveillance sharing agreement with the LME that applies with respect to trading in futures contracts currently included in the DJ–UBS CI and DJ–UBS Roll Select CI.

[31] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

[32] *See* FINRA Regulatory Notice, at 3–4.

concurrently with the confirmation of a transaction; and (g) trading information. The Information Bulletin will also advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in the Shares, and will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

(5) With respect to application of Rule 10A–3 under the Act,[33] the Trust relies on the exception contained in Rule 10A–3(c)(7).[34]

(6) The Sponsor represents that the Trust will invest in Index Futures and Collateral Assets in a manner consistent with the Trust's investment objective and not to achieve additional leverage.

(7) With respect to Index Futures traded on exchanges, not more than 10% of the weight of such Index Futures in the aggregate shall consist of futures contracts whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement, provided that, so long as the Exchange may obtain market surveillance information with respect to transactions occurring on the COMEX pursuant to the ISG memberships of CME and NYMEX, futures contracts whose principal trading market is COMEX shall not be subject to the prohibition in (a) above.

(8) A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Trust, including those set forth above and in the Notice.[35]

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[36] and the rules and regulations thereunder applicable to a national securities exchange.

[33] 17 CFR 240.10A–3.

[34] 17 CFR 240.10A–3(c)(7).

[35] The Commission notes that it does not regulate the market for futures in which the Trust plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[36] 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NYSEArca–2013–48), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16377 Filed 7–8–13; 8:45 am]

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[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69915; File No. SR–NYSEArca–2013–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the PowerShares China A-Share Portfolio Under NYSE Arca Equities Rule 8.600

July 2, 2013.

I. Introduction

On May 21, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the PowerShares China A-Share Portfolio (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on May 30, 2013.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by PowerShares Actively Managed Exchange-Traded Fund Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund will be Invesco PowerShares Capital Management LLC (''Adviser''). Invesco Distributors, Inc. (''Distributor'') will serve as the distributor of the Fund Shares. The Bank of New York Mellon Corporation (''Administrator,'' ''Transfer Agent,'' or ''Custodian'') will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that the Adviser is not a broker-dealer but is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio.[5]

The Fund's investment objective will be to seek to provide long term capital appreciation. The Fund will seek to achieve its investment objective by using a quantitative, rules-based strategy designed to provide returns that correspond to the performance of the FTSE China A50 Index (''Benchmark''). The Benchmark is designed for investors who seek exposure to China's domestic market through ''A-Shares,'' which are securities of companies that are incorporated in mainland China and that trade on the Shanghai Stock Exchange or the Shenzhen Stock Exchange. The Benchmark is comprised of the securities of the largest 50 A-Share companies, as determined by full market capitalization, listed on the Shanghai and Shenzhen Stock Exchanges.

Under normal circumstances,[6] the Fund generally will invest at least 80%

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69634 (May 23, 2013), 78 FR 32487 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On April 20, 2012, the Trust filed with the Commission a post-effective amendment to Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–147622 and 811–22148) (''Registration Statement''). The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28171 (February 27, 2008) (File No. 812–13386) (''Exemptive Order'').

[5] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[6] The term ''under normal circumstances'' includes, but is not limited to, the absence of: extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-

Continued

of its net assets in a combination of investments whose collective performance is designed to correspond to the performance of the Benchmark. These investments will be: (i) Futures contracts on the Benchmark; (ii) exchange-traded funds (''ETFs'') that provide exposure to the China A-Shares market (''Underlying ETFs'');[7] and (iii) A-Shares included in the Benchmark, to the extent permissible under Chinese law. As described below, the Fund expects to invest its remaining assets in U.S. government securities, money market instruments (including repurchase agreements), cash, and cash equivalent securities (*i.e.,* corporate commercial paper) to collateralize investments in futures contracts or for other purposes. Although the Fund will seek to provide returns that generally correspond to the performance of the Benchmark, the Fund will be actively managed by the Adviser and will not be designed to track the performance of any index.

''A-Shares'' are shares of stock that are issued by companies incorporated in mainland China and that are traded in Renminbi on the Shanghai Stock Exchange or the Shenzhen Stock Exchange. Due to strict controls imposed by the Chinese government, the Fund currently cannot invest directly in A-Shares, which are available only to domestic Chinese investors and a limited pool of foreign investors, including foreign investors who have been approved as a Qualified Foreign Institutional Investor (''QFII'') by the China Securities Regulatory Commission and have obtained a QFII license. After obtaining a QFII license, a QFII applies to China's State Administration of Foreign Exchange for a specific aggregate dollar amount investment quota of A-Shares (''A-Share Quota'') in which the QFII can invest. In order for the Fund to invest directly in A-Shares, the Adviser would need to apply for a QFII license and obtain an A-Share Quota.

If the Adviser obtains a QFII license, the Fund may invest directly in A-Shares through the QFII license. There are no assurances that such a QFII license would be granted, or that such a license, if granted, would permit the Fund to purchase A-Shares in an amount necessary to provide the Fund with sufficient A-Shares exposure.

Because it currently cannot invest in A-Shares directly, the Fund will invest primarily in futures contracts on the Benchmark that provide exposure to the China A-Shares market. These futures contracts are listed on the Singapore Exchange (''SGX'').[8] By investing in futures contracts on the Benchmark, the Fund will have no direct ownership of the A-Shares of the companies included in the Benchmark, but the Fund will gain exposure to the performance of those companies.[9]

The Fund also may invest in Underlying ETFs listed on U.S. securities exchanges or on the HKSE that provide exposure to China A-Shares.

The Fund will invest in futures contracts on the Benchmark—specifically, in SGX-listed futures contracts—as a significant part of its investment strategy. Generally, futures contracts are a type of derivative whose value depends upon, or is derived from, the value of an underlying asset, reference rate, or index. The Fund's use of futures contracts will be underpinned by investments in short-term, high quality U.S. Treasury Securities, money market instruments, cash, and cash equivalent securities, as described below.[10] The Trust's Exemptive Order places no limit on the amount of derivatives in which the Fund can invest. The futures contracts will be used to simulate full investment in China A-Share securities. To the extent the Fund uses futures, it will do so only in accordance with Rule 4.5 of the Commodity Exchange Act (''CEA'').[11]

The Subsidiary

The Fund may seek to gain exposure to the A-Shares market through investments in a subsidiary organized in the Cayman Islands (''Subsidiary'') that in turn would make investments in futures contracts that provide exposure to China A-Shares. If utilized, the Subsidiary would be wholly-owned and controlled by the Fund, and its investments would be consolidated into the Fund's financial statements. Should the Fund invest in the Subsidiary, that investment may not exceed 25% of the Fund's total assets at each quarter end of the Fund's fiscal year. Further, should the Fund invest in the Subsidiary, it would be expected to provide the Fund with exposure to A-Share returns within the limits of the federal tax requirements applicable to investment companies, such as the Fund.

The Subsidiary would be able to invest in futures contracts that would provide exposure to A-Shares, as well in other investments that would serve as margin or collateral or otherwise support the Subsidiary's futures positions. The Subsidiary, accordingly, would be subject to the same general investment policies and restrictions as the Fund, except that unlike the Fund, which must invest in futures contracts in compliance with the requirements of Subchapter M of the Internal Revenue Code,[12] federal securities laws, and the CEA, the Subsidiary may invest without limitation in futures. References to the

made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[7] For purposes of this proposed rule change, Underlying ETFs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)) and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Underlying ETFs all will be listed and traded in the U.S. on registered exchanges or the Stock Exchange of Hong Kong Limited (''HKSE''), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited. Hong Kong Exchanges and Clearing Limited is a member of the Intermarket Surveillance Group (''ISG'').

[8] SGX is a member of the ISG.

[9] Futures contracts on the Benchmark were first approved for investment by U.S. investors by the Commodity Futures Trading Commission (''CFTC'') in January 2012. Futures contracts on the Benchmark have expirations ranging from the two nearest consecutive months, and March, June, September, and December on a 1-year cycle, and provide investors the ability to invest based on their view of the future direction or movement of the Benchmark. FTSE International Limited (''FTSE'') reviews constituents in the Benchmark quarterly using data from the close of business on the Monday following the third Friday in February, May, August, and November. FTSE will implement any constituent changes on the next trading day following the third Friday in March, June, September, and December.

[10] With respect to certain kinds of futures entered into by the Fund that involve obligations to make future payments to third parties, under applicable federal securities laws, rules, and interpretations thereof, the Fund must ''set aside'' (referred to sometimes as ''asset segregation'') liquid assets, or engage in other measures to ''cover'' open positions with respect to such transactions. With respect to futures contracts that are not contractually required to ''cash-settle,'' the Fund must cover its open positions by setting aside liquid assets equal to the contracts' full, notional value. With respect to futures contracts that are contractually required to ''cash-settle,'' the Fund may set aside liquid assets in an amount equal to the Fund's daily marked-to-market (net) obligation rather than the notional value of the futures contract.

[11] 7 U.S.C. 1. To the extent the Fund uses futures contracts, it will do so only in accordance with Rule 4.5 of the CEA. The Trust has filed a notice of eligibility for exclusion from the definition of the term ''commodity pool operator'' or ''CPO'' in accordance with Rule 4.5 of the CEA. Under amendments to Rule 4.5 adopted in February 2012, an investment adviser of a registered investment company may claim exclusion from registration as a CPO only if the registered investment company it advises uses futures contracts solely for ''bona fide hedging purposes'' or limits its use of futures contracts for non-bona fide hedging purposes in specified ways. Because the Fund does not expect to use futures contracts solely for ''bona fide hedging purposes,'' the Fund will be subject to rules that will require it to limit its use of positions in futures contracts in accordance with the requirements of amended Rule 4.5 unless the Adviser otherwise complies with CPO regulation. To the extent that the Fund is unable to rely on Rule 4.5, the Fund will be operated in accordance with CFTC rules; the Adviser already is registered as a CPO.

[12] 26 U.S.C. 851.

investment strategies and risks of the Fund include the investment strategies and risks of the Subsidiary.

The Fund may utilize the Subsidiary, but is not required to do so. If it is utilized, the Subsidiary will not be registered under the 1940 Act. As an investor in the Subsidiary, the Fund, as the Subsidiary's sole shareholder, would not have the protections offered to investors in registered investment companies. However, because the Fund would wholly own and control the Subsidiary, and the Fund and Subsidiary would be managed by the Adviser, the Subsidiary would not take action contrary to the interests of the Fund or the Fund's shareholders. The Board of Trustees of the Trust (''Board'') has oversight responsibility for the investment activities of the Fund, including its investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. Also, in managing the Subsidiary's portfolio, the Adviser would be subject to the same investment restrictions and operational guidelines that apply to the management of the Fund. Changes in the laws of the United States, under which the Fund is organized, or of the Cayman Islands, under which the Subsidiary is organized, could result in the inability of the Fund or the Subsidiary to operate as described in the filing or in the Registration Statement and could negatively affect the Fund and its shareholders.

Other Investments

The Fund, under normal circumstances, may invest no more than 20% of its net assets in other investments such as money market instruments (including repurchase agreements, as described below), cash, and cash equivalents to provide liquidity or to collateralize its investments in futures contracts. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; [13] (ii) short-term negotiable obligations of commercial banks, fixed time deposits,[14] and bankers' acceptances [15] of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality, as the Adviser of the Fund determines; and (iv) money market mutual funds.

The Fund may invest in the securities of other investment companies (including money market funds) beyond the limits permitted under the 1940 Act, subject to certain terms and conditions set forth in a Commission exemptive order issued pursuant to Section 12(d)(1)(J) of the 1940 Act.[16]

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

Investment Restrictions

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will not use futures for speculative purposes.

The Fund may not concentrate its investments (*i.e.*, invest more than 25% of the value of its net assets) in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. Government, its agencies, or instrumentalities.

The Fund intends to qualify for, and to elect to be treated as, a separate regulated investment company under Subchapter M of the Internal Revenue Code.[17]

The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary and Underlying ETFs listed on HKSE), to the extent that the Fund may not invest directly in China A-Shares through the QFII license, as described above. The Fund will not invest in options or swaps.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[18]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system,

[13] The Fund may invest in U.S. government obligations. Obligations issued or guaranteed by the U.S. Government, its agencies, and instrumentalities include bills, notes, and bonds issued by the U.S. Treasury, as well as ''stripped'' or ''zero coupon'' U.S. Treasury obligations representing future interest or principal payments on U.S. Treasury notes or bonds.

[14] Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates.

[15] Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

[16] Investment Company Act Release No. 30238 (October 23, 2012) (File No. 812–13820).

[17] 26 U.S.C. 851.

[18] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[23] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[24] The NAV per Share of the Fund will be determined at the close of regular trading (normally 4:00 p.m. Eastern Time) every day the New York Stock Exchange is open. A basket composition file, which will include the security names and share quantities to deliver in exchange for Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the Exchange via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information on the value and the constituents of the Benchmark may be found on the Web site of FTSE, the Benchmark's provider. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the portfolio investments (*e.g.*, futures contracts and Underlying ETFs) are also readily available from the exchanges trading such securities or futures contracts, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[25] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities, futures contracts, and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[26] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[27] The Commission notes that the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange,[28] will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is affiliated with a broker-dealer, and the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[29]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[23] According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from CTA or other data feeds.

[24] On a daily basis, the Fund will disclose for each portfolio security, futures contract, and other financial instrument of the Fund and the Subsidiary the following information on the Fund's Web site: ticker symbol (if applicable); name of security, futures contract, and financial instrument; number of shares, if applicable, and dollar value of each security, futures contract, and financial instrument in the portfolio; and percentage weighting of the security, futures contract, and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[25] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[26] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[27] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[28] The Exchange states that, while FINRA surveils trading on the Exchange pursuant to a regulatory services agreement, the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[29] *See supra* note 5. An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws and that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value will be disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[30] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary and Underlying ETFs listed on HKSE), to the extent that the Fund may not invest directly in China A-Shares. To the extent that the Fund invests directly in China A-Shares, not more than 10% of the weight of the Fund's portfolio in the aggregate shall consist of such China A-Shares whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(7) The Fund will invest solely in SGX-listed futures contracts on the Benchmark. It is possible that the futures contracts on the Benchmark may become listed on other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement, at which time the Fund may invest in those futures contracts listed on such exchanges. To the extent that the Fund or the Subsidiary were to invest in futures contracts on the Benchmark that were traded on exchanges other than SGX, not more than 10% of the weight of such futures contracts held by the Fund or the Subsidiary in the aggregate would consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Fund will not invest in options or swaps. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment).

(9) Should the Fund invest in the Subsidiary, that investment may not exceed 25% of the Fund's total assets at each quarter end of the Fund's fiscal year.

(10) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.[31]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[32] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR–NYSEArca–2013–56) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Elizabeth M. Murphy,

Secretary.

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[30] 17 CFR 240.10A–3.

[31] The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions. Limits on the positions that any person may take in futures may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69913; File No. SR–FINRA–2013–027]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to Amendments to FINRA Rules 2360 and 4210 in Connection With OCC Cleared Over-the-Counter Options

July 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend: (1) FINRA Rule 2360 (Options) to treat over-the-counter (''OTC'') options cleared by The Options Clearing Corporation (''OCC'') as conventional options for purposes of the rule; and (2) FINRA Rule 4210 (Margin Requirements) to treat OTC options cleared by the OCC as listed options with respect to applicable margin requirements.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA proposes amendments to its rules on options and margin requirements to address new rules established by The Options Clearing Corporation (''OCC'') to clear and guarantee OTC options on the S&P 500 index.[3] Given the expansion of the OCC's business to include clearing and guaranteeing certain OTC options, FINRA is proposing amendments to FINRA Rule 2360 (Options) and FINRA Rule 4210 (Margin Requirements), as discussed below, to provide for the proper application of existing rules to OTC options cleared by the OCC.

Amendments to Rule 2360

FINRA Rule 2360 generally classifies options as either standardized or conventional. A standardized equity option is ''any equity options contract issued, or subject to issuance, by The [OCC] that is not a FLEX Equity Option.''[4] A conventional option is ''any option contract not issued, or subject to issuance, by The [OCC].''[5] Historically, all standardized options have been traded on an exchange, and all conventional options have been traded OTC. In addition, FINRA Rule 2360 recognizes FLEX Equity Options, which are options contracts ''issued, or subject to issuance, by The [OCC] whereby the parties to the transaction have the ability to negotiate the terms of the contract consistent with the rules of the exchange on which the options contract is traded.''[6] The OCC's proposal to clear and guarantee OTC options on the S&P 500 index (and thereby become the issuer of such options) raises interpretive issues under FINRA Rule 2360. For the reasons discussed more fully below, FINRA proposes to amend FINRA Rule 2360 to treat OCC cleared OTC options as conventional options for purposes of the rule.

Background

FINRA Rule 2360 was adopted to address the specific risks that pertain to trading in options and implement provisions of the federal securities laws and SEC rules. The rule includes, among other things, provisions requiring specific disclosure documents, additional diligence in approving the opening of accounts, and specific requirements for confirmations, account statements, suitability, supervision, recordkeeping and reporting. The rule also contains provisions imposing limits on the size of an options position and on the number of contracts that can be exercised during a fixed period. The rule generally treats the categories of options (*i.e.,* standardized, conventional or FLEX Equity options) the same, except in the case of position limits,[7] reporting, and the delivery of disclosure documents.

Position Limits

Position limits are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. They are designed to minimize the potential for mini-manipulation and for corners or squeezes of the underlying market.[8] In addition, position limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[9]

With respect to conventional and standardized equity options, FINRA Rule 2360(b)(3)(A) imposes a position limit on the number of options contracts in each class on the same side of the market (*i.e.,* aggregating long calls and short puts, or long puts and short calls) that can be held or written by a member, a person associated with a member, a customer or a group of customers acting in concert. In general, position limits for standardized equity options are determined according to a five-tiered system in which more actively traded stocks with larger public floats are subject to higher position limits.[10] FINRA Rule 2360 does not specifically govern how a particular equity option falls within one of the tiers. Rather, the position-limit provision provides that the position limit established by the rules of an options exchange for a particular equity option is the applicable position limit for purposes of FINRA Rule 2360.

In general, position limits for conventional equity options are the same as the limits for the applicable standardized equity options.[11] In instances where an equity security is not subject to a standardized option, the applicable position limit for the conventional option is the lowest tier (25,000 contracts) unless the security is in an index designated by FINRA that meets the volume and float criteria specified by FINRA[12] or the member can otherwise demonstrate to FINRA's Market Regulation Department that the underlying security meets the standards for a higher position limit.[13] Conventional index options are not subject to position limits[14] while standardized index options are subject to the position limit as specified on the exchange on which the option trades.[15] Position limits for FLEX Equity Options are governed by the rules of the exchange on which such options trade as specified in FINRA Rule 2360(b)(2).

The position limits for standardized equity options and conventional equity options are calculated separately.

[3] *See* Securities Exchange Act Release No. 68434 (December 14, 2012), 77 FR 75243 (December 19, 2012) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, and Notice of No Objection to Advance Notice, Modified by Amendment No. 1 Thereto, Relating to the Clearance and Settlement of Over-the-Counter Options; File No. SR–OCC–2012–14). The OCC has not yet implemented clearing of OTC options on the S&P 500 index.

[4] *See* FINRA Rule 2360(a)(31). *See also* FINRA Rule 2360(a)(32) for the definition of standardized index option.

[5] *See* FINRA Rule 2360(a)(9). *See also* FINRA Rule 2360(a)(8) for the definition of conventional index option.

[6] *See* FINRA Rule 2360(a)(16).

[7] FINRA Rule 2360(b)(4) specifies exercise limits through incorporating by reference options position limits under the rule; the provision does not further differentiate by category of option. Accordingly, the treatment of an option with respect to its position limit is the same with respect to exercise limits. For example, if an option (regardless of category—standardized, conventional or FLEX Equity Option) is subject to a 25,000 contract position limit, then a member may not exercise within five consecutive business days more than 25,000 contracts.

[8] *See* Securities Exchange Act Release No. 40087 (June 12, 1998), 63 FR 33746, 33748 (June 19, 1998) (Order Granting Approval and Notice of Filing and Order Granting Accelerated Approval to Amendment No.1 and Amendment No. 2 to Proposed Rule Change Relating to an Amendment to the NASD's Options Position Limit Rule File No. SR–NASD–98–23).

Note 16 defined mini manipulation as an attempt to influence, over a relatively small range, the price movement in a stock to benefit a previously established derivatives position.

[9] *See* note 8.

[10] However, the position limits for standardized and conventional options overlying specified exchange-traded funds are established in FINRA Rule 2360, Supplemental Material .03.

[11] *See* FINRA Rule 2360(b)(3)(A)(vii) for the available equity option hedge exemptions. For specified hedge strategies (for example, conversions and reverse conversions), standardized options are exempt from position limits. However, if one of the options components in the hedge strategy consists of a conventional option, the position limit is five times that of the established position limit. For the same specified hedge strategies (for example, conversions and reverse conversions), conventional options are subject to a position limit five times that of the established limits.

[12] *See e.g., Notice to Members* 07–03 (January 2007), which provides that the FTSE All-World Index Series is a designated index for this purpose and *Regulatory Notice* 13–20 (May 2013), which provides that, effective June 27, 2013, the NASDAQ Global Large Mid Cap Index is an additional designated index for this purpose.

[13] *See* FINRA Rule 2360(b)(3)(A)(viii)b.

[14] *See Notice to Members* 94–46 (June 1994).

[15] *See* FINRA Rule 2360(b)(3)(B).

Standardized equity options contracts of the put class and call class on the same side of the market overlying the same security are not aggregated [16] with the conventional equity options contracts or FLEX Equity Options contracts overlying the same security on the same side of the market.[17]

In considering the proper categorization for OCC cleared OTC options for position limit purposes, FINRA notes that it previously determined that FLEX Equity Options were economically equivalent to conventional options because they are non-uniform and individually negotiated.[18] FINRA believes that OCC cleared OTC options are similar to FLEX Equity Options in that they are cleared by the OCC, are non-uniform and give investors the ability to designate certain terms of the option. Unlike FLEX Equity Options, OCC cleared OTC options are not traded on an exchange, which FINRA believes makes such options even more analogous to conventional options (also not traded on an exchange). FINRA also notes, as discussed below, that the counterparties to OCC cleared OTC options must be ''eligible contract participants'' as defined in the Act and thus are more sophisticated investors likely to be aware of the risk of options trading. FINRA believes it is appropriate to treat OCC cleared OTC options as conventional options for position limit purposes to ensure that any OCC cleared OTC option would be subject to appropriate position limits, consistent with other OTC options. At this time, the OCC has only been approved by the SEC to clear OTC options on the S&P 500 index. Options on S&P 500 index, whether standardized or conventional are not subject to a position limit.[19] The proposed rule change is intended to cover any OCC cleared OTC option.[20] Accordingly, an OCC cleared OTC option on an equity security would be subject to the position limit of the greater of: (1) 25,000 contracts or (2) any standardized equity options position limit for which the underlying security qualifies,[21] and would not be aggregated with any standardized option counterpart. An OCC cleared OTC option on an index would not be subject to position limits, consistent with conventional index options.

Reporting

FINRA Rule 2360(b)(5) outlines members' options position reporting requirements. FINRA's Market Regulation staff uses the options position information reported to FINRA as part of its ongoing market surveillance operations and this information supports FINRA's monitoring efforts for any market manipulation or disruption related to the accumulation or disposition of large options positions. It also enables FINRA to identify large positions held or written by a member that could pose a financial risk to the member or its clearing firm. Currently, firms satisfy the reporting obligation by reporting positions to the Large Options Position Reporting (''LOPR'') system that is operated by the OCC. This system allows firms to submit their LOPR files to OCC to maintain compliance with FINRA Rule 2360(b)(5) and the corresponding exchanges' rules. FINRA receives the LOPR reports on a daily basis.

FINRA Rule 2360(b)(5)(A)(i)a. requires that members report to FINRA with respect to each account that has established an aggregate position of 200 or more conventional option contacts (whether long or short) of the put class and the call class on the same side of the market covering the same underlying security or index, provided, that such reporting with respect to positions in conventional index options shall apply only to an option that is based on an index that underlies, or is substantially similar to an index that underlies, a standardized index option.[22] In addition, FINRA Rule 2360(b)(5)(A)(i)b. has a similar reporting requirement with respect to standardized options, but the requirement to report standardized options positions to FINRA only applies to members that are not members of the options exchange on which the standardized options are listed and traded. Because there is not a comparable exchange regulatory regime that applies to members trading OCC cleared OTC options as exists with standardized options, FINRA believes that it is appropriate and straightforward to categorize these options as conventional options such that all members must report positions of 200 or more contracts on the same side of the market covering the same underlying security or index to FINRA as is the case for all conventional options.

Disclosure Documents

FINRA Rule 2360(b)(11)(A)(i) requires members to deliver to customers the Characteristics and Risks of Standardized Options, which is also known as the Options Disclosure Document (''ODD''), if the customer engages in transactions in options issued by the OCC (as noted above such options have historically been traded on an exchange). This provision implements Rule 9b–1 under the Act, which applies only to standardized options and further defines standardized options to include options that trade on an exchange.[23] Accordingly, standardized options and FLEX Equity Options are described in the ODD and if a customer engages in transactions in such options, a member is subject to the requirement to deliver the ODD. In contrast, the ODD does not address conventional options (historically OTC options), and members are not required to deliver the

[16] *See* FINRA Rule 2360(b)(3)(A)(viii)a. FINRA Rule 2360 does not address aggregation of index options because, as noted above, conventional index options are not subject to position limits.

[17] The SEC approved disaggregating conventional equity options from standardized equity options and FLEX Equity Options to allow market participants in the OTC options market to compete effectively with the participants using standardized options or with entities not subject to position limit rules. *See* note 8 at 33748.

[18] *See* note 8 at 33747.

[19] *See* CBOE Rule 24.4. *See also* Securities Exchange Act Release No. 40969 (January 22, 1999), 64 FR 4911 (February 1, 1999) (Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2 and 3 Relating to An Elimination of Position and Exercise Limits for Certain Broad Based Index Options File No. SR–CBOE–98–23) and Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Permanent Approval of the Pilot Program To Eliminate Position and Exercise Limits for OEX, SPX, and DJX Index Options and Flex Options on These Indexes File No. SR–CBOE–2001–22).

[20] In this regard, FINRA notes that the definition of ''options contract'' in FINRA Rule 2360(a)(22) provides that ''[i]f a stock option is granted covering some other number of shares, then for purposes of paragraphs (b)(3) through (12), it shall be deemed to constitute as many option contracts as that other number of shares divided by 100 (*e.g.,* an option to buy or sell five hundred shares of common stock shall be considered as five option contracts).''

[21] As noted above, if the equity security is not subject to a standardized option, the applicable position limit is 25,000 contracts unless the security is in an index designated by FINRA that meets the volume and float criteria specified by FINRA or the member can demonstrate to FINRA that the underlying security meets the standards for a higher position limit.

[22] FINRA's reporting requirements do not currently apply to FLEX Equity Options; however, the LOPR reports contain members' FLEX Equity Options position reports.

[23] Rule 9b–1(a)(4) under the Act defines a ''standardized option'' as ''options contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.'' The SEC has not designated OCC cleared OTC options as standardized options under Rule 9b–1 under the Act.

ODD with respect to transactions in such options. FINRA believes it is consistent to treat transactions in OCC cleared OTC options, which are similarly not addressed in the ODD, the same as transactions in conventional options, and not subject members to the requirement to deliver the ODD for such transactions. FINRA also believes that the ODD delivery requirement is not necessary because the OCC requires that the counterparties to OCC cleared OTC options must be ''eligible contract participants'' as defined in the Act and thus are more sophisticated investors likely to be aware of the risks of OTC options.[24]

In addition, FINRA Rule 2360(b)(11)(A)(ii) requires members to deliver to customers that are approved to write uncovered short option transactions the Special Statement for Uncovered Option Writers (the ''Special Written Statement'') that describes the risk related to writing uncovered short options. Similar to the ODD delivery requirements, the requirement to deliver the Special Written Statement applies with respect to transactions in options issued by the OCC (listed options). Accordingly, FINRA believes it is consistent to treat transactions in OCC cleared OTC options with transactions in conventional options, and not require members to deliver the Special Written Statement for such transactions. FINRA believes that the Special Written Statement delivery requirement is unnecessary in light of the OCC requirement that the counterparties to OCC cleared OTC options must be ''eligible contract participants'' as defined in the Act and thus are more sophisticated investors likely to be aware of the risks of writing uncovered short options.[25]

Proposal

As noted above, FINRA Rule 2360 generally treats the categories of options the same, except in the case of position limits, reporting, and the delivery of disclosure documents. FINRA believes that in these enumerated areas it is appropriate to treat OCC cleared OTC options as conventional options for the reasons discussed above. FINRA believes that OCC cleared OTC options should otherwise be subject to the same sales practice and other requirements that apply to transactions in any category of options (including, among other requirements, suitability, approval of account opening and supervision).

FINRA proposes a series of definition changes to explain this treatment. Specifically, FINRA proposes to define an ''OCC Cleared OTC Option'' as ''any put, call, straddle or other option or privilege that meets the definition of an 'option' under Rule 2360(a)(21) and is cleared by The Options Clearing Corporation, is entered into other than on or through the facilities of a national securities exchange, and is entered into exclusively by persons who are 'eligible contract participants' as defined in the Exchange Act.''[26] In addition, FINRA proposes to clarify that the definitions of ''conventional option'' and ''conventional index option'' would include ''OCC Cleared OTC Options'' in amended FINRA Rule 2360(a)(8) and (a)(9), respectively. FINRA would further amend the definitions of ''standardized equity option,'' ''standardized index option'' and ''FLEX Equity Option'' in FINRA re-numbered Rule 2360(a)(32), (a)(33) and (a)(16), respectively, to specifically exclude OCC Cleared OTC Options. Finally, FINRA proposes minor amendments to the definition of ''expiration date'' in Rule 2360(a)(14) to reflect that the expiration date of OCC Cleared OTC Options may be customized by the parties to the trade in accordance with the rules of the OCC, and not fixed by the OCC's rules.[27]

FINRA also proposes minor amendments to paragraphs (b)(11)(A)(i) and (ii) and paragraph (b)(16) of FINRA Rule 2360 to provide, as noted above, that the ODD and Special Written Statement are not required to be delivered by members effecting a transaction in OCC Cleared OTC Options. As noted above, the OCC Cleared OTC Options would otherwise be subject to the same sales practice and other requirements that apply to transactions in conventional options (including, among other requirements, suitability, approval of account opening and supervision). In addition, the proposed rule change would make technical, non-substantive changes to FINRA Rule 2360(b)(11)(A) to reflect FINRA Manual style convention.

Amendments to FINRA Rule 4210

For purposes of margin treatment, FINRA proposes to treat OCC Cleared OTC Options as it treats other cleared and guaranteed options, which to date have always been listed options,[28] in light of the clearing and guaranteeing functions performed by the OCC. FINRA Rule 4210(f)(2) and FINRA Rule 4210(g) sets forth the strategy-based margin and portfolio margin requirements for transactions in options. In general, the margin requirement for options listed on an exchange (and cleared and guaranteed by the OCC) is lower than the margin requirement for OTC options[29] (not cleared or guaranteed by the OCC). The reasons underlying the more favorable margin treatment for listed (and OCC cleared and guaranteed) options apply with equal force to OCC Cleared OTC Options. The clearing and guaranteeing functions performed by the OCC reduce the counterparty credit risk of the otherwise OTC nature of these options, likening them to the same level of risk as listed options.

The proposed beneficial margin treatment for OCC cleared OTC option may only be applied by a member after the OTC option has been accepted for clearing and guaranteed by the OCC. FINRA understands that the OCC's proposal provides that the trade data for an OTC option trade would be submitted to an approved OCC vendor that would process the trade and submit it as a confirmed trade to OCC for clearing. The OCC would then confirm if the OTC option trade meets OCC's validation requirements and will notify the vendor, which will notify the submitting parties.[30] The OCC proposal also provides that parties may submit trades for clearance that were entered into bilaterally at any time in the past, provided that the eligibility for clearance will be determined as of the date the trade is submitted to OCC for clearance.[31] Upon confirmation from

[24] *See* note 3 and proposed Section 6(f), Article XVII of the OCC By-Laws.

[25] *See* note 3 and proposed Section 6(f), Article XVII of the OCC By-Laws.

[26] The definition reflects the OCC proposed rule requirement that counterparties to OCC Cleared OTC Options must be ''eligible contract participants'' as defined in the Act. *See* note 3 and proposed Section 6(f), Article XVII of the OCC By-Laws.

[27] FINRA notes that the expiration date of FLEX Equity Options also may be customized and accordingly the proposed rule change also clarifies this definition for purposes of FLEX Equity Options.

[28] *See* FINRA Rule 4210(f)(2)(A)(xxiv) and FINRA Rule 4210(g)(2)(A) for the definition of ''listed'' and ''listed option,'' respectively.

[29] *See* FINRA Rule 4210(f)(2)(A)(xxvii) for the definition of ''OTC'' and FINRA Rule 4210(g)(2)(H) for ''unlisted derivative.''

[30] FINRA further understands that, if the option trade is rejected for clearing, the option would remain subject to any applicable agreement between the original parties to the transaction, which may provide that (1) such rejected transaction shall remain a bilateral transaction between the parties subject to such agreement or other documentation as the parties have entered into for that purpose or (2) may be terminated. *See* note 3 and proposed interpretation .02 of Section 6, Article VII of the OCC By-Laws. If the OTC option was rejected for clearing, but the option contract was not terminated by the parties and remained an OTC option contract, the member would be required to apply the applicable OTC option margin requirements, not the listed option margin requirements.

[31] *See* note 3. OCC's license agreement with S&P imposes certain minimum requirements relating to time remaining to expiration of the OTC option, as

the OCC vendor that the OTC option has been accepted for clearance and guaranteed by the OCC, the member may apply the applicable listed option margin requirements.

Accordingly, FINRA proposes to amend the definition of ''listed'' in FINRA Rule 4210(f)(2)(A)(xxiv) to provide that a listed option means an option that is traded on a national securities exchange or issued and guaranteed by a registered clearing agency and shall include an OCC Cleared OTC Option as defined in FINRA Rule 2360. FINRA proposes to amend the definition of ''OTC'' in FINRA Rule 4210(f)(2)(A)(xxvii) to provide that OTC options shall not include an OCC Cleared OTC Option as defined in FINRA Rule 2360. FINRA proposes conforming amendments to FINRA Rule 4210(g)(2)(A) regarding portfolio margin requirements to provide that a ''listed option'' means an option that is traded on a national securities exchange or issued and guaranteed by a registered clearing agency and shall include an OCC Cleared OTC Option as defined in FINRA Rule 2360. Finally, FINRA Rule 4210(g)(2)(H) would be amended to clarify that an ''unlisted derivative'' would include among other things, an index-based option that is neither traded on a national securities exchange nor issued or guaranteed by a registered clearing agency and shall not include an OCC Cleared OTC Option as defined in FINRA Rule 2360.

FINRA requests comment on the proposed rule change. Among other matters that commenters may wish to address, FINRA is particularly interested in the following question: Do commenters believe that different or amended margin provisions, including higher requirements, would be superior to those set forth in the proposed rule change?

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice,* which will be no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[32] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change fosters innovation in the market by accommodating a new product in OCC Cleared OTC Options while balancing the need to protect investors and the public interest by regulating such product in a rational regulatory framework. FINRA believes that treating OCC Cleared OTC Options as conventional options ensures that OCC Cleared OTC Options are subject to position and exercise limits and reporting consistent with the treatment of OTC options generally. FINRA believes requiring OCC Cleared OTC Options to be subject to position limits is consistent with Act and the purpose of position limits generally: To prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position; to minimize the potential for mini-manipulation and for corners or squeezes of the underlying market; and to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. FINRA believes that it is consistent to treat transactions in OCC cleared OTC options as conventional options and not require delivery of the ODD or the Special Written Statement because the options are not addressed in the ODD, and because counterparties to such OCC cleared OTC options are ''eligible contract participants'' as defined in the Act and are more sophisticated investors likely to be aware of the risks of options trading. OCC Cleared OTC options will also be subject to the same options sales practice and other requirements (such as account opening procedures and standards for supervision and suitability) as are all categories of options. For purposes of margin treatment, FINRA believes that the clearing and guaranteeing functions performed by the OCC support a determination to treat OCC cleared OTC options as the margin rule treats other cleared and guaranteed options, which to date have always been listed options. The clearing and guaranteeing functions performed by the OCC greatly reduce the counterparty credit risk of the otherwise OTC nature of these options, likening them to the same level of risk as listed options.

In addition, FINRA believes the proposed rule change facilitates OCC's ability to clear OTC options subject to the same basic rules, procedures and risk management practices that have been used by OCC in clearing transactions in listed options. The clearance and settlement of OTC options by the OCC is consistent with OCC's obligations with respect to the prompt and accurate clearance and settlement of securities transactions and the protection of securities investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA does not anticipate that the proposed rule change would impose any additional costs on members that trade OCC Cleared OTC Options. FINRA believes that the proposed rule change fosters innovation in the market by accommodating a new product in OCC Cleared OTC Options while balancing the need to protect investors and the public interest by regulating such product in a rational regulatory framework. FINRA believes that treating OCC Cleared OTC Options as conventional options ensures clarity and consistency in that OCC Cleared OTC Options are subject to position and exercise limits and reporting as well as other sales practice and other requirements on par with the treatment of OTC options generally. FINRA believes that the clearing and guaranteeing function provided by OCC benefits members by reducing the counterparty credit risk of the otherwise OTC nature of these options and the proposed rule change reflects such reduction in risk by permitting members to margin these options consistent with the margin requirements for listed options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

detailed in proposed Interpretation and Policy .01 of Section 6, Article XVII of the OCC By-Laws. *See also* proposed Section 5, Article VI of the OCC By-Laws specifying that the OCC will not accept certain trades for clearance that were entered into bilaterally at any time in the past if such a trade is received after 4:00 p.m. Central Time on the business day that is four business days prior to the expiration date of such option.

[32] 15 U.S.C. 78*o*–3(b)(6).

(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–FINRA–2013–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–027. 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 FINRA. 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–FINRA–2013–027, and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16379 Filed 7–8–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69926; File No. SR–NYSEArca-2013–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Modify the Credits for Certain Mid-Point Passive Liquidity Orders, Add Two New Tiers Applicable to Transactions in Tape B Securities, Add a Pricing Tier Applicable to Orders of ETP Holders for Tape A and Tape C Securities That Are Eligible To Be Routed Away From the Exchange, and Modify the Equity Threshold Applicable to the Cross-Asset Tier

July 3, 2013.

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 June 20, 2013, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Fee Schedule'') to (i) modify the credits for certain Mid-Point Passive Liquidity (''MPL'') Orders, (ii) add two new tiers applicable to transactions in Tape B Securities, (iii) add a pricing tier applicable to orders of ETP Holders for Tape A and Tape C Securities that are eligible to be routed away from the Exchange, and (iv) modify the equity threshold applicable to the Cross-Asset Tier. The Exchange proposes to implement the fee changes on July 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) modify the credits for certain MPL Orders, (ii) add two new tiers applicable to transactions in Tape B Securities, (iii) add a pricing tier applicable to orders of ETP Holders for Tape A and Tape C Securities that are eligible to be routed away from the Exchange, and (iv) modify the equity threshold applicable to the Cross-Asset Tier.[4] The Exchange proposes to implement the fee changes on July 1, 2013.

MPL Orders

The Exchange proposes to add an ''MPL Order Tier'' applicable to MPL Orders that provide liquidity on the Exchange and modify an existing credit for such orders.[5]

Currently, under various tiers and Basic Rates, MPL Orders that provide liquidity on the Exchange receive a credit of $0.0015 per share for Tape A and Tape B Securities and a credit of $0.0020 per share for Tape C Securities. The Exchange proposes to add a new tier under which MPL Orders that provide liquidity on the Exchange would receive a credit of $0.0020 per

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[33] 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] The proposed changes would apply to securities with a per share price of $1.00 or above.

[5] A Passive Liquidity (''PL'') Order is an order to buy or sell a stated amount of a security at a specified, undisplayed price. *See* Rule 7.31(h)(4). An MPL Order is a PL Order executable only at the midpoint of the Protected Best Bid and Offer. *See* Rule 7.31(h)(5).

share for Tape A, B and C Securities for ETP Holders, including Market Makers, that execute an average daily volume (''ADV'') of MPL Orders during the month that is 0.0775% or more of U.S. consolidated ADV (''CADV'').[6] As is currently the case, for all other fees and credits, Tiered or Basic Rates would apply based on a firm's qualifying levels.[7] In this regard, for ETP Holders that do not satisfy the proposed MPL Order Tier threshold, an MPL Order that provides liquidity on the Exchange would receive the existing credit of $0.0015 per share for Tape A and Tape B Securities. The Exchange also proposes that under the existing tiers and Basic Rates that provide credits for MPL Orders, the $0.0015 per share credit that applies to Tape A and B Securities would also apply to Tape C Securities, instead of the current $0.0020 per share rate.

For example, if U.S. CADV during the month is 6.5 billion shares across Tapes A, B and C, an ETP Holder would need to execute an ADV of at least 5,037,500 shares of MPL Orders during the month in order to qualify for the applicable MPL Order Tier credit of $0.0020 per share, in which case the ETP Holder's executions of MPL Orders that provide liquidity on the Exchange would receive a credit of $0.0020 per share for Tape A, B and C Securities. Under this example, an ETP Holder that executes an ADV less than 5,037,500 shares of MPL Orders during the month would not qualify for the MPL Order Tier and, therefore, the ETP Holder's executions of MPL Orders that provide liquidity on the Exchange would receive a credit of $0.0015 per share for Tape A, B and C Securities.

Tape B Tiers

The Exchange proposes to add two new tiers applicable to transactions in Tape B Securities that provide liquidity on the Exchange.[8]

First, the Exchange proposes to add a new ''Tape B Adding Tier'' applicable to ETP Holders, including Market Makers, that provide liquidity of 0.675% or more of U.S. Tape B CADV for the billing month. A qualifying ETP Holder would receive a credit of $0.0002 per share for orders that provide liquidity on the Exchange in Tape B Securities, which would be in addition to the ETP Holder's Tiered or Basic Rate credit(s). For example, if U.S. Tape B CADV during the month is 1 billion shares, an ETP Holder would need to execute an ADV of at least 6.75 million shares of Tape B Securities during the month in order to qualify for the applicable credit of $0.0002 per share.

Second, the Exchange proposes to add a new ''Tape B Step Up Tier'' applicable to ETP Holders, including Market Makers, that, on a daily basis, measured monthly, directly execute providing volume in Tape B Securities during the billing month (''Tape B Adding ADV'') that is equal to at least the ETP Holder's May 2013 Tape B Adding ADV (''Tape B Baseline ADV'') plus 0.275% of U.S. Tape B CADV for the billing month. A qualifying ETP Holder would receive a credit of $0.0004 per share for orders that provide liquidity on the Exchange in Tape B Securities, which would be in addition to the ETP Holder's Tiered or Basic Rate credit(s). For example, if U.S. Tape B CADV during the month is 1 billion shares, and the ETP Holder's Tape B Baseline ADV during May 2013 was 5 million shares, the ETP Holder would need to execute an ADV of at least 7.75 million shares of Tape B Securities during the month in order to qualify for the applicable credit of $0.0004 per share (i.e., 1 billion shares CADV multiplied by 0.275% plus 5 million shares Tape B Baseline ADV).

Lead Market Makers (''LMMs'') on the Exchange could not qualify for either of the proposed new Tape B tiers, nor would LMM provide volume apply to the applicable volume requirements proposed for the new Tape B tiers. Additionally, ETP Holders that qualify for Investor Tier 1, Investor Tier 2, Investor Tier 3, the Retail Order Tier or the Retail Order Cross-Asset Tier could not qualify for either of the new Tape B tiers.[9] Also, ETP Holders that qualify for the proposed new Tape B Step Up Tier could not qualify for the proposed new Tape B Adding Tier (i.e., an ETP Holder that qualifies for the $0.0004 credit under the Tape B Step Up Tier could not also receive the $0.0002 credit under the Tape B Adding Tier). Finally, for ETP Holders that qualify for either of the proposed new Tape B tiers, Tiered or Basic Rates would apply to all other fees and credits, based on a firm's qualifying levels.

Routable Order Tier

The Exchange proposes to add a pricing tier applicable to orders of ETP Holders for Tape A and Tape C Securities that is based, in part, on the amount of an ETP Holder's orders that are eligible to be routed away from the Exchange (''Routable Orders'').[10]

The Exchange proposes that ETP Holders that provide liquidity on the Exchange would receive a credit of $0.0032 per share for their Routable and non-Routable Orders in Tape A and Tape C Securities if such ETP Holders, including Market Makers, (1) provide liquidity of 0.40% or more of U.S. CADV during the billing month across all Tapes, (2) maintain a ratio during the billing month across all Tapes of executed Routable Orders that provide liquidity to total executed provide liquidity of 75% or more, and (3) execute an ADV of provide liquidity during the billing month across all Tapes that is equal to at least the ETP Holder's or Market Maker's May 2013 provide liquidity across all Tapes plus 40%. An ETP Holder that qualifies for the proposed new Routable Order Tier would not be eligible for the Tape C Step Up Tier fee of $0.0029 per share for removing liquidity or the Tape C Step Up Tier 2 credit of $0.0002 per share for adding liquidity. For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels.

For example, if U.S. CADV during the month is 6.45 billion shares, the ETP Holder would need to provide liquidity of at least 25.8 million shares to satisfy the first threshold (i.e., providing liquidity of 0.40% or more of U.S. CADV during the month). Additionally, based on a minimum of 25.8 million shares of required provide liquidity, the ETP Holder would need to execute at least 19.35 million Routable Orders that provide liquidity during the month (i.e., maintaining a ratio of executed Routable Order provide liquidity to total executed orders of 75% or more). Finally, if the ETP Holder's ADV of provide liquidity during May 2013 was 20,000,000 shares, the ETP Holder would need to execute an ADV of at least 8 million additional shares of provide liquidity during the month (i.e., executing an ADV of provide liquidity during the month that is equal to at least the ETP Holder's May 2013 provide liquidity plus 40%).

[6] U.S. CADV means United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape and excludes volume on days when the market closes early.

[7] The existing $0.0030 fee applicable to MPL Orders in Tape A, B and C Securities that remove liquidity from the Exchange would not change as a result of this proposal.

[8] Existing fees applicable to transactions in Tape B Securities that remove liquidity from the Exchange would not change as a result of this proposal.

[9] Investor Tier 4 and Cross-Asset Tier ETP Holders would be eligible to qualify for the proposed new Tape B tiers.

[10] ETP Holders are able to include an instruction with their orders to determine whether the order will be eligible to route to an away exchange (e.g., to execute against trading interest with a better price than on the Exchange) or, for example, be cancelled if routing would otherwise occur.

Cross-Asset Tier

ETP Holders, including Market Makers, are currently able to qualify for the Cross-Asset Tier and a corresponding credit of $0.0030 per share for orders that provide liquidity to the Exchange. To qualify for the Cross-Asset Tier, an ETP Holder must (1) provide liquidity of 0.45% or more of U.S. CADV per month and (2) be affiliated with an Options Trading Permit (''OTP'') Holder or OTP Firm that provides an ADV of electronic posted Customer executions in Penny Pilot issues on NYSE Arca Options (excluding mini options) of at least 0.95% of total Customer equity and Exchange-Traded Fund (''ETF'') option ADV, as reported by the Options Clearing Corporation (''OCC''). For all other fees and credits, Tiered or Basic Rates apply based on a firm's qualifying levels. The Exchange proposes to decrease the equity threshold from 0.45% to 0.40% of U.S. CADV.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

MPL Order Tier

The Exchange believes that the proposed change is reasonable because the proposed MPL Order Tier credit of $0.0020 per share would incentivize ETP Holders to submit additional MPL Orders on the Exchange. This would increase the liquidity available on the Exchange and, therefore, could increase the potential price improvement to incoming marketable orders submitted to the Exchange. In this regard, MPL Orders allow for additional opportunities for passive interaction with trading interest on the Exchange and are designed to offer potential price improvement to incoming marketable orders submitted to the Exchange.[13]

The Exchange also believes that the proposed change is reasonable because decreasing the rate for the non-MPL Order Tier credit for Tape C Securities from $0.0020 per share to $0.0015 per share would align the treatment of MPL Orders in Tape C Securities that provide liquidity on the Exchange with that of Tape A and Tape B Securities for purposes of the Exchange's Fee Schedule. This aspect of the proposed change would also remove a pricing feature from the Fee Schedule that has generally not incentivized ETP Holders to submit additional MPL Orders in Tape C Securities, as was originally intended. In this regard, the current Tape C MPL Order credit of $0.0020 was intended to increase the liquidity available on the Exchange in Tape C Securities, generally, and therefore increase the potential price improvement to incoming marketable orders submitted to the Exchange in Tape C Securities.[14] Instead, the Exchange believes that this increased liquidity may be accomplished by implementing a U.S. CADV requirement applicable to the proposed MPL Order Tier credit.

The Exchange believes that the proposed change is also equitable and not unfairly discriminatory because the MPL Order Tier would be available to all ETP Holders to qualify for and would apply equally to MPL Orders from all ETP Holders in all Tape A, B and C Securities traded on the Exchange.

Finally, the Exchange notes that certain other exchanges also structure pricing based on midpoint pricing, including with respect to applicable volume thresholds that must be satisfied in order to qualify for such pricing, and that the pricing levels proposed by the Exchange are competitive with those exchanges.[15]

Tape B Tiers

The Exchange believes that the proposed change is reasonable because the proposed Tape B Adding Tier and Tape B Step Up Tier credits would encourage ETP Holders to send additional orders in Tape B Securities to the Exchange for execution in order to qualify for an incrementally higher credit for such executions that add liquidity on the Exchange. In this regard, the Exchange believes that this may incentivize ETP Holders to increase the orders sent directly to the Exchange and therefore provide liquidity that supports the quality of price discovery and promotes market transparency. The Exchange believes that the rates proposed for the Tape B Adding Tier and Tape B Step Up Tier credits are reasonable because they are directly related to an ETP Holder's level of executions in Tape B Securities during the month.

The Exchange believes that the proposed Tape B Adding Tier and Tape B Step Up Tier credits are also equitable and not unfairly discriminatory because they would incentivize ETP Holders to submit orders in Tape B Securities to the Exchange and would result in a credit that is reasonably related to an exchange's market quality that is associated with higher volumes. Moreover, like existing pricing on the Exchange that is tied to ETP Holder volume levels, the Exchange believes that the proposed Tape B Adding Tier and Tape B Step Up Tier credits are equitable and not unfairly discriminatory because they would be available for all ETP Holders, including Market Makers, on an equal and non-discriminatory basis.

The Exchange also believes that it is equitable and not unfairly discriminatory to exclude Investor Tier 1, Investor Tier 2, Investor Tier 3, Retail Order Tier, and Retail Order Cross-Asset Tier ETP Holders from qualifying for the proposed new Tape B tiers because the ETP Holders that qualify for these specified tiers would already receive a higher credit for such executions. The Exchange believes that this is also true with respect to the proposal that an ETP Holder that qualifies for both the proposed new Tape B Adding Tier and the new Tape B Step Up Tier would receive the higher of the two credits, but would not receive credits for both tiers. In contrast, the Exchange proposes permitting Investor Tier 4 and Cross-Asset Tier ETP Holders to qualify for the proposed new Tape B tiers because, even when combined with the proposed Tape B Adding Tier or Tape B Step Up Tier credits of $0.0002 or $0.0004, respectively, the ETP Holders that qualify for Investor Tier 4 and the Cross-Asset Tier would not achieve an overall credit rate that is higher than that which

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See, e.g.,* Securities Exchange Act Release No. 54511 (September 26, 2006), 71 FR 58460, 58461 (October 3, 2006) (SR–PCX–2005–53).

[14] *See* Securities Exchange Act Release No. 68848 (February 6, 2013), 78 FR 9985, 9986 (February 12, 2013) (SR–NYSEArca-2013–09).

[15] For example, the Nasdaq Stock Market LLC (''NASDAQ'') provides a credit of $0.0020 per share for midpoint pegged or midpoint post-only orders (''midpoint orders'') that provide liquidity if the member provides an ADV of 5 million or more shares through midpoint orders during the month, and the member's average daily volume of liquidity provided through midpoint orders during the month is at least 2 million shares more than in April 2013. *See, e.g.,* NASDAQ Rule 7018. *See also* Securities Exchange Act Release No. 69566 (May 13, 2013), 78 FR 29193 (May 17, 2013) (SR–NASDAQ–2013–075). Additionally, a member of EDGX Exchange, Inc. (''EDGX'') can qualify for the EDGX Mid-Point Match (''MPM'') Volume Tier by adding and/or removing an ADV of at least 3,000,000 shares on a daily basis, measured monthly, on EDGX. *See* footnote 3 of the EDGX Fee Schedule, available at *http://www.directedge.com/Portals/0/docs/Fee%20Schedule/2013/EDGX%20Fee%20Schedule%20-%20Junev2.pdf. See also* Securities Exchange Act Release No. 69725 (June 10, 2013), 78 FR 35996 (June 14, 2013) (SR–EDGX–2013–19).

is available under Investor Tier 1, which is the highest credit that is currently available in the Fee Schedule.[16] Similarly, the Exchange believes that it is equitable and not unfairly discriminatory to prohibit LMMs on the Exchange from qualifying for either of the proposed new Tape B tiers and to exclude LMM provide volume from applying to the applicable volume requirements proposed for the new Tape B tiers. This is because, like the ETP Holders that qualify for the tiers specified above, LMMs are already eligible for increased credits that range from $0.0035 per share to $0.0045 per share for executions of transactions that add liquidity to the Exchange.

Routable Order Tier

The Exchange believes that the proposed change is reasonable because the proposed Routable Order Tier would contribute to incentivizing ETP Holders to submit additional orders on the Exchange that are eligible to be routed away from the Exchange. This would increase the liquidity available on the Exchange because, for example, instead of an order, or a portion thereof, being cancelled immediately if the order would be routed, the order may remain available for execution on the Exchange. The Exchange believes that Routable Orders add to the quality of the Exchange's market because they are unlikely to be quickly cancelled and therefore may provide liquidity on the Exchange of a longer duration. The Routable Order Tier therefore would support the quality of price discovery and promote market transparency, thereby benefiting all market participants. In this regard, the Exchange believes that the rate proposed for the Routable Order Tier is reasonable because it takes into account the amount of Routable Orders that an ETP Holder would be required to execute on the Exchange during a month.

The Exchange also believes that it is reasonable and equitable to apply the Routable Order Tier pricing to executions of Tape A and Tape C Securities, but not to Tape B Securities. This is because existing pricing on the Exchange is often grouped according to Tape A and Tape C Securities, with separate pricing applicable to Tape B Securities. In addition, and for example, the Exchange is proposing incremental credits in this filing that would only apply to ETP Holder executions of Tape B Securities. Furthermore, the Exchange believes that it is reasonable and equitable to apply the Routable Order Tier pricing to Routable and non-Routable Orders of a qualifying ETP Holder because this would create a further incentive for ETP Holders to submit Routable Orders to the Exchange. This is also true because the thresholds applicable to the Routable Order Tier pertain to liquidity that consists of Routable Orders as well as the overall liquidity of an ETP Holder, including non-Routable Orders.

Furthermore, the Exchange believes that the proposed Routable Order Tier is equitable and not unfairly discriminatory because all ETP Holders have the ability to designate their orders as Routable Orders. Additionally, the proposed credit of $0.0032 per share for Routable Orders that provide liquidity to the Exchange would be available to all ETP Holders that qualify for the Routable Order Tier. The proposed thresholds are also equitable and not unfairly discriminatory because they are based on objective criteria and the same criteria would be applicable to all ETP Holders.

The Exchange also believes that it is equitable and not unfairly discriminatory for an ETP Holder that qualifies for the proposed new Routable Order Tier to not be eligible for the Tape C Step Up Tier rate for removing liquidity of $0.0029 per share or the Tape C Step Up Tier 2 credit of $0.0002 per share for adding liquidity. This is because the ETP Holders that qualify for these specified tiers would already receive the benefit of a lower fee for such executions that remove liquidity or a higher credit for such executions that add liquidity, respectively.

Finally, the Exchange notes that certain other exchanges also structure pricing based on routability of orders, including with respect to applicable volume thresholds that must be satisfied in order to qualify for such pricing, and that the pricing levels proposed by the Exchange are competitive with those exchanges.[17]

Cross-Asset Tier

The Exchange believes that the proposed change to the Cross-Asset Tier is reasonable because the proposed reduction of the equities threshold would directly relate to the activity of an ETP Holder and, when combined with the applicable options threshold requirement, the activity of an affiliated OTP Holder or OTP Firm on the Exchange, thereby encouraging increased trading activity on both the NYSE Arca equity and option markets by making it easier for ETP Holders to qualify for the tier. The Exchange has determined to adjust the equity CADV threshold in light of current and anticipated market conditions and believes that this proposed change would provide a greater incentive to attract additional equities and options liquidity. In this regard, the Exchange also believes that the proposed change is equitable and not unfairly discriminatory because it would apply to all ETP Holders on the Exchange that are affiliated with an NYSE Arca Options OTP Holder or OTP Firm and, as a result, the proposed reduction in the equities threshold would make it easier for all such ETP Holders to qualify for the Cross-Asset Tier. The proposed change is also equitable and not unfairly discriminatory with respect to ETP Holders that are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm because such ETP Holders would continue to have the opportunity to qualify for the same credit of $0.0030 per share that is provided pursuant to the Cross-Asset Tier by qualifying for Tier 1 or any of the Investor Tiers.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[18] 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. Instead, the Exchange believes that the proposed change will encourage

[16] Investor Tier 4 and Cross-Asset Tier ETP Holders are eligible for a $0.0030 credit for their executions that add liquidity on the Exchange. Investor Tier 1 ETP Holders are eligible for a $0.0034 credit for their executions that add liquidity on the Exchange.

[17] For example, a NASDAQ member may participate in the Routable Order Program (''ROP'') with respect to any market participant identifier (''MPID'') through which it (i) provides an ADV of at least 35 million shares of displayed liquidity using orders that employ the ''SCAN'' or ''LIST'' routing strategies, and (ii) provides displayed liquidity and/or routes an ADV of at least 2 million shares prior to the Nasdaq Opening Cross and/or after the Nasdaq Closing Cross using orders that employ the SCAN or LIST routing strategies. With respect to SCAN or LIST orders in securities priced at $1 or more per share that are entered through such an MPID, NASDAQ charges a fee of $0.0029 per share executed for such orders that access liquidity in the Nasdaq Market Center and provides a credit of $0.0037 per share executed for such orders that are displayed and that provide liquidity, in lieu of the fees or credits otherwise charged or provided under NASDAQ Rule 7018. *See* NASDAQ Rule 7014. *See also* Securities Exchange Act Release No. 68905 (February 12, 2013), 78 FR 11716 (February 19, 2013) (SR–NASDAQ–2013–023).

[18] 15 U.S.C. 78f(b)(8).

competition, including by attracting additional liquidity to the Exchange, which will make the Exchange a more competitive venue for, among other things, order execution and price discovery. In general, ETP Holders impacted by the proposed change may readily adjust their trading behavior to maintain or increase their credits or decrease their fees in a favorable manner, and will therefore not be disadvantaged in their ability to compete. Specifically, all ETP Holders have the ability to submit MPL Orders and ETP Holders could readily choose to submit additional MPL Orders on the Exchange in order to qualify for the proposed new MPL Order Tier. Similarly, an ETP Holder could qualify for the proposed new Tape B tiers by providing sufficient liquidity in Tape B Securities to satisfy the applicable proposed volume requirements. Additionally, all ETP Holders have the ability to designate their orders as Routable Orders and therefore any ETP Holder could qualify for the proposed Routable Order Tier by satisfying the proposed liquidity thresholds. Finally, the proposed reduction of the Cross-Asset Tier equity threshold would apply to all ETP Holders and, while certain ETP Holders are not affiliated with an NYSE Arca Options OTP Holder or OTP Firm, such ETP Holders would be able to qualify for a credit of at least $0.0030 per share that is provided pursuant to the Cross-Asset Tier by qualifying for any of the Investor Tiers.

Also, the Exchange does not believe that the proposed change will impair the ability of ETP Holders or competing order execution venues to maintain their competitive standing in the financial markets. In this regard, the Exchange notes that certain aspects of the proposed change are similar to, and competitive with, pricing structures and applicable fees and credits applicable on other exchanges.[19]

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee or credit levels at a particular venue to be unattractive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. The credits proposed herein are based on objective standards that are applicable to all ETP Holders and reflect the need for the Exchange to offer significant financial incentives to attract order flow. For these reasons, the Exchange believes that the proposed rule change reflects this competitive environment and is therefore consistent with the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[20] of the Act and subparagraph (f)(2) of Rule 19b–4[21] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[22] of the Act 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–NYSEArca-2013–67 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2013–67. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. 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-2013–67, and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16479 Filed 7–8–13; 8:45 am]

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[19] *See supra* notes 15 and 17.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(2).

[22] 15 U.S.C. 78s(b)(2)(B).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69916; File No. SR–CBOE–2013–065]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the CBOE Stock Exchange Fees Schedule

July 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 24, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 amend the Fees Schedule of its CBOE Stock Exchange. 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 Exchange proposes to amend the CBSX Fees Schedule. First, CBSX proposes to establish a separate fees structure for transactions in AMD, BAC, MU, NOK and SIRI (the ''Select Symbols'') that is different than the fees for transactions in all other symbols (all fees discussed in this proposed rule change apply to transactions in securities priced $1 or greater; CBSX does not propose to amend any fees for transactions in securities priced less than $1). Currently, transactions in all securities (including the Select Symbols) are subject to the following fees structure:

Execution type	Rate
Maker (adds less than 0.08% of TCV of liquidity in one day) (1)(5)	$0.0018 per share.
Maker (adds at least 0.08% but less than 0.16% of TCV of liquidity in one day) (1)(5)	$0.0017 per share.
Maker (adds at least 0.16% but less than 0.24% of TCV of liquidity in one day) (1)(5)	$0.0016 per share.
Maker (adds at least 0.24% but less than 0.42% of TCV of liquidity in one day) (1)(5)	$0.0015 per share.
Maker (adds 0.42% or more of TCV of liquidity in one day) (1)(5)	$0.0014 per share.
Taker (removes 9,999,999 shares or less of liquidity in one day (1) or less than 85% Execution Rate)	$0.0015 rebate per share.
Taker (removes 10,000,000 shares or more of liquidity in one day (1) and equal to or greater than 85% Execution Rate).	$0.0017 rebate per share.
Maker (adds liquidity using a silent order)	$0.0018 per share.
Taker (removes silent order liquidity)	$0.0014 rebate per share.
Maker (adds liquidity using a silent-mid or silent-post-mid order)	$0.0008 per share.
Taker (removes silent-mid or silent-post-mid liquidity)	$0.0004 rebate per share.

CBSX hereby proposes to except the Select Symbols out of this structure. Instead, CBSX proposes to assess a fee of $0.0050 per share for Maker transactions in the Select Symbols (including to a Maker who adds liquidity using a silent, silent-mid or silent-post-mid order) and provide a rebate of $0.0045 per share for Taker transactions in the Select Symbols (including to a Taker who removes silent, silent-mid or silent-post-mid liquidity). CBSX proposes this change due to the liquidity profiles of the Select Symbols. The NBBO market width in the Select Symbols is most often $0.01, and the proposed fee and rebate structure for the Select Symbols is designed to get close to synthesizing a midpoint between the NBBO. For example, say the market in a select symbol is 3.15–3.16. In the case of the proposed pricing in the Select Symbols, a participant would be able to buy the displayed offer at 3.16 and receive a $0.0045 rebate per share, which is similar to the economics of a midpoint execution. The ''Select Symbols'' will be defined in the proposed new Footnote 6 to the Fees Schedule.

CBSX does not propose to amend fees for all other symbols (all symbols except for the Select Symbols), with the exception of fees and rebates related to silent, silent-mid and silent-post-mid orders. Currently, CBSX provides a rebate of $0.0014 per share for Taker orders that remove silent order liquidity, and $0.0004 per share for Taker orders that remove silent-mid or silent-post-mid liquidity. CBSX proposes to increase these rebates to $0.0015 per share. This normalizes the Taker rebate for orders that remove silent, silent-mid, or silent-post-mid liquidity with the regular Taker rebate (for a Taker who removes 9,999,999 shares of liquidity in one day or less than 85% Execution Rate). In conjunction with this rebate increase, CBSX proposes to increase the fee for a Maker that adds liquidity using a silent-mid or silent-post-mid order to $0.0018 per share in order to help offset the increases in the rebate for Taker orders that remove silent, silent-mid, or silent-post-mid liquidity. The fee for a Maker that adds liquidity using a silent order is already $0.0018 per share.

The proposed changes are to take effect on July 1, 2013.

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. The Exchange believes that the proposed fees and rebates for the Select Symbols are reasonable because the amount of the proposed Maker fee is merely $0.0005 greater than the amount of the proposed Taker rebate, and because the NBBO market width in the Select Symbols in the Select Symbols is often $0.01, and the proposed fee and rebate structure for the Select Symbols is designed to get close

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

to synthesizing a midpoint between the NBBO. The Exchange notes that the proposed fees for the Select Symbols do not violate the limitation on access fees described in Rule 610 of Regulation NMS as the $0.0050 per share proposed fee is a Maker fee, and Rule 610(c)(1)'s prohibition of fees greater than $0.0030 applies to orders that execute against a quotation (Taker orders).[5]

The Exchange believes that offering a different fee and rebate structure for the Select Symbols is equitable and not unfairly discriminatory because the liquidity profiles of the Select Symbols are different from those for other symbols. The NBBO market width in the Select Symbols in the Select Symbols is often $0.01, and the proposed fee and rebate structure for the Select Symbols is designed to get close to synthesizing a midpoint between the NBBO. Further, the proposed fee and rebate structure for the Select Symbols is intended to incentivize the trading on the Select Symbols. Finally, the proposed fees and rebates for the Select Symbols will apply equally to all market participants.

The Exchange believes that it is reasonable to increase, for all other symbols, the rebate for a Taker who removes silent order liquidity from $0.0014 per share to $0.0015 per share and for a Taker who removes silent-mid or silent-post-mid liquidity from $0.0004 per share to $0.0015 per share because this will allow such Takers to receive a greater rebate for such activity. The Exchange believes this is equitable and not unfairly discriminatory because it will set the rebate for a Taker who removes silent order liquidity and silent-mid or silent-post-mid liquidity at the same amount, as well as the same amount as the regular Taker rebate (for a Taker who removes 9,999,999 shares of liquidity in one day or less than 85% Execution Rate). Further, this rebate will apply equally for all market participants.

The Exchange believes that it is reasonable to increase, for all other symbols, the fee for a Maker who adds liquidity using a silent-mid or silent-post-mid order to $0.0018 per share because this amount is within the range of other Maker fees assessed by CBSX. Further, this increase is necessary in order to offset the above-mentioned increase in the rebate for a Taker who removes silent-mid or silent-post-mid liquidity. CBSX believes that this increase is equitable and not unfairly discriminatory because it will make the amount of the fee for a Maker who adds liquidity using a silent-mid or silent-post-mid order the same as the amount of the fee for a Maker who adds liquidity using a silent order. Further, this fee will apply equally for all market participants.

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 changes apply to all CBSX market participants. CBSX does not believe that the proposed rule change will impose any burden on intermarket competition because these changes apply solely to trading on CBSX. To the extent that the proposed new fees structure for the Select Symbols or the changes to fees and rebates for orders involving silent, silent-mid and silent-post-mid liquidity may make CBSX a more attractive trading venue for market participants on other exchanges, such market participants may elect to become CBSX market participants. Indeed, these changes may enhance competition by encouraging other exchanges to amend their fees to provide more attractive fees and rebate structures for their market participants.

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[6] and paragraph (f) of Rule 19b–4[7] 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–2013–065 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–065. 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 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

[5] 17 CFR 242.610. The relevant section of Rule 610(c) states: *"(c) Fees for access to quotations.* A trading center shall not impose, nor permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the trading center or against any other quotation of the trading center that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc. in an NMS stock that exceed or accumulate to more than the following limits: (1) If the price of a protected quotation or other quotation is $1.00 or more, the fee or fees cannot exceed or accumulate to more than $0.003 per share;"

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

available publicly. All submissions should refer to File Number SR–CBOE–2013–065, and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16380 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69925; File No. SR–OCC–2013–803]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice To Reflect Enhancements in OCC's System for Theoretical Analysis and Numerical Simulations as Applied to Longer-Tenor Options

July 3, 2013.

Pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] of the Securities Exchange Act of 1934 (''Exchange Act'') notice is hereby given that on June 4, 2013, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice described in Items I and II below, which Items have been substantially prepared by OCC.[3] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

OCC is proposing to provide for enhancements in OCC's margin model for longer-tenor options (*i.e.,* those options with at least three years of residual tenor) and OCC intends to reflect those enhancements in the description of OCC's margin model in OCC's Rules through a corresponding proposed rule change.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[5]

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

The purpose of this advance notice is to provide for enhancements in OCC's margin model for longer-tenor options (*i.e.,* those options with at least three years of residual tenor) and OCC intends to reflect those enhancements in the description of OCC's margin model in OCC's Rules through a corresponding proposed rule change.[6]

1. Background

On August 30, 2012, OCC submitted a rule change and advance notice with respect to OCC's proposal to clear certain over-the-counter options on the S&P 500 Index (''OTC Options Filings'').[7] Additional information concerning OCC's proposal to clear OTC Options is included in the OTC Options Filings. As described in the OTC Options Filings, OCC intends to use its STANS margin system to calculate margin requirements for OTC Options on the same basis as for exchange-listed options cleared by OCC. However, OCC is proposing to implement enhancements to its risk models for all longer-tenor options (including OTC Options) in order to better reflect certain risks of longer-tenor options. The changes described herein would apply to all longer-tenor options cleared by OCC and would be implemented before OCC begins clearing OTC Options.

2. Description of Current Proposed Changes

OCC states that the proposed change includes daily OTC quotes, variations in implied volatility and valuation adjustments in the modeling of all longer-tenor options under STANS, thereby enhancing OCC's ability to set margin requirements through the use of risk-based models and encouraging clearing members to have sufficient financial resources to meet their obligations to OCC. OCC states that the proposed change would not affect OCC's safeguarding of securities and funds in its custody or control because though it may change margin requirements in respect of certain longer-tenor options, it does not change the manner in which margin assets are pledged. In addition, OCC states that the proposed change allows OCC to enhance its risk management procedures and controls related to longer-tenor options.

OCC states that it calculates clearing-level margin using STANS, which determines the minimum expected liquidating value of each account using a large number of projected price scenarios created by large-scale Monte Carlo simulations. OCC is proposing to implement enhancements to the STANS margin calculation methodology with respect to longer-tenor options and to amend Rule 601 to reflect these enhancements as well as to make certain clarifying changes in the description of STANS in Rule 601. The specific details of the calculations performed by STANS are maintained in OCC's proprietary procedures for the calculation of margin and coded into the computer systems used by OCC to calculate daily margin requirements.

OCC has proposed at this time to clear only OTC Options on the S&P 500 index and only such options with tenors of up to five years. However, OCC currently clears FLEX Options with tenors of up to fifteen years. While OCC believes that its current risk management practices are adequate for current clearing activity, OCC proposes to implement risk modeling enhancements with respect to all longer-tenor options.

Daily OTC Indicative Quotes

OCC states that, in general, the market for listed longer-tenor options is less liquid than the market for other options, with less volume and therefore less price information. In order to supplement OCC's pricing data derived from the listed markets, and to improve the valuation process for longer-tenor options, OCC proposes to include in the daily dataset of market prices used by STANS to value each portfolio indicative daily quotations obtained through a third-party service provider that obtains these quotations through a daily poll of OTC derivatives dealers. A third-party service provider was selected to provide this data in lieu of having the data provided directly by the OTC derivatives dealers in order to avoid unnecessarily duplicating

[8] 17 CFR 200.30–3(a)(12).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] OCC is a designated financial market utility and is required to file advance notices with the Commission. *See* 12 U.S.C. 5465(e). OCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4. *See* SR–OCC–2013–08.

[4] *See supra* note 3.

[5] The Commission has modified the text of the summaries prepared by the clearing agency.

[6] *See supra* note 3.

[7] *See* Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 75243 (Dec. 19, 2012) (SR–OCC–2012–14 and AN–OCC–2012–01).

reporting that is already done in the OTC markets.

Variations in Implied Volatility

OCC states that, to date, the STANS methodology has assumed that implied volatilities of option contracts do not change during the two-day risk horizon used by OCC in the STANS methodology. According to OCC, back testing of its margin models has identified few instances in which this assumption would have, as a result of sudden changes in implied volatility, resulted in margin deposits insufficient to liquidate clearing member accounts without loss. However, as OCC expects to begin clearing more substantial volumes of longer-tenor options, including OTC Options, OCC believes that implied volatility shocks may become more relevant due to the greater sensitivity of longer-tenor options to implied volatility. OCC therefore proposes to introduce variations in implied volatility in the modeling of all longer-tenor options under STANS. OCC states that this will be achieved by incorporating, into the set of risk factors whose behavior is included in the econometric models underlying STANS, time series of proportional changes in implied volatilities for a range of tenors and in-the-money and out-of-the-money amounts representative of the dataset provided by OCC's third-party service provider.

OCC states that it has reviewed individual S&P 500 Index put and call options positions with varying in-the-money amounts and with four to nine years of residual tenor and that such review indicates that the inclusion of modeled implied volatilities tends to result in less margin being held against short call positions and more margin being held against short put positions. OCC states that these results are consistent with what would be expected given the strong negative correlation that exists between changes in implied volatility and market returns.

OCC states that the description of the Monte Carlo simulations performed within STANS in Rule 601 references revaluations of assets and liabilities in an account under numerous price scenarios for ''underlying interests.'' In order to accommodate the proposed implied volatility enhancements, OCC is proposing to amend this portion of Rule 601 to provide that the scenarios used may also involve projected levels of other variables influencing prices of cleared contracts and modeled collateral. Accordingly, the references to ''underlying interests'' are proposed to be deleted.

Valuation Adjustment

OCC states that historically it has not cleared a significant volume of longer-tenor options, but that it anticipates that there will be growth in the volume of longer-tenor options, including OTC Options, being cleared with three to five year tenors. According to OCC, longer-tenor options may represent a larger portion of any clearing member's portfolio in the future, and OCC has therefore identified a need to model anticipated changes in the value of longer-tenor options on a portfolio basis in order to address OCC's exposure to longer-tenor options that may have illiquid characteristics. OCC proposes to introduce a valuation adjustment into the portfolio net asset value used by STANS based upon the aggregate sensitivity of any longer-tenor options in a portfolio to the overall level of implied volatilities at three years and five years and to the relationship between implied volatility and exercise prices at both the three- and five-year tenors in order to allow for the anticipated market impact of unwinding a portfolio of longer-tenor options, as well as for any differences in the quality of data in OCC's third party service provider's dataset, given that month-end data may be subjected to more extensive validation by the service provider than daily data. In order to accommodate the planned valuation adjustment for longer-tenor options, OCC proposes to add language to Rule 601 to indicate that the projected portfolio values under the Monte Carlo simulations may be adjusted to account for bid-ask spreads, illiquidity, or other factors.

Clarification of Pricing Model Reference in Rule 601

Rule 601 currently refers to the use of ''options pricing models'' to predict the impact of changes in values on positions in OCC-cleared contracts. OCC is proposing to amend this description to reflect that OCC currently uses non-options related models to price certain instruments, such as futures contracts and U.S. Treasury securities. OCC states that this change is not intended to be substantive and simply clarifies the description in Rule 601.

Effect on Clearing Members

OCC states that the proposed change will affect clearing members who engage in transactions in longer-tenor options, and indirectly their customers, by enhancing the STANS margin calculation methodology for these options. The STANS enhancements could increase margin requirements with respect to these positions. However, OCC states that it does not believe that the enhancements will result in significantly increased margin requirements for any particular clearing member, and therefore is not aware of any significant problems that clearing members are likely to have in complying with the proposed rule change.

OCC states that the proposed rule change is consistent with the purposes and requirements of Section 17A(b)(3)(F) of the Exchange Act [8] and the rules and regulations thereunder, including Rule 17Ad–22(b)(2) [9] and Rule 17Ad–22(d)(2) [10] because by providing additional clarity to clearing members and others concerning the current calculation of margin requirements under OCC's Rules, while also enhancing the calculation of margin with respect to longer-tenor options, the proposed modifications would help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, ensure that OCC's rules are reasonably designed to have participation requirements that are objective and publicly disclosed and permit fair and open access, and provide for a well-founded, transparent, and enforceable legal framework. OCC states that the proposed rule change is not inconsistent with any rules of OCC, including any other rules proposed to be amended.

(B) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited by OCC with respect to the advance notice and none have been received.

(C) Advance Notices Filed Pursuant to Section 806(e) of the Clearing Supervision Act

OCC is filing this proposed change as an advance notice pursuant to Section 806(e)(2) of the Clearing Supervision Act because the proposed change could be deemed to materially affect the nature or level of risks presented by OCC. However, OCC believes that the Rule changes and changes in OCC's system for calculating margin on longer-tenor options will represent enhancements to OCC's ability to manage the risks presented to it, particularly as OCC begins clearing OTC Options.

[8] 15 USC 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(b)(2).

[10] 17 CFR 240.17Ad–22(d)(2).

According to OCC, OTC Options are nearly identical to listed FLEX options on the S&P 500 that OCC has cleared for many years. OTC Options have the same degree of customization as FLEX options except that OTC Options are limited to a maximum tenor of five years whereas FLEX options can have tenors of up to fifteen years. In this respect, OCC states that OTC Options pose less of a challenge from a risk management perspective than do FLEX options. However, OCC believes, based on activity in the existing OTC markets for uncleared, bilateral options, that there may be greater open interest in OTC Options with tenors exceeding three years as compared to FLEX options, in which open interest is more concentrated in shorter term options. In addition, it is inherent in the nature of the OTC option markets that there are no market makers with affirmative duties to create liquidity by standing ready to buy and sell OTC Options in response to market interest as in the listed options markets, including the FLEX options market.

In order to address the potentially greater open interest in longer-tenor options, OCC is proposing to supplement its existing risk management procedures by enhancing its STANS margining system by:

(i) including in the daily dataset of market prices used by STANS to value each portfolio indicative daily quotations obtained through a third-party service provider that obtains these quotations through a daily poll of OTC derivatives dealers;

(ii) incorporating, into the set of risk factors whose behavior is included in the econometric models underlying STANS, time series of proportional changes in implied volatilities, for a range of tenors and in-the-money and out-of-the-money amounts representative of the foregoing dataset; and

(iii) introducing a valuation adjustment into the portfolio net asset value used by STANS, based upon the aggregate sensitivity of any longer-tenor options in a portfolio to the overall level of implied volatilities at three years and five years and to the relationship between implied volatility and exercise prices at both the three- and five-year tenors in order to allow for the market impact of unwinding a portfolio of longer-tenor options, as well as for any differences in the quality of data provided by OCC's third party service provider's dataset, given that month-end data may be subjected to more extensive validation by the service provider than daily data.

These proposed changes are described in more detail above. As noted above, OCC will not commence clearing of OTC Options unless and until the Commission has approved the modeling enhancements described herein.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

OCC may implement the proposed change pursuant to Section 806(e)(1)(G) of the Clearing Supervision Act [11] if it has not received an objection to the proposed change within 60 days of the later of (i) the date that the Commission received the advance notice or (ii) the date the Commission receives any further information it requested for consideration of the notice. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date of receipt of the advance notice, or the date the Commission receives any further information it requested, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2013–803 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2013–803. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 OCC and on OCC's Web site (*http://www.theocc.com/about/publications/bylaws.jsp*). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2013–803 and should be submitted on or before July 30, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16477 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

[11] 12 U.S.C. 5465(e)(1)(G).

[12] OCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Exchange Act and Rule 19b-4 thereunder. *See supra* note 3.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69921; File No. SR–Phlx–2013–72]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Acceptable Complex Execution Parameter

July 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act'')[1], and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the Acceptable Complex Execution Parameter (''ACE Parameter'') in Rule 1080.08(i), which is the price range outside of which a Complex Order (as defined below) will not be executed.

The text of the proposed rule change is set forth below. Proposed new language is *italicized;* deleted text is in brackets.

* * * * *

Rule 1080. Phlx XL and Phlx XL II

(a)–(o) No change.

• • • *Commentary:* ————————

.01–.07 No change.

.08 Complex Orders on Phlx XL.

(a)–(h) No change.

* * * * *

(i) Acceptable Complex Execution (''ACE'') Parameter. The ACE Parameter defines a price range outside of which a Complex Order will not be executed [following a COLA]. The ACE Parameter is *either* a percentage *or number* defined by the Exchange on an issue-by-issue basis. [The ACE Parameter percentage shall not be less than 3 percent.] The ACE Parameter price range is based on the cNBBO at the time an order would be executed. A Complex Order to sell will not be executed at a price that is lower than the cNBBO bid by more than the ACE Parameter [percentage]. A Complex Order to buy will not be executed at a price that is higher than the cNBBO offer by more than the ACE Parameter [percentage]. A Complex Order or a portion of a Complex Order that cannot be executed within the ACE Parameter pursuant to this rule will be placed on the CBOOK. The Exchange will issue an Options Trader Alert (''OTA'') to membership indicating the issue-by-issue ACE Parameter*s* [percentages]. The Exchange will also maintain a list of ACE Parameter*s* [percentages] on its Web site.

* * * * *

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 ACE Parameter feature is designed to help maintain a fair and orderly market by helping to mitigate the potential risk of executions at prices which are extreme and potentially erroneous. Specifically, the ACE Parameter prevents Complex Orders[3] from automatically executing at potentially erroneous prices by establishing a price range outside of which a Complex Order will not be executed. Currently, the ACE Parameter is a percentage defined by the Exchange on an issue-by-issue basis. The purpose of this proposal is to make the ACE Parameter more flexible and relevant to different types of options by eliminating the 3 percent limit and permitting the ACE Parameter to a number, in addition to a percentage.

Currently, the ACE Parameter is always a percentage, not less than 3 percent. The ACE Parameter is based on the Complex National Best Bid or Offer (''cNBBO'')[4] at the time an order would be executed. A Complex Order to sell will not be executed at a price that is lower than the cNBBO bid by more than the ACE Parameter. A Complex Order to buy will not be executed at a price that is higher than the cNBBO offer by more than the ACE Parameter percentage. A Complex Order or a portion of a Complex Order that cannot be executed within the ACE Parameter will be placed on Exchange's Complex Limit Order Book (''CBOOK'').[5]

For example, assume the ACE parameter is set at 10%, and a PHLX XL participant submits a Complex Order to buy Series A and buy Series B (30 units of the strategy) for a net debit of $8.40 and a COLA[6] is initiated. At the end of the COLA, the market is:

NBBO for Series A is $4.50 – $4.60, size 10 X 10.

NBBO for Series B is $2.90 – $3.00, size 10 X 10.

cNBBO for the strategy is $7.40 – $7.60.

If the ACE Parameter is set at 10%, executions to buy the strategy (buy Series A and buy Series B) will occur up to $8.36 ($7.60 + [0.10 x $7.60]) but no higher. Any remainder of the order will be placed on the CBOOK at $8.40.

In its proposal to adopt the ACE Parameter, the Exchange adopted a minimum 3 percent level, similar to the CBOE.[7] At the time, the Exchange believed that this level was reasonable and appropriate, because a marketable order that would deviate from the cNBBO by more than 3% may be indicative of an extreme or potentially erroneous price, and an Exchange participant would likely want to evaluate the affected Complex Order further before receiving an automatic execution. At this time, based on its experience, the Exchange believes that this amount may not be appropriate for all options, such that a lower percentage could be necessary. For example, higher priced options series may benefit from an ACE Parameter of 1%. Consider the following scenario: Assume the ACE Parameter is set at 10%, and a PHLX XL participant submits a Complex Order to buy Series A and buy Series B (30 units of the strategy) at the market. Further assume:

NBBO for Series A is $124.50 – $124.60, size 10 X 10.

NBBO for Series B is $12.90 – $13.00, size 10 X 10.

cNBBO for the strategy is $137.40 – $137.60.

If the ACE Parameter is set at 10%, executions to buy the strategy (buy Series A and buy Series B) will occur up to $151.36 ($137.60 + [0.10 x $137.60]) but no higher. The resulting executions of the Complex Order could vary in price by up to $13.76 ($151.36 – $137.60). If the ACE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Rule 1080.08(a).

[4] *See* Rule 1080.08(a)(vi).

[5] *See* Rule 1080.08(f). The Exchange notes that Complex Orders are placed on the CBOOK at their limit price and may trade pursuant to Rule 1080.08(f)(iii), depending on the movement of the cNBBO and application of the ACE Parameter. Although at any given time, the price of a Complex Order may lock or cross another Complex Order on the CBOOK, this is not a prohibited locked or crossed market for purposes of Rule 1086, because such Complex Orders do not constitute a Protected Quotation as defined in Rule 1083. Complex Orders consist of multiple components (rather than one series) and are not disseminated pursuant to the OPRA Plan. If two Complex Orders on the CBOOK cross, they may nevertheless execute against each other, if the execution price is within the ACE Parameter. If, however, the potential execution price is not within the ACE Parameter for one of those orders, those orders would not trade.

[6] COLA is the automated Complex Order Live Auction process. *See* Rule 1080.08(e).

[7] *See* Securities Exchange Act Release No. 66602 (March 14, 2012), 77 FR 16579 (March 21, 2012) (SR-Phlx-2012–31). *See also* CBOE Rule 6.53C.08(e).

Parameter is set at 1% rather than 10%, executions to buy the strategy will occur only up to $138.97 ($137.60 + [0.01 x $137.60]) but no higher. With the ACE Parameter set at 1%, the variation in execution prices is drastically reduced.

The Exchange also seeks to operate the ACE Parameter not only as a percentage but as an absolute number, representing a certain dollar amount around the cNBBO. The Exchange believes that sometimes an absolute number rather than a percentage would be appropriate, such as when the cNBBO is low priced.

For example, assume the ACE Parameter is set at 10%, and a PHLX XL participant submits a Complex Order to buy Series A and sell Series B (30 units of the strategy) for a net debit of $0.08.

NBBO for Series A is $0.25 – $0.28, size 10 X 10.

NBBO for Series B is $0.20 – $0.25, size 10 X 10.

cNBBO for the strategy is $0.00 – $0.08.

If the ACE Parameter is set at 10%, executions to buy the strategy (buy Series A and sell Series B) will only be permitted to occur at the offer of $0.08 since a 10% range of that offer equates to a sub-penny increment ($0.08 + [.10 x $0.08]) = .088). Allowing an absolute number rather than a percentage for the ACE Parameter in this instance would give the Exchange the ability to offer a range of allowable execution prices rather than only the cNBBO offer.

The Exchange intends to implement these changes to the ACE Parameter in July or August, and will issue an Options Trader Alert (''OTA'') indicating when the changes become operative as well as the issue-by-issue ACE Parameters. The Exchange will also maintain a list of ACE Parameters on its Web site.

The Exchange also proposes to amend the first sentence of Rule 1080.08(i) by deleting reference to the COLA. The Exchange believes that this was an inadvertent drafting error and now seeks to correct it. Consistent with the fourth sentence, the ACE Parameter applies and is based on the cNBBO at the time an order would be executed, whether or not there was a COLA. The Exchange believes that the fifth and sixth sentences further support this and do not mention a COLA. Regardless, the Exchange believes that it is appropriate to apply the ACE Parameter even when there is no COLA, because the purpose of the ACE Parameter is to protect orders from an execution at a faraway price, which purpose is equally relevant when there is an execution without a COLA. Accordingly, the Exchange believes that applying the ACE Parameter to orders than are not subject to a COLA should be beneficial to users submitting Complex Orders to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [8] in general, and furthers the objectives of Section 6(b)(5) of the Act [9] in particular, in that it is designed to promote just and equitable principles of trade and protect investors and the public interest, by making slight modifications to the ACE Parameter so that it can better protect investors from extreme and potentially erroneous executions of their Complex Orders. The ACE Parameter, as modified, will continue to promote just and equitable principles of trade by preventing executions at prices that are significantly worse than the cNBBO, which the Exchange believes is a fair representation of then-available prices. Like other order protections, such as an Acceptable Trade Range feature,[10] the ACE Parameter is a protection against executions at inappropriate prices and the Exchange believes that it will do so better with the modifications proposed herein.

Respecting the amendment to the first sentence of Rule 1080.08(i), the Exchange believes that applying the ACE Parameter when there is no COLA is consistent with the aforementioned statutory principles, because the ACE Parameter will protect orders from an execution at a faraway price. Specifically, when there is no COLA and therefore no opportunity for price improvement over existing markets, protection from executions at faraway prices is especially useful and likely to promote just and equitable principles of trade and protect investors and the public interest.

The Exchange noted above that Complex Orders are placed on the CBOOK at their limit price and may trade from the CBOOK pursuant to Rule 1080.08(f)(iii). At any given time, the price of a Complex Order may lock or cross another Complex Order on the CBOOK, which is not prohibited, as explained above. The Exchange believes that it is consistent with just and equitable principles of trade and the protection of investors and the public interest for Complex Orders on the CBOOK to, in this way, lock or cross, including because of the application of the ACE Parameter, without interacting, because those orders benefit from the protections of the ACE Parameter in terms of pricing at a reasonable price from the market. Although such orders could have potentially interacted but for the ACE Parameter, the orders are nevertheless protected from unreasonable execution prices, which benefits those who enter such Complex Orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal does not impose an intra-market burden on competition, because it will be available to all Phlx participants who enter Complex Orders. Nor will the proposal impose a burden on competition among the options exchanges, because, in addition to the vigorous competition for order flow among the options exchanges generally, many options exchanges offer complex order functionality. To the extent that market participants disagree with the particular approach taken by the Exchange herein, market participants can easily and readily direct order flow to competing venues. The ACE Parameter, as amended by this proposed rule change, will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See* NOM Rules, Chapter VI, Section 10(7) and BX Options Rules, Chapter VI, Section 10(7).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–72, and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16476 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69927; File No. SR–NYSE–2013–46]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List To Add Greater Specificity Related to the Applicable ''Tier 3'' Supplemental Liquidity Provider Rate and the Member Organization Tier 1 and Tier 2 Adding Credit Rates

July 3, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b4 thereunder,[2] notice is hereby given that, on June 20, 2013, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List to add greater specificity related to (i) the applicable ''tier 3'' Supplemental Liquidity Provider (''SLP'') rate and (ii) the member organization Tier 1 and Tier 2 Adding Credit rates. The Exchange proposes to implement the fee change effective July 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[13] 17 CFR 200.30–3(a)(12).

[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 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 amend its Price List to add greater specificity related to (i) the applicable ''tier 3'' SLP rate and (ii) the member organization Tier 1 and Tier 2 Adding Credit rates. The Exchange proposes to implement the fee change effective July 1, 2013.

SLP Credits[3]

SLPs are eligible for certain credits when adding liquidity to the Exchange. The amount of the credit is determined by the ''tier'' that the SLP qualifies for, which is generally based on the SLP's level of quoting and the average daily volume (''ADV'') of liquidity added by the SLP in assigned securities, excluding early closing days. Since October 1, 2012, a $0.0025 credit has been available under ''tier 3'' for an SLP that adds liquidity to the NYSE in securities with a per share price of $1.00 or more if the SLP (i) meets the 10% average or more quoting requirement in an assigned security pursuant to Rule 107B (quotes of an SLP-Prop and an SLMM of the same member organization are not aggregated), (ii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV of more than 0.22% of NYSE consolidated ADV (''CADV''), (iii) adds liquidity for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of an ADV during the billing month that is at least an 0.18% increase over the SLP's

[3] The SLP program provides incentives for quoting and adds competition to the existing group of liquidity providers. An SLP can either be a proprietary trading unit of a member organization (an ''SLP-Prop'') or a registered market maker at the Exchange (an ''SLMM''). *See* Rule 107B.

September 2012 Adding ADV[4] (''SLP Baseline ADV''), and (iv) has a minimum provide ADV for all assigned SLP securities of 12 million shares.[5]

Unlike the other SLP tiers, the Price List does not currently specify the applicable tier 3 rate for a Non-Displayed Reserve Order that adds liquidity to the Exchange.[6] The Exchange hereby proposes to specify that the rate for a Non-Displayed Reserve Order that adds liquidity to the Exchange for an SLP that qualifies for tier 3 is a credit of $0.0020. The Exchange notes that, as is currently the case for the other SLP tiers, the proposed rate of $0.0020 for Non-Displayed Reserve Orders would be $0.0005 less than the otherwise applicable rate of $0.0025.

Member Organization Tier 1 and 2 Adding Credits

Member organizations are currently eligible for the Non-Tier Adding Credit when adding liquidity to the Exchange, including both displayed and non-displayed. The applicable rate for the Non-Tier Adding Credit is $0.0015 per share, or $0.0010 if a Non-Displayed Reserve Order. Executions of *displayed* liquidity of certain member organizations may instead be eligible for the Tier 1[7] or Tier 2[8] Adding Credit based on the member organization's level of activity during a month.[9] The Price List currently specifies that the rate for the Tier 1 Adding Credit is $0.0018 and that the rate for the Tier 2 Adding Credit is $0.0017. The Exchange proposes a technical change to add the $0.0010 per share rate for Non-Displayed Reserve Orders to the Tier 1 and Tier 2 Adding Credits. In this regard, a member organization that qualifies for the Tier 1 or Tier 2 Adding Credit currently receives a credit of $0.0010 per share for Non-Displayed Reserve Orders pursuant to the Non-Tier Adding Credit. The Exchange also proposes a conforming change to remove the existing reference to ''displayed'' from the Tier 1 and Tier 2 Adding Credit descriptions.

The Exchange believes that the proposed changes would result in greater specificity in the Price List. The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that member organizations, including SLPs, would have in complying with the proposed change.

The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because, unlike the other SLP tiers, the Price List does not specify the applicable tier 3 rate for Non-Displayed Reserve Orders that add liquidity to the Exchange. The proposed change is also reasonable because, as is currently the case for the other SLP tiers, the proposed rate for Non-Displayed Reserve Orders would be $0.0005 less than the otherwise applicable rate of $0.0025.

The Exchange believes that this proposed change is also equitable and not unfairly discriminatory because it would apply to any SLP that qualifies for tier 3. The proposed change is also equitable and not unfairly discriminatory because it would add specificity to the Price List regarding the applicable rate for Non-Displayed Reserve Orders.

The Exchange also believes that the proposed change is reasonable because the technical change to add the $0.0010 per share rate for Non-Displayed Reserve Orders to the Tier 1 and Tier 2 Adding Credits would result in greater specificity regarding the applicable rate for qualifying member organizations. The Exchange believes that this proposed change is also equitable and not unfairly discriminatory because such greater specificity would benefit all readers of the Price List, including member organizations that qualify for the Tier 1 or Tier 2 Adding Credit.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] 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. Instead, the Exchange believes that the proposed change will add greater specificity within the Price List. Specifically, the proposed change related to SLP tier 3 would add specificity to the Price List regarding the applicable rate for Non-Displayed Reserve Orders. In this regard, the Exchange notes that, as is currently the case for the other SLP tiers, the proposed rate of $0.0020 for Non-Displayed Reserve Orders would be $0.0005 less than the otherwise applicable rate of $0.0025. Additionally, the proposed change related to the Tier 1 and Tier 2 Adding Credits would be a technical change, and such greater specificity would benefit all readers of

[4] Adding ADV is ADV that adds liquidity to the NYSE during the billing month. Adding ADV excludes any liquidity added by a Designated Market Maker.

[5] *See* Securities Exchange Act Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR–NYSE–2012–50).

[6] A Non-Displayed Reserve Order is a limit order that is not displayed, but remains available for potential execution against all incoming automatically executing orders until executed in full or cancelled. *See* NYSE Rule 13 (Definitions of Orders).

[7] A member organization currently qualifies for the Tier 1 Adding Credit by adding displayed liquidity to the Exchange if (i) the member organization has ADV Adding ADV (which excludes any liquidity added by a Designated Market Maker) that is at least 1.5% of NYSE CADV, and executes market at-the-close (''MOC'') and limit at-the-close (''LOC'') orders of at least 0.375% of NYSE CADV, (ii) the member organization has Adding ADV that is at least 0.8% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and adds liquidity to the NYSE as an SLP for all assigned SLP securities in the aggregate (including shares of both an SLP-Prop and an SLMM of the same member organization) of more than 0.15% of NYSE CADV, or (iii) the member organization has ADV that adds liquidity in customer electronic orders to the NYSE (''Customer Electronic Adding ADV,'' which excludes any liquidity added by a Floor broker, Designated Market Maker, or SLP) during the billing month that is at least 0.5% of NYSE CADV, executes MOC and LOC orders of at least 0.12% of NYSE CADV, and has Customer Electronic Adding ADV during the billing month that, taken as a percentage of NYSE CADV, is at least equal to the member organization's Customer Electronic Adding ADV during September 2012 as a percentage of CADV in NYSE-listed securities during September 2012 plus 15%.

[8] A member organization currently qualifies for the Tier 2 Adding Credit by adding displayed liquidity to the NYSE if the member organization has Adding ADV that is at least 0.20% of NYSE CADV and executes MOC and LOC orders of at least 0.10% of NYSE CADV.

[9] The Tier 1 and Tier 2 Adding Credits became effective October 1, 2012 pursuant to the same proposed rule change that implemented SLP tier 3. *See* supra note 6. The criteria applicable to the Tier 1 Adding credit was subsequently changed effective November 1, 2012. *See* Securities Exchange Act Release No. 68150 (November 5, 2012), 77 FR 67431 (November 9, 2012) (SR–NYSE–2012–56).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] 15 U.S.C. 78f(b)(8).

the Price List, including member organizations that qualify for the Tier 1 or Tier 2 Adding Credit.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act 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–NYSE–2013–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–46 and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16480 Filed 7–8–13; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69919; File No. SR–NYSEMKT–2013–59]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 965NY, Which Governs NDX and RUT Combination Orders

July 2, 2013.

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 June 21, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 965NY, which governs NDX and RUT combination orders. 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 amend Rule 965NY, which governs NDX and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

RUT combination orders,[4] to adopt a one-year pilot program containing revised procedures that the Exchange believes would make the trading of certain combination orders in Nasdaq 100 Index options (NDX) and Russell 2000 Index options (RUT) more competitive with the trading of combinations in Nasdaq 100 Index futures contracts on the Chicago Mercantile Exchange (''CME'') and the trading of combinations in Russell 2000 Index futures contracts on the IntercontinentalExchange (''ICE''). As discussed further below, the Exchange is also proposing to revise the existing Combo Order text to make certain amendments.

Background

NDX

When NDX traders and customers trade NDX options, they hedge their underlying risk with either Nasdaq 100 Index futures traded at CME or with NDX call and put options traded as combinations at one of the option Exchanges where it is multiply listed (including the Exchange). In order for NDX traders and customers to hedge the risk of their options positions using Nasdaq 100 Index futures, they have to execute two separate trades in two separate markets.

Example 1: Assume a trader or customer wants to buy NDX April 2790 puts and hedge with the April futures contract trading at 2810. First, the NDX April 2790 put option position could be traded at the Exchange. After the options trade, the trader or customer then has to submit an order to CME to trade the appropriate number of Nasdaq 100 Index April futures contracts to hedge the options trade.

Example 2: Assume a trader or customer wants to trade a conversion involving the purchase of NDX April 2790 puts and the sale of the NDX April 2790 calls with the purchase of the April futures contract trading at 2810. First, the NDX April 2790 put-call option position could be traded at the Exchange. After the options trade, the trader or customer then has to submit an order to CME to trade the appropriate number of Nasdaq 100 Index April futures contracts to hedge the options trade.

Hedging NDX options by using Nasdaq 100 Index futures in this manner is not preferred by traders and customers because of the execution risk that is involved in having to trade in two separate markets. In other words, the trader or customer is exposed to the risk of the Nasdaq 100 Index moving significantly before the hedging futures transaction can be executed (e.g., assume the trader or customer in *Example 1* above completes the purchase of the NDX April 2790 puts but the Nasdaq 100 Index declines sharply before the futures can be traded. Given the market decline, the trader or customer must sell the futures at a much lower price to complete the hedge.) As a result, NDX traders and customers prefer trading NDX combinations against their NDX options positions in order to hedge the risk associated with those positions.

Example 3: Assume the Nasdaq 100 Index April futures contract is trading at 2810 and a customer wants to trade the 35 delta NDX April 2790 puts tied to the April 2810 calls and April 2810 puts (instead of the April futures contract). Under this scenario, all three legs of the strategy could be traded on the Exchange.

Example 4: Assume a trader or customer wants to trade a conversion involving the purchase of the NDX April 2790 puts and the sale of the NDX April 2790 calls tied to the April 2810 calls and April 2810 puts (instead of the April futures contract). Under this scenario, all four legs of the strategy could be traded on the Exchange.

One reason that the use of combinations by NDX traders and customers is preferred is that all the required transactions can be effected as a package in one market, which avoids the execution risk and the increased costs involved in trading in the futures market. Another reason that the use of combinations is preferred is that an options order can be ''tied'' to a particular level of the Nasdaq 100 Index in order to establish the hedge price.[5] When NDX options are tied to NDX combinations, the underlying hedge level of the NDX 100 Index is established and traders and customers can determine the exact implied volatilities of their options trades.[6] Hedging options with combinations acts as an incentive for market-makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, customers who trade options tied to combinations enjoy tighter and more liquid markets.

RUT

Similarly, when RUT traders and customers trade RUT options, they hedge their underlying risk with either Russell 2000 Index futures traded at ICE or with RUT call and put options traded as combinations at one of the option Exchanges where it is multiply listed (including the Exchange). In order for RUT traders and customers to hedge the risk of their options positions using Russell 2000 Index futures, they have to execute two separate trades in two separate markets.

Example 1: Assume a trader or customer wants to buy RUT April 915 puts and hedge with the April futures contract trading at 935. First, the RUT April 915 put option position could be traded at the Exchange. After the options trade, the trader or customer then has to submit an order to ICE to trade the appropriate number of Russell 2000 Index April futures contracts to hedge the options trade.

Example 2: Assume a trader or customer wants to trade a conversion involving the purchase of RUT April 915 puts and the sale of the RUT April 915 calls with the purchase of the April futures contract trading at 935. First, the RUT April 915 put-call option position could be traded at the Exchange. After the options trade, the trader or customer then has to submit an order to ICE to trade the appropriate number of Russell

[4] NDX is the trading symbol for Nasdaq 100 index options, and RUT is the trading symbol for Russell 2000 index options. An ''NDX Combination'' is a long (short) NDX call and a short (long) NDX put having the same expiration date and strike price. An ''RUT Combination'' is a long (short) RUT call and a short (long) RUT put having the same expiration date and strike price. The delta is the positive (negative) number of NDX or RUT combinations that must be sold (bought) to establish a market neutral hedge with the corresponding NDX or RUT option position. An ''NDX combination order'' is an order to purchase or sell NDX options and the offsetting number of NDX combinations defined by the delta, and a ''RUT combination order'' is an order to purchase or sell RUT options and the offsetting number of RUT combinations defined by the delta. *See* Rule 965NY(b)(1)–(3).

[5] Using the example in note 3 [sic], *supra,* the customer will request a market for the calls that the customer wishes to purchase based on a specified level of the Nasdaq 100 Index. The customer specifies an underlying level of the Nasdaq 100 Index to allow market participants to determine the delta (in this case 35) and a theoretical value of the puts. A market participant will then give his or her market for the 35 delta puts and for the component call and put options that will make up the combination. The combination portion of the order is equivalent to an order to trade futures at the underlying value of the Nasdaq 100 Index that has been specified by the parties. The prices quoted for the call and put components of the combination establish the hedge price for the transaction. When the foregoing occurs, NDX traders and customers say that the calls have been ''tied'' to the combination or ''tied to the combo.''

[6] Implied volatility is defined as the volatility percentage that justifies an option's price. When the customer and the market-maker establish the underlying hedge level of the NDX 100 Index and a market price for the calls, the market-maker and the customer are able to use option pricing models to determine the implied volatility of the puts and calls. Knowing the implied volatility that is being quoted in the market is useful to customers and traders in that customers and traders frequently take positions in the market based on the implied volatility level.

2000 Index April futures contracts to hedge the options trade.

Hedging RUT options by using Russell 2000 Index futures in this manner is not preferred by traders and customers because of the execution risk that is involved in having to trade in two separate markets. In other words, the trader or customer is exposed to the risk of the Russell 2000 Index moving significantly before the hedging futures transaction can be executed (e.g., assume the trader or customer in *Example 1* above completes the purchase of the RUT April 915 puts but the Russell 2000 Index declines sharply before the futures can be traded. Given the market decline, the trader or customer must sell the futures at a much lower price to complete the hedge.) As a result, RUT traders and customers prefer trading RUT combinations against their RUT options positions in order to hedge the risk associated with those positions.

Example 3: Assume the Russell 2000 Index April futures contract is trading at 935 and a customer wants to trade the 23 delta RUT April 915 puts tied to the April 935 calls and April 935 puts (instead of the April futures contract). Under this scenario, all three legs of the strategy could be traded on the Exchange.

Example 4: Assume a trader or customer wants to trade a conversion involving the purchase of the RUT April 915 puts and the sale of the RUT April 915 calls tied to the April 935 calls and April 935 puts (instead of the April futures contract). Under this scenario, all four legs of the strategy could be traded on the Exchange.

One reason that the use of combinations by RUT traders and customers is preferred is that all the required transactions can be effected as a package in one market, which avoids the execution risk and the increased costs involved in trading in the futures market. Another reason that the use of combinations is preferred is that an options order can be ''tied'' to a particular level of the Russell 2000 Index in order to establish the hedge price.[7] When RUT options are tied to RUT combinations, the underlying hedge level of the RUT 2000 Index is established and traders and customers can determine the exact implied volatilities of their options trades.[8] Hedging options with combinations acts as an incentive for market-makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, customers who trade options tied to combinations enjoy tighter and more liquid markets.

Occasionally, certain market activity occurs that makes it difficult to effect these types of trades. If an order for options tied to a combination receives an initial quote but does not trade immediately, it remains a live order until the party that submitted the order cancels it. The order may not trade immediately for any reason, but some of the more common reasons are that the customer submitting the order may want to show the order to other market participants in order to improve the initial quote received or an ATP Holder may need time to locate a customer that it believes might like to participate in a trade. Specific market activity can occur hours after an order for options tied to a combination is submitted and initially quoted that would make the trade desirable to both the customer and the market-maker to consummate. However, in a volatile market, the underlying index can move substantially in one direction such that the originally quoted priced [sic] for the options and the combinations are no longer within the current market quotes. In such market conditions, the parties would be unable to consummate the trade because Exchange Rules preclude trading the legs of the options and a combination strategy outside of the currently prevailing market quotes in the individual component series legs.[9] This is not nearly as accommodating as the rules for trading spreads and combinations on the futures markets. Thus, when it comes to the existence of rule constraints that may prevent complex, multi-part strategy trades from occurring out-of-range from the prevailing market quotes in the individual component series legs, another significant consideration for NDX and RUT traders and market participants is the ease with which an execution can take place on other markets such as CME and ICE, which offers a comparable alternative to NDX and RUT (respectively) but is not subject to the same constraints as a national securities exchange like NYSE Amex Options.

From the Exchange's perspective, the combination order rule for options does not come close to leveling the field with the CME and ICE rules for spread and combination trading. The Exchange's rule still requires a combination order in NDX or RUT to be executed at the prices originally quoted, with no window to find liquidity. By comparison, the CME and ICE rules allow spread and combination executions to take place without regard to market prices and only be bound by the daily limit. Under these competing frameworks, it can be more difficult for an NYSE Amex Options market participant attempting to achieve an execution of a complex NDX or RUT option trading strategy compared to a CME market participant attempting to achieve an execution of substantially the same strategy using futures contracts in Nasdaq 100 Index futures [sic] or Russell 2000 Index, respectively. While this distinction is particularly exacerbated during times of market volatility, it can also be an issue at other times as well. In addition, the Exchange believes market participants who are looking to frequently trade spreads or combinations, in general, or as a strategy for hedging risk, in particular, would tend to utilize a market venue where they can more consistently depend on achieving a net price execution at all times—regardless of the level of market volatility—which can put the Exchange at a competitive disadvantage. The additional burden placed on the Exchange market participants can have the effect of discouraging trading on the Exchange in favor of trading on the CME and ICE. The Exchange believes this competitive disadvantage is not consistent with just and equitable principles, serves as an impediment to a free and open market, and may ultimately not serve investors or the public interest. In order to compete and more effectively achieve certain strategy executions, as well as manage risk, the Exchange believes that market participants need more comparable procedures within Exchange Rules.

[7] Using the example in note 3 [sic], *supra,* the customer will request a market for the calls that the customer wishes to purchase based on a specified level of the Russell 2000 Index. The customer specifies an underlying level of the Russell 2000 Index to allow market participants to determine the delta (in this case 23) and a theoretical value of the puts. A market participant will then give his or her market for the 23 delta puts and for the component call and put options that will make up the combination. The combination portion of the order is equivalent to an order to trade futures at the underlying value of the Russell 2000 Index that has been specified by the parties. The prices quoted for the call and put components of the combination establish the hedge price for the transaction. When the foregoing occurs, RUT traders and customers say that the calls have been ''tied'' to the combination or ''tied to the combo.''

[8] Implied volatility is defined as the volatility percentage that justifies an option's price. When the customer and the market-maker establish the underlying hedge level of the RUT 2000 Index and a market price for the calls, the market-maker and the customer are able to use option pricing models to determine the implied volatility of the calls. Knowing the implied volatility that is being quoted in the market is useful to customers and traders in that customers and traders frequently take positions in the market based on the implied volatility level.

[9] *See, e.g.* Exchange Rule 965NY(b).

Proposal

The Exchange is seeking to amend its combination order procedures for RUT and NDX on a pilot basis in an attempt to further level the field of competition between market participants trading on NYSE Amex Options and CME and ICE. In particular, the Exchange is proposing to adopt a two-hour window procedure (which would allow a trade to take place so long as it would have been in the permissible net price trading range within the preceding two hours) on a one-year pilot basis.

The two-hour window procedure would be reflected in proposed new Commentary .03 [10] to Rule 965NY for a pilot period ending one-year after this rule change filing is approved. The new Commentary would provide that, notwithstanding any other rules of the Exchange, combination orders in NDX and RUT may be transacted in open outcry in the following manner: An ATP Holder holding a combination order in NDX or RUT may execute the order at the best net debit or credit price, which may be outside the current derived net market so long as (i) the best net debit or credit price would have been at or within the derived net market over the preceding two hours of trading that day, (ii) no leg of the order would trade at a price outside the displayed bids or offers in the trading crowd or Customer interest in the NDX or RUT Consolidated Book for that series at a point in time over the preceding two-hour period, and (iii) at least one leg of the order would trade at a price that is better than a corresponding Customer bid or offer in the in the NDX or RUT Consolidate Book at the same point in time over the preceding two-hour period.[11] The ''derived net market'' will be defined as the Exchange's best bids and offers displayed in the individual option series legs for the strategy at any one point in time.

Example 7: Assume the Nasdaq 100 Index April futures contract is trading at 2810 and an ATP Holder wants to trade the 35 delta NDX April 2790 puts tied to the April 2810 calls and April 2810 puts. Assume the ATP Holder wants to buy 100 NDX April 2790 puts at $15.10 tied to a purchase of 35 April 2810 calls at $22 and sale of 35 April 2810 puts at $21.00 at 10:35 a.m. At the time, assume the current displayed market for the April 2790 puts is $14.60–$15.10, for the April 2810 calls is $21.50–$22.00 [sic], and for the April 2810 puts is $21.50–$22.50. As a result, the combination order in NDX is priced ''out-of-range'' from the current derived net market ($21 is outside the $21.50 bid, $22.50 offered markets for the April 2810 calls and April 2810 puts). The ATP Holder can execute the combination order in NDX at the desired net price so long as it is the best net price and the net price would have been in range over the preceding 2 hours of trading that day. In particular, the net price must be at or within the derived net market price range over the preceding 2 hours of trading that day, each component series leg must trade at a price at or within the displayed bids or offers at a point in time over the preceding 2-hour period, and at least one leg must trade at a price that is better than the corresponding Customer bid or offer in the NDX Consolidate Book at the same point in time. (In this particular example, the derived net market range would be based on the markets that existed from 9:30 a.m.–10:35 a.m., since the market was open for less than 2 hours). Assume, for example, if the displayed market at 10:20 a.m. for the April 2790 puts was $14.90–$15.30, for the April 2810 calls was $21.00–$22.60, and for the April 2810 puts was $2100 [sic]–$22.60 and there are not public customer orders displayed at the best price in all of the component series, then the combination order in NDX could be executed at the desired net price because it would have been net priced at or within the derived net market over the preceding two hours of trading, the individual component leg prices are at or within the displayed component series prices, and at least one leg would trade at price that improves corresponding customer orders in the NDX Consolidated Book.

It should be noted that the derived net market would be calculated based on the displayed price in each of the component series that exist [sic] at a single point in time over the preceding two-hour window, not separate points in time for each series (e.g. an ATP Holder cannot use the prices of the April 2790 puts at 10:20 a.m. and the prices of the April 2810 calls and puts at 10:30 a.m. to calculate a derived net market). The net execution price must have been ''in range'' over the prior two-hour window of trading. To be ''in range,'' as noted above, the net price must have been at or within the derived net market over the preceding two-hour period, and each leg of the order must ''line up'' and trade at a price that would have been at or inside the best bids and offers displayed in the individual option series legs at a single point in time over the two-hour window and at least one leg must trade at a price that is better than corresponding Customer orders in the NDX or RUT Consolidated Book at the same point in time.

This procedure is generally modeled after CME Rule 542 and ICE Rule 27.11(a)(v) (e.g., a combination order in NDX may be executed out-of-range from the current market prices in the individual component option series legs), except that under NYSE Amex Options' proposed pilot the reported net price and related component series prices must in range within the preceding 2 hours. By comparison, the CME and ICE rules only require the reported price of each component futures contract leg to be within the daily limit price (a number that is, by definition, generally much wider than the two-hour derived net market range proposed by the Exchange).

As is the case for the existing combination orders trading procedure today, combination orders in NDX and RUT executed under the proposed new pilot procedure would continue to be identified with a special indicator on each component leg that would be price reported to the trading floor and the Options Price Reporting Authority (''OPRA''). This indicator acts as notice to the public that the reported prices are part of a combination order trade. Therefore, the Exchange believes that price discovery should not be adversely affected by the operation of Exchange Rule 965NY, as proposed to be modified. In addition, as is the case, today, the proposed procedure under Rule 965NY would not lessen the obligations of ATP Holders to obtain best execution of options orders for their customers. Therefore, with the approval of the proposed rule change, the Exchange will issue a Regulatory Bulletin to its ATP Holders explaining the operation of Rule 965NY, as amended. In the Regulatory Bulletin, the Exchange will remind ATP Holders that Rule 965NY does not lessen the obligation of ATP Holders to obtain best execution of options orders for their customers.

If the Exchange were to propose an extension of the proposed pilot program, or should the Exchange propose to make the program permanent, the Exchange would submit, along with any filing proposing such amendments to the program, a pilot program report that would provide an analysis of the program covering the period during which the program was in

[10] The Commission notes that the Exchange is proposing to add a new subsection (b)(4)(iii) to Rule 965NY, not a new Commentary .03.

[11] Stated another way, this provision provides that, if there are resting public customer orders on all of the legs of the individual series of the strategy at the same point in time, at least one leg of the order must trade at a price that is better than the corresponding bid or offer of a customer.

effect. This report would include information on the number of combination trades in NDX and RUT and best bid or offer trade through/trade at analysis of such combination trades. The report will also include information on the options classes of NDX and RUT and other broad-based index option products, including information on average contract value, average daily volume, open interest, average order size, percentage of complex orders, percentage of volume from complex orders, and average daily notional value traded. The report would be submitted to the Commission at least two months prior to the expiration date of the pilot program and would be provided on a confidential basis.

The Exchange believes the proposed pilot procedure will facilitate the orderly execution of combination orders in NDX and RUT at all times, including during volatile markets, in a manner that is more competitive with the existing CME and ICE processes. In addition, the Exchange believes the proposed pilot procedure will continue to address customers' desire to show an order to other market participants to seek price improvement or additional liquidity. The Exchange also believes the proposed pilot procedure will continue to create an incentive for market makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, customers who trade options tied to combinations will continue to enjoy tighter and more liquid markets.

In proposing to introduce this pilot, the Exchange is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their trading activity in NDX and RUT, on the one hand, and priority principles common to securities exchanges, on the other. The Exchange is also cognizant of the CME and ICE markets, in which similar restrictions do not apply. In light of these considerations, the Exchange believes the proposed pilot procedure is appropriate and reasonable and would provide market participants with additional flexibility in achieving desired combination order strategies in NDX and RUT and in determining whether to execute their options on the Exchange or comparable products on CME and ICE. In that regard, the Exchange notes that the proposed new procedure outlined above does not go as far as what exists today on CME and ICE and instead represents what the Exchange believes is a trading process that is very narrowly tailored. For the foregoing reasons, the Exchange believes that the proposed pilot procedure for trading combination orders in NDX and RUT is reasonable and appropriate, would promote just and equitable principles of trade, and would facilitate transactions in securities while continuing to foster the public interest and investor protection.

2. Statutory Basis

The Exchange believes that the proposed rule change will allow for the orderly execution of combination orders in NDX and RUT and will be beneficial to both customers and traders. Accordingly, the Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[12] in general, and Section 6(b)(5) of the Act,[13] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

As noted above, the Exchange believes the proposed pilot procedure will facilitate the orderly execution of combination orders in NDX and RUT at all times, including during volatile markets, in a manner that is more competitive with the existing CME and ICE processes. In addition, the Exchange believes the proposed pilot procedure will continue to address customers' desire to show an order to other market participants to seek price improvement or additional liquidity. The Exchange also believes the proposed pilot procedure will continue to create an incentive for market-makers to reduce the price width of their markets because they know that their hedge price has been established and they will not have to trade in another market. Thus, customers who trade options tied to combinations will continue to enjoy tighter and more liquid markets.

In proposing the pilot, the Exchange is cognizant of the need for market participants to have substantial options transaction capacity and flexibility to hedge their trading activity in NDX and RUT, on the one hand, and priority principles common to securities exchanges, on the other. The Exchange is also cognizant of the CME and ICE markets, in which similar restrictions do not apply. In light of these considerations, the Exchange believes the proposed pilot procedure is appropriate and reasonable and would provide market participants with additional flexibility in achieving desired combination order strategies in NDX and RUT and in determining whether to execute their options on the Exchange or a comparable product on CME or ICE, respectively. In that regard, the Exchange notes that the proposed pilot procedure outlined above does not go as far as that exists today on CME and ICE and instead represents what the Exchange believes is a trading process that is already very narrowly tailored. For the foregoing reasons, the Exchange believes that the proposed new procedure for trading combination orders in NDX and RUT is reasonable and appropriate, would promote just and equitable principles of trade, and would facilitate transactions in securities while continuing to foster the public interest and investor protection. Finally, the Exchange believes that the proposed revisions to the existing combination orders in NDX and RUT text will provide clarity on the existing application of the combination order provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal will provide market participants with additional protection from receiving executions on one venue. Further, since NDX and RUT are multiply-listed products, other exchanges are free to adopt similar rules regarding combination orders if they so elect. Thus, the Exchange does not believe the proposal creates any significant impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

(A) By order approve or disapprove the 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. The Commission requests comments, in particular, on the following aspects of the proposed rule change:

1. Under current rules, the NDX and RUT combination orders, as described above, could not be executed at a price that would result in any underlying option leg trading through a contemporaneous resting order for that option. Do commenters believe this restriction impedes trading of such combination orders? If not, why not?

2. If so, what is the nature of the impediment? Would the proposed provision of a two-hour look-back window mitigate this impediment? If so, why?

3. During any look-back window, prices of underlying option legs may change as a result of changing buy or sell pressure for any given option, competition among market participants, changes in views of implied volatility of any option, or changes in the NDX and RUT indices themselves. Does the efficacy of the proposed rule change depend on why the bid and offer prices for the underlying legs have moved during the look-back window?

4. What would be the impact of a contemporaneous trade-through on market participants who provide liquidity in the underlying leg options? Would knowing that they can be traded through as a result of the NDX and RUT combination orders cause them to change the way they quote for the underlying options? Are there any negative implications regarding the provision of liquidity in the underlying options? If so, would the proposed two-hour look-back window mitigate these effects?

5. Do commenters believe that there is currently insufficient information to fully inform the implications of this proposed rule, and that a decision should be made only after a pilot period?

6. If so, what type of data should be collected during the pilot period? What type of analyses would be performed on such data that could more fully inform market participants and regulators regarding the nature of the proposed rule? Are there specific criteria that would suggest the changes were either net positive or net negative to the markets?

7. Do commenters believe that market participants consider NDX combination orders traded on NYSE MKT and spreads or combinations in Nasdaq 100 Index futures traded on CME to be substitutes for each other for purposes of hedging NDX positions? Do commenters believe that market participants consider RUT combination orders traded on NYSE MKT and spreads or combinations in Russell 2000 Index futures traded on ICE to be substitutes for each other for purposes of hedging RUT positions? If so, provide examples of the Nasdaq 100 and Russell 2000 Index futures strategies with which NDX and RUT combination orders may compete.

8. Do commenters believe that NYSE MKT's current rules for trading NDX and RUT combination orders make NDX and RUT options listed on NYSE MKT less attractive than Nasdaq 100 Index and Russell 2000 Index futures traded as spreads or combinations on CME and ICE, respectively, as a means for hedging Nasdaq 100 Index and Russell 2000 Index exposure? If so, why? If not, why not?

9. Please provide data, if available, about any preference you believe exists for market participants to use Nasdaq 100 Index and Russell 2000 Index futures combination orders traded on CME and ICE, respectively, over NDX and RUT combination orders traded on NYSE MKT.

10. Do commenters believe that the proposed pilot program will make the trading of NDX and RUT combination orders more competitive with the trading of delta-hedged options strategies using CME's Nasdaq 100 Index futures and ICE's Russell 2000 Index futures, respectively, and combinations of options on those futures and, if so, why?

11. Do commenters believe that the ability of an ATP Holder executing an NDX or RUT combination order to look back two hours to price some or all of the legs of the NDX or RUT combination order, as provided in the proposed pilot program, will affect the willingness of other market participants to trade with the NDX or RUT combination order? If so, how?

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2013–59 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–59. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2013–59, and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16384 Filed 7–8–13; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69909; File No. SR–BOX–2013–35]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange Fee Schedule To Update and Clarify Certain Fees Assessed Under Section V (Technology Fees)

July 2, 2013.

Pursuant to Section 19(b)(1) under the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2013, BOX Options Exchange LLC (the ''Exchange'') 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 Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend the Exchange Fee Schedule to update and clarify certain fees assessed under Section V (Technology Fees) on the BOX Market LLC (''BOX'') options facility. Changes to the fee schedule pursuant to this proposal will be effective upon filing. 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.*

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, Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for trading on BOX to update and clarify the technology fees that are assessed on market participants. The Exchange currently organizes Section V (Technology Fees) into two sections; a Point of Presence (''PoP'') Connection Fee under Section V.A., and a Back Office Trade Management Software (''TMS'') Fee under Section V.B. The Exchange proposes to rename Section V.A. ''Connectivity Fees'' and replace the text in Section V.A. with text that clarifies how these fees are assessed. Further, the Exchange proposes to remove Section V.B. from the BOX Fee Schedule.

Section V.A, currently titled ''PoP Connection Fee'', was created to detail the fees applicable to Participants who connected to the BOX market network at PoP sites. These sites are owned and operated by third-party external vendors, and the fees listed in this section were meant to encompass what fees could be charged based on each Participant's particular configuration. These fees could either be billed directly to the Participant by the vendor, or passed through to the Participant by BOX. Currently, in practice, a vast majority of Participants are billed directly by the vendor.

The Exchange is proposing to rename Section V.A. ''Connectivity Fees'' and replace the text in Section V.A. with text that clarifies the fees applicable to all market participants that connect to the BOX network. Specifically, the Exchange proposes to state that market participants are required to connect to the BOX network (including cross-connects),[5] through datacenters owned and operated by third-party vendors. The Exchange also proposes to state that while BOX does not assess Connectivity Fees; these fees are assessed by the datacenters and will be billed directly to the market participant. BOX will no longer be responsible for passing through any of these fees. Connectivity fees can include one-time set-up fees, monthly charges, and other fees charged by the third-party vendor in exchange for the services provided to the market participant. The Exchange notes that this proposal does not change any of the fees currently assessed by third party vendors on market participants connecting to BOX, but rather clarifies how they will be billed.

The Exchange then proposes to detail the two datacenters where market participants may connect to the BOX network: NY4, owned and operated by Equinix; and 65 Broadway, owned and operated by 365 Main; and the connectivity fees applicable, depending upon connection type, in the table set forth below (and included in the proposed Section V.A.).

Connection Type	NY4		65 Broadway	
	One-time set-up	Monthly	One-time set-up	Monthly
POTS	$100	$25	$50	$25
Ethernet	N/A	N/A	250	225
T1	500	100	N/A	N/A
Cat 5/6	500	245	250	225
COAX	500	245	250	200
Single & Multi Mode Fiber	500	350	325	500
Extended Cross Connect	850	1000	N/A	N/A

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A ''cross connect'' occurs when the affected third-party system is located at the same datacenter site where BOX systems are located, and the third-party connects to BOX through the datacenter.

The Exchange believes the proposed changes to Section V.A. will more accurately explain the costs of connecting to the Exchange.

Further, the Exchange is proposing to remove Section V.B. ''Back Office Trade Management Software (''TMS'')'' from the Fee Schedule. The TMS Software is optional software to which BOX Participants may subscribe in order to manage their post trade data. The Exchange currently charges a monthly per user fee, depending upon the number of users per Participant.

The Exchange proposes to remove Section V.B. and offer TMS Software to all BOX Participants at no cost. The Exchange believes that offering TMS Software at no cost will allow more Participants to subscribe to the service and therefore will give them the opportunity to better manage their trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to clarify that connectivity fees are assessed on all market participants that establish connections to BOX through a third-party and that these fees will be billed directly to the market participant. Specifically, the Exchange is proposing to amend the connectivity fee section of the Fee Schedule in a way that is similar to a comparable section of the Miami International Securities Exchange, LLC (''MIAX'').[8]

The Exchange believes that the proposed amendments to Section V.A. of the Fee Schedule are reasonable as they do not change any of the fees currently assessed by third party vendors on market participants connecting to BOX, but rather clarify how these fees will be billed.

Further, the Exchange believes that the proposed Connectivity Fees constitute an equitable allocation of fees, and are not unfairly discriminatory, as all similarly situated market participants are charged the same amount depending on the services they receive.

The Exchange believes that the proposed removal of TMS Software fees is non-discriminatory because it applies equally to all Participants on the Exchange. Further, the Exchange believes that offering the TMS Software at no cost will remove impediments to and better provide for a free and open market. Moreover, the removal of the TMS Software fees is reasonable because it will allow all Participants to access the software at no cost.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendments to the Fee Schedule will not impose a burden on competition among various Exchange Participants. The proposed change is designed to provide greater specificity and clarity within the Fee Schedule and does not place any Participants at a disadvantage compared to other Participants. Further, the Exchange does not believe this rule change will have an impact on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further 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–2013–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2013–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–35 and should be submitted on or before July 30, 2013.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] *See* MIAX Options Fee Schedule as of June 1, 2013, available at *http://www.miaxoptions.com/sites/default/files/MIAX_Options_Fee_Schedule_06032013.pdf*

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16381 Filed 7–8–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69920; File No. SR–Phlx–2013–73]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 1012 To Permit the Exchange To List Additional Strike Prices Until the Close of Trading on the Second Business Day Prior to Monthly Expiration

July 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 1, 2013, NASDAQ OMX PHLX LLC (the ''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Rule 1012 (Series of Options Open for Trading) to permit the Exchange to list additional strike prices until the close of trading on the second business day prior to the expiration of a monthly, or standard, option in the event of unusual market conditions.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rule 1012(a)(i)(B) to permit the Exchange to add additional strikes until the close of trading on the second business day prior to a monthly expiration in the event of unusual market conditions.

This is a competitive filing that is based on two recently approved filings submitted by NYSE MKT LLC (''NYSE MKT'') and NYSE, Arca, Inc. (''NYSE Arca'') and an immediately effective filing submitted by Chicago Board Options Exchange, Incorporated (''CBOE'').[3] The NYSE MKT and NYSE Arca filings both made changes to their respective rules governing the last day on which strikes may be added for individual stock and exchange traded fund (''ETF'') options. Similar to current Rule 1012(a)(i)(B), NYSE MKT, NYSE Arca, and CBOE had rules that permitted the opening of additional series of individual stock and ETF options until the first calendar day of the month in which the option expires or until the fifth business day prior to expiration if unusual market conditions exist. NYSE MKT, NYSE Arca, and CBOE amended their rules to permit the opening of additional series of individual stocks and ETF options until the close of trading on the second business day prior to the expiration of a monthly, or standard, option in the event of unusual market conditions. The Exchange is proposing to amend its rules in respect of equity and ETF options to permit the opening of additional strike prices until the close of trading on the second business day prior to the expiration of a standard (monthly) option.

Options market participants generally prefer to focus their trading in strike prices that immediately surround the price of the underlying security. However, if the price of the underlying stock or ETF moves significantly, there may be a market need for additional strike prices to adequately account for market participants' risk management needs in a stock or ETF. In these situations, the Exchange has the ability to add additional series at strike prices that are better tailored to the risk management needs of market participants. The Exchange may make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when the market price of the underlying stock or ETF moves more than five strike prices from the initial exercise price or prices.[4]

If the market need occurs prior to five business days prior to expiration, then the market participants may have access to an option contract that is more tailored to the movement in the underlying stock or ETF. Under current Rule 1012, however, the Exchange is unable to open additional series in response to unusual market conditions that occur between five and two days prior to expiration and market participants may be left without a contract that is tailored to manage their risk. Because of the current five days before expiration restriction, investors may be unable to tailor their hedging activities in options and effectively manage their risk going into expiration.

The Exchange proposes to permit the listing of additional strikes until the close of trading on the second business day prior to expiration in unusual market conditions. Since expiration of standard options on individual stocks and ETFs is on a Saturday, the close of trading on the second business day prior to expiration will typically fall on a Thursday. However, in cases where Friday is a holiday during which the Exchange is closed, the close of trading on the second business day will occur on a Wednesday. The Exchange will continue to make the determination to open additional series for trading when the Exchange deems it necessary to maintain an orderly market, to meet customer demand, or when certain price movements take place in the underlying market. The proposed change will

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 68460 (December 18, 2012), 77 FR 76145 (December 26, 2012) (SR–NYSEMKT–2012–41) (approval order) (''NYSE MKT filing''); 68461 (December 18, 2012), 77 FR 76155 (December 26, 2012) (SR–NYSEArca–2012–94) (approval order) (''NYSE Arca filing''); and 68606 (January 9, 2013), 78 FR 3065 (January 15, 2013) (SR–CBOE–2012–131) (notice of filing and immediate effectiveness) (''CBOE filing'').

[4] *See* Rule 1012(a)(i)(B).

provide an additional four days to the Exchange to gauge market impact of the underlying stock or ETF and to react to any market conditions that would render additional series prior to expiration beneficial to market participants. The Exchange believes that the impact on the market from the proposed change will be very minimal to market participants; however, it will be extremely beneficial when unusual market conditions occur during the five to two days leading up to expiration. As a result, the proposal would allow participants to adjust their risk exposure when an unusual market event occurred on trading days 2, 3, 4, or 5 prior to expiration.

This proposal does not raise any capacity concerns on the Exchange, because the changes have no material difference in impact from the current rules. The Exchange notes the proposed change allows for new strikes that would otherwise be permitted to add under existing rules either on the fifth day prior or immediately after expiration.[5] A strike which opens two days prior to expiration will have minimal impact on quoting, as it adds two series out of hundreds of thousands, and only for a small number of days.[6] Thus, any additional strikes that may be added under the proposed change would have no measurable effect on systems capacity. The Exchange understands that The Options Clearing Corporation (''OCC'') is able to accommodate the proposal and would have no operational concerns with adding new series on any day except the last day of trading an expiring series.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[7] In particular, 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 promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that providing an additional four days to the Exchange to gauge market impact and to react to any market conditions prior to expiration is beneficial and will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions prior to expiration. The Exchange also believes that the additional four days will provide the investing public and other market participants with additional opportunities to hedge their investments thus allowing these investors to better manage their risk exposure with additional in the money series. While the four additional days may generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to the narrow situations when an unusual market event occurred on trading days 2, 3, 4, or 5 prior to expiration. The Exchange also believes that the proposed rule change will ensure competition because the Exchange will be able to list additional equity and ETF series up to the second day before expiration in the same manner that NYSE MKT, NYSE Arca, and CBOE are currently able to do.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to recently approved NYSE MKT and NYSE Arca filings, and an immediately effective CBOE filing. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest in that it will allow Phlx to open additional series of individual stocks and ETF options until the close of trading on the second business day prior to a monthly expiration in unusual market conditions in the same manner as NYSE MKT, NYSE Arca and CBOE. In sum, the proposed rule change presents no novel issues, and waiver will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[12] of the Act 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:

[5] Any new strikes added under this proposal for options on equities or ETFs would be added in a manner consistent with the range limitations described in Rule Commentary .10 to Rule 1012.

[6] In the case of a multi-stock event where multiple stocks may be subject to unusual market conditions, a strike which opens two days prior to expiration will also have minimal impact on quoting, as it adds two series per stock out of hundreds of thousands, and only for a small number of days.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78s(b)(2)(B).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2013–73 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–73. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2013–73 and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16383 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69908; File No. SR–NASDAQ–2013–089]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend Fee Pilot Program for NASDAQ Last Sale

July 2, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/NYSE MKT'' data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). The purpose of this proposal is to extend the existing pilot program for three months, from July 1, 2013 to September 30, 2013.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by millions of investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [April] *July* 1, 2013, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.

NLS consists of two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ'' data product is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the ''NASDAQ Last Sale for NYSE/NYSE MKT'' data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE MKT-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors (''SIPs'') that provide ''core'' data consolidate last sale information from all exchanges and trade reporting facilities (''TRFs''). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/NYSE MKT Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

NASDAQ also established a cap on the monthly fee, currently set at $50,000 per month, for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/NYSE MKT products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(4) of the Act,[4] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[5]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (DC Cir. 2010) (''*NetCoalition I*''), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [6]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record in that case did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[7] Moreover, NASDAQ further notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] *NetCoalition I,* at 535.

[7] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis.

necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[8] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity.

[8] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSE Arca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while Yahoo! and Google now both disseminate NASDAQ's product, several other major content providers, including MSN and Morningstar, use the BATS product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition I* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a

platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml.* In addition, in response to prior filings to extend the NLS pilot,[9] the Securities Industry and Financial Markets Association (''SIFMA'') and/or NetCoalition[10] filed comment letters contending that the SEC should suspend and institute disapproval proceedings with respect to the filing. SIFMA and NetCoalition had also filed petitions seeking review by the United States Court of Appeals for the District of Columbia Circuit (the ''Court'') with respect to the NLS pricing pilots in effect from July 1, 2011 through September 30, 2011, from October 1, 2011 through December 31, 2011, from July 1, 2012 through September 30, 2012, and from January 1, 2013 through March 31, 2013. These appeals were stayed pending resolution of the consolidated case *NetCoalition* v. *SEC,* Nos. 10–1421, 10–1422, 11–1001, and 11–1065 (''*NetCoalition II*''). On April 30, 2013, the Court issued a decision dismissing *NetCoalition II,* concluding that it lacked jurisdiction to entertain the case. Subsequently, the Court issued orders dismissing each of the pending petitions seeking review of prior extensions of the NLS pricing pilot.[11]

SIFMA's most recent letter is identical to prior letters (other than with respect to changes reflecting the deletion of NetCoalition as a signatory). As such, the letter continues to mischaracterize the import of *NetCoalition I.* Specifically, the court made findings about the extent of the Commission's record in support of determinations about a depth-of-book product offered by NYSE Arca. In making this limited finding, the court nevertheless squarely rejected contentions that cost-based review of market data fees was required by the Act:

> The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended ''fair and reasonable'' to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.[12]

While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are ''difficulties in calculating the direct costs . . . of market data,'' *id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a trading platform, and the marginal costs of market data production are minimal or even zero. Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two ''joint products''—and any attempt to do so would result in inherently arbitrary cost allocations.[13]

SIFMA further contends the prior filing lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in *NetCoalition I.* While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: Rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in prior filings, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues; additional competitive entry is possible; and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA's letter not only mischaracterizes the *NetCoalition I*

[9] Securities Exchange Act Release Nos. 69245 (March 27, 2013), 78 FR 19772 (April 2, 2013) (SR–NASDAQ–2013–053); 68568 (January 3, 2013), 78 FR 1910 (January 9, 2013) (SR–NASDAQ–2012–145); 67376 (July 9, 2012), 77 FR 41467 (July 13, 2012) (SR–NASDAQ–2012–078); 65488 (October 5, 2011), 76 FR 63334 (October 21, 2011) (SR–NASDAQ–2011–132); 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR–NASDAQ–2011–092); 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044).

[10] It was recently reported that NetCoalition is terminating its operations. *See* Martinez, ''NetCoalition Winds Down Operations'' (available at *http://thehill.com/blogs/hillicon-valley/technology/263793-netcoalition-winds-down-operations*). Accordingly, NASDAQ notes that the most recent comment letter was filed solely by SIFMA. *See* Letter from Ira D. Hammerman, Senior Managing Director & General Counsel, SIFMA, to Elizabeth M. Murphy, Secretary, Commission (April 23, 2013).

[11] NASDAQ understands that SIFMA has subsequently submitted to the Commission a pleading styled as an ''Application for an Order Setting Aside Rule Changes of Certain Self-Regulatory Organizations Limiting Access to their Services'' that purports to challenge prior filings under Section 19(d) and (f) of the Act.

[12] *NetCoalition I,* 615 F.3d at 534.

[13] The court also explicitly acknowledged that the ''joint product'' theory set forth by NASDAQ's economic experts in *NetCoalition I* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. Indeed, the Commission relied on that theory before the DC Circuit, but the court declined to reach the question because the Commission raised it for the first time on appeal. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was submitted to the Commission in SR–NASDAQ–2011–010. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

decision, it also fails to address the characteristics of the product at issue and the evidence already presented.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–089 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–089. 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 NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–089 and should be submitted on or before July 30, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–16376 Filed 7–8–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8375]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on July 23, 2013, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App § 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public because the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's studies on current U.S. policy and issues regarding arms control, international security, nuclear proliferation, and diplomacy.

For more information, contact Richard W. Hartman II, Executive Director of the International Security Advisory Board, U. S. Department of State, Washington, DC 20520, telephone: (202) 736–4290.

Dated: June 26, 2013.

Richard W. Hartman, II,

Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. 2013–16469 Filed 7–8–13; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Meeting: RTCA Program Management Committee

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

ACTION: Notice of RTCA Program Management Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Program Management Committee.

DATES: The meeting will be held July 25, 2013, from 9:00 a.m.–1:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 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) 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 Program Management Committee meeting. The agenda will include the following:

July 25, 2013

- Welcome and Introductions.
- Review/Approve Meeting Summary.
  - June 19, 2013, RTCA Paper no. 137–13/PMC–1106.
- Action Item Review.
  - SC–214—Standards for Air Traffic Data Communication Services—Discussion-Review/Approve Terms of Reference Revision 5—RTCA Paper No. 134–13/PMC–1103.
  - Include 4D trajectory with dynamic RNP, fixed radius transitions, advanced interval management, and transmission of ATC winds into the operational capabilities of the message set for Baseline 2.
  - Extend the completion dates from January 2014 to March 2015 for Baseline 2—Interoperability Standards.
- Other Business.
- Schedule for Committee Deliverables and Next Meeting Date.
- 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 June 28, 2013.

Paige Williams,

Management Analyst, NextGen, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–16464 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Hilo International Airport, Hilo, Hawaii

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA announces its determination that the noise exposure maps submitted by Hawaii State Department of Transportation, Airports Division (HDOT–A), for Hilo International Airport under the provisions of 49 U.S.C. 47501 et. seq (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: This notice is effective July 9, 2013, and applicable May 31, 2013.

FOR FURTHER INFORMATION CONTACT: Gordon Wong, Environmental Protection Specialist, FAA Western-Pacific Region, Honolulu Airports District Office, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii, telephone number (808) 541–1232. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Hilo International Airport are in compliance with applicable requirements of Title 14, Code of Federal Regulations (CFR) Part 150 (hereinafter referred to as ''Part 150''), effective May 31, 2013. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by HDOT–A. The documentation that constitutes the ''Noise Exposure Maps'' as defined in section 150.7 of Part 150 includes: Exhibit 1 ''Existing (2013) Noise Exposure Map'' and Exhibit 2 ''Future (2018) Noise Exposure Map.'' The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on May 31, 2013.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Western-Pacific Region, Airports Division, Room 3012, 15000 Aviation Boulevard, Hawthorne, California 90261.

Federal Aviation Administration, Honolulu Airports District Office, HNL–ADO, 300 Ala Moana Boulevard, Room 7–128, Honolulu, Hawaii 96813.

Administrative Offices of the Hawaii Department of Transportation—Airports, Engineering Branch, 400 Rodgers Boulevard, 7th Floor, Honolulu, Hawaii 96819.

Hilo International Airport, 2450 Kekuanaoa Street, Suite 215, Hilo, Hawaii 96720.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Hawthorne, California on May 31, 2013.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 2013–16451 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Passenger Facility Charge (PFC) Application 11–05–C–00–SFO to Impose and Use PFC Revenue at San Francisco International Airport, San Francisco, California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at San Francisco International Airport (SFO), under the provisions of

the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (Title 14 CFR part 158).

DATES: Comments must be received on or before August 8, 2013.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John L. Martin, Airport Director, San Francisco International Airport, at the following address: 575 North McDonnell Road, 2nd Floor, San Francisco, CA 94128. Air carriers and foreign air carriers may submit copies of written comments previously provided to the San Francisco Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Arlene Draper, Assistant Manager, San Francisco Airports District Office, 1000 Marina Boulevard, Suite 220, Brisbane, CA 94005–1835, Telephone: (650) 827–7602. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at San Francisco International Airport, under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (Title 14 CFR Part 158).

On October 5, 2010, the public agency submitted an application to impose and use PFC revenue on 25 projects at SFO. On November 4, 2010, the FAA found the application was not substantially complete. On November 18, 2010, the public agency notified the FAA of their intent to supplement the application. The FAA received the supplemented application on June 14, 2013, within the requirements of section 158.27 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 12, 2013.

The following is a brief overview of PFC application No. 11–05–C–00–SFO:

Proposed charge effective date: January 1, 2017.

Proposed charge expiration date: June 1, 2023.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $610,451,805.

Description of the impose and use project:

Terminal 2 and Boarding Area D Renovations—the project provides for the reimbursement of the costs associated with the renovation, expansion, and modernization of the San Francisco International Airport Terminal 2 and Boarding Area D, including the installation of 14 boarding gates and associated aircraft parking apron and passenger loading bridges.

Withdrawn Projects: By letter dated June 14, 2013, the public agency withdrew 23 airfield improvement projects and the International terminal common use system improvements project, included in the original October 5, 2010 application. Therefore, these projects are no longer part of this application.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled on-demand air carriers filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Office located at: 15000 Aviation Blvd., Room 3012, Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the San Francisco International Airport.

Issued in Lawndale, California, on June 27, 2013.

Mia Paredes Ratcliff,

Manager, Planning and Programming Branch, Western-Pacific Region.

[FR Doc. 2013–16453 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Brunswick Executive Airport in Brunswick, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comments.

SUMMARY: Under the provisions of Title 49, U.S.C. 47153(d), notice is being given that the FAA is considering a request from Midcoast Regional Redevelopment Authority to waive the surplus property requirements for approximately 3.47 acres of airport property located at Brunswick Executive Airport in Brunswick, ME.

It has been determined through study and master planning that the subject parcel will not be needed for aeronautical purposes and would better serve the airport if used for aviation compatible, non-aeronautical revenue generation. Full and permanent relief of the surplus property requirements on this specific parcel will allow the airport and its tenant on this parcels to enter into a long-term lease and begin making infrastructure improvements. All revenues through the leasing of the parcel will continue to be subject to the FAAs revenue-use policy and dedicated to the maintenance and operation of the Brunswick Executive Airport.

DATES: Comments must be received on or before August 8, 2013.

ADDRESSES: Send comments on this document to Mr. Barry J. Hammer at the Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone 781–238–7625.

FOR FURTHER INFORMATION CONTACT: Documents are available for review by appointment by contacting Mr. Marty McMahon, Telephone 207–798–6512 or by contacting Mr. Barry J. Hammer, Federal Aviation Administration, 16 New England Executive Park, Burlington, Massachusetts, Telephone 781–238–7625.

Issued in Burlington, Massachusetts on June 17, 2013.

Mary T. Walsh,

Manager, Airports Division, New England Region.

[FR Doc. 2013–16462 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–24278; FMCSA–2006–25854; FMCSA 2008–0355; FMCSA 2010–0203; FMCSA–2011–0089]

Denial of Exemption Applications; Epilepsy and Seizure Disorders

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

ACTION: Notice of denial for exemptions from the provisions of 49 CFR 391.41(b)(8).

SUMMARY: FMCSA announces denial of applications from seven individuals for an exemption from the prohibition against persons with a clinical diagnosis of epilepsy or any other condition which is likely to cause a loss of consciousness or any loss of ability to operate a commercial motor vehicle (CMV), from operating CMVs in interstate commerce. Reasons for denial are listed after each name entry.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Director, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 7 individuals listed in this notice have recently requested an exemption from the epilepsy and seizure disorder standard in 49 CFR 391.41(b)(8), which applies to drivers who operate CMVs, as defined in 49 CFR 390.5, in interstate commerce. Section 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a commercial motor vehicle.

In order to make an evidence-based decision, FMCSA conducted a comprehensive review of scientific literature and convened a panel of medical experts in the field of neurology to evaluate key questions regarding seizure and anti-seizure medication related to the safe operation of a commercial motor vehicle. In reaching the determination to grant or deny exemption requests for individuals who have experienced a seizure, the Agency considered both current medical literature and information and the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency previously gathered evidence for decision-making concerning potential changes to the regulation, by conducting a comprehensive review of scientific literature that was compiled into a report entitled, ''*Evidence Report on Seizure Disorders and Commercial Vehicle Driving''* (*Evidence Report*) [CD–ROM HD TL230.3 .E95 2007]. The Agency then convened an MEP in the field of neurology on May 14–15, 2007, to review: 49 CFR 391.41(b)(8) and the advisory criteria regarding individuals who have experienced a seizure; and the 2007 Evidence Report. The *Evidence Report* and the MEP recommendations are published on-line at *http://www.fmcsa.dot.gov/rules-regulations/topics/mep/mep-reports.htm,* under Seizure Disorders, and are in the docket for this notice.

MEP Criteria for Evaluation

On October 15, 2007, the MEP issued the following recommended criteria for evaluating whether an individual with epilepsy or a seizure disorder should be allowed to operate a CMV.[1] The MEP recommendations are included in an appendix at the end of this notice and in each of the previously published dockets.

Epilepsy diagnosis. If there is an *epilepsy diagnosis,* the applicant should be seizure-free for *8 years, on or off medication.* If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years.* Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with an epilepsy diagnosis should be performed every year.

Single unprovoked seizure. If there is a *single unprovoked seizure* (i.e., there is no known trigger for the seizure), the individual should be seizure-free for *4 years, on or off medication.* If the individual is taking anti-seizure medication(s), the plan for medication should be stable for *2 years.* Stable means no changes in medication, dosage, or frequency of medication administration. Recertification for drivers with a single unprovoked seizure should be performed every 2 years.

Single provoked seizure. If there is a *single provoked seizure* (i.e., there is a known reason for the seizure), the Agency should consider specific criteria that fall into the following two categories: Low-risk factors for recurrence and moderate-to-high risk factors for recurrence.

- *Examples of low-risk factors for recurrence* include seizures that were caused by a medication; by non-penetrating head injury with loss of consciousness less than or equal to 30 minutes; by a brief loss of consciousness not likely to recur while driving; by metabolic derangement not likely to recur; and by alcohol or illicit drug withdrawal.
- *Examples of moderate-to-high-risk factors for recurrence* include seizures caused by non-penetrating head injury with loss of consciousness or amnesia greater than 30 minutes, or penetrating head injury; intracerebral hemorrhage associated with a stroke or trauma; infections; intracranial hemorrhage; post-operative complications from brain surgery with significant brain hemorrhage; brain tumor; or stroke.

The MEP report indicates individuals with moderate to high-risk conditions should not be certified. Drivers with a history of a single provoked seizure with low risk factors for recurrence should be recertified every year.

Medical Review Board Recommendations and Agency Decision

FMCSA presented the MEP's findings and the Evidence Report to the Medical Review Board (MRB) for consideration. The MRB reviewed and considered the 2007 ''Seizure Disorders and Commercial Driver Safety'' evidence report and the 2007 MEP recommendations. The MRB recommended maintaining the current advisory criteria, which provide that ''drivers with a history of epilepsy/seizures off anti-seizure medication and seizure-free for 10 years may be qualified to drive a CMV in interstate commerce. Interstate drivers with a history of a single unprovoked seizure may be qualified to drive a CMV in interstate commerce if seizure-free and off anti-seizure medication for a 5 year period or more'' [Advisory criteria to 49 CFR 391.43(f)].

The Agency acknowledges the MRB's position on the issue but believes relevant current medical evidence supports a less conservative approach. The medical advisory criteria for epilepsy and other seizure or loss of consciousness episodes was based on the 1988 ''Conference of Neurological Disorders and Commercial Driving'' (NITS Accession No. PB89–158950/AS). A copy of the report can be found in the docket referenced in this notice.

The MRB's recommendation treats all drivers who have experienced a seizure the same, regardless of individual medical conditions and circumstances. In addition, the recommendation to continue prohibiting drivers who are taking anti-seizure medication from operating a CMV in interstate commerce does not consider a driver's actual seizure history and time since the last seizure. The Agency has decided to use the 2007 MEP recommendations as the basis for evaluating applications for an exemption from the seizure regulation on an individual, case-by-case basis. The disposition of applications announced in this notice applies the 2007 MEP recommendations.

[1] Engel, J., Fisher, R.S., Krauss, G.L., Krumholz, A., and Quigg, M.S., ''Expert Panel Recommendations: Seizure Disorders and Commercial Motor Vehicle Driver Safety,'' FMCSA, October 15, 2007.

Public Comments

Patty Cantagallo, MD, expressed her concern that applicant John Morris had indications of alcohol abuse in his medical data. The Agency did not include Mr. Morris in the final disposition. Dr. Cantagallo also indicated uncertainty with applicant Anthony Besch having unresolved ''nighttime seizures.'' Mr. Besch was excluded from final disposition.

Denials and Reasons

• The following drivers were listed previously in **Federal Register** Notice FMCSA–2006–24278:

Anthony Besch—We are unable to contact Mr. Besch by phone or through his former employer to ascertain his status.

Charles Gant—Mr. Gant's records indicated that he had suffered transient ischemic attacks (stroke), not epilepsy.

John Morris—Mr. Morris' file indicated that his seizure was induced by alcohol.

• The following driver was previously listed in **Federal Register** Notice FMCSA–2006–25854:

Daniel L. Pulse—Mr. Pulse may meet the criteria, but he has been unresponsive in attempts to certify the date of his last seizure and/or any anti-seizure medication he is taking.

• The following driver was previously listed in **Federal Register** FMCSA–2008–0355:

Travis Williams—Mr. Williams has a diagnosis of epilepsy, and his last seizure was in 2008. He will have been seizure-free for 8 years, as required by the MEP guidelines, in 2016. He may reapply at that time.

• The following driver was listed previously in **Federal Register** FMCSA 2010–0203:

Leo Lombardio—Mr. Lombadrio had a loss of consciousness event related to a diagnosis of complex partial seizures in 2009. He does not meet the exemption criteria at this time.

• The following driver was listed previously in **Federal Register** FMCSA 2011–0089:

Richard Laqua—Mr. Laqua had a seizure in 2009 and does not currently meet the exemption criteria.

Issued on: June 27, 2013.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2013–16460 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0147]

Driver Qualifications: Skill Performance Evaluation; Virginia Department of Motor Vehicles' Application for Exemption

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

ACTION: Notice of application for exemption; request for public comment.

SUMMARY: FMCSA announces receipt of an application for exemption from the Virginia Department of Motor Vehicles (Virginia), on behalf of truck and bus drivers who are licensed in the Commonwealth of Virginia and need a Skill Performance Evaluation (SPE) certificate from FMCSA to operate commercial motor vehicles in interstate commerce. The exemption would enable Virginia-licensed drivers subject to the Federal SPE requirements under 49 CFR 391.49, to fulfill the Federal requirements with a State-issued SPE. The State-issued SPE would be based on standards, processes and procedures comparable to those used by FMCSA, and the State would maintain copies of all evaluation forms and certificates issued to enable FMCSA to conduct periodic reviews of the program.

DATES: Comments must be received on or before August 8, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) number FMCSA–2013–0147 by any of the following methods:

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

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

• *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the ''Public Participation'' heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the ''Privacy Act'' heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140, DOT Building, New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the FDMS published in the **Federal Register** published on January 17, 2008 (73 FR 3316) or you may visit *http://edocket/access.gpo.gov/2008/pdf/E8-785.pdf*.

FOR FURTHER INFORMATION CONTACT: Ms. Eileen Nolan, Office of Carrier, Driver and Vehicle Safety, Medical Programs Division, (202) 366–4001, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or

class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Virginia's Exemption Application

The Virginia DMV is requesting an exemption from 49 CFR 391.49 concerning FMCSA's SPE process for drivers who have experienced an impairment or loss of a limb, on behalf of commercial motor vehicle (CMV) drivers licensed in the Commonwealth of Virginia. Instead of requiring such drivers to apply to FMCSA for an SPE, Virginia would establish its own SPE program essentially identical to the current FMCSA program. Virginia would establish an application process modeled on the FMCSA process, and State personnel who have completed SPE training identical to that of FMCSA personnel currently administering the Federal SPE program would conduct the skill test following the same procedures and testing criteria used by FMCSA. If the driver passed the skill test, the State would issue the SPE certificate. Virginia would maintain records of applications, testing, and certificates issued for periodic review by FMCSA.

An exemption granted under the authority of 49 U.S.C. 31315(b) preempts State laws and regulations that conflict with or are inconsistent with the exemption. If FMCSA decided to grant Virginia's request, the exemption would amount to automatic Federal ratification of each State-issued SPE certificate and would therefore prohibit other jurisdictions from requiring a separate FMCSA-issued SPE. The State-issued certificate would be treated as if it had been issued by FMCSA. Virginia-licensed drivers who receive the State-issued SPE would be allowed to operate CMVs in interstate commerce, anywhere in the United States. A copy of the exemption application is included in the docket.

Request for Comments

FMCSA requests public comments on Virginia's exemption application. The Agency will consider all comments submitted to the public docket referenced at the beginning of this notice and determine whether the exemption would achieve a level of safety equivalent to the Federal SPE process, and consistent with the statutory requirements for exemptions under 49 U.S.C. 31136(e) and 31315(b)(1).

Issued on: July 2, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–16461 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0028]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 25 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective July 9, 2013. The exemptions expire on July 9, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316).

Background

On May 9, 2013, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (78 FR 27281). That notice listed 25 applicants' case histories. The 25 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 25 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 25 exemption applicants

listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including refractive amblyopia, strasbismic amblyopia, myopia, central scotoma, aniridia, optic atrophy, retinal detachment, cataract, amblyopia, prosthetic eye, optic nerve damage, high myopia, optic nerve hypoplasia, anisometropic amblyopia, macular scar, and central corneal opacity. In most cases, their eye conditions were not recently developed. Sixteen of the applicants were either born with their vision impairments or have had them since childhood.

The nine individuals that sustained their vision conditions as adults have had it for a period of 4 to 27 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 25 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 45 years. In the past 3 years, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 9, 2013 notice (78 FR 27281).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 25 applicants, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 25 applicants listed in the notice of May 9, 2013 (78 FR 27281).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 25 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment is considered and discussed below.

The Pennsylvania Department of Transportation is in favor of granting exemptions to Kevin Kacicz, Allen Weiand, and Gregory Thurston after reviewing their driving histories.

Conclusion

Based upon its evaluation of the 25 exemption applications, FMCSA exempts Allan L. Anthony (MD), James C. Barr (OH), Clifford L. Burruss (CA), Brian G. Dvorak (IL), Roger Dykstra (IL), Gerald R. Eister (NC), Juan M. Guerrero (TX), Michael L. Huffman (IA), John T. Johnson (NM), Kevin S. Kacicz (PA), Thomas Korycki (NJ), John Kozminski (MI), Larry W. Lunde (WA), David Matos (NY), Chad Penman (UT), Raymond Potter (RI), David Rothermel (RI), Charles T. Spears (VA), Brian Tessman (WI), Gregory Thurston (PA), Donald R. Torbett (IA), Scharron Valentine (OH), Allen D. Weiand (PA), James Whiteway (TX), and Billy W. Wilson (TN) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 2, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–16459 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. USCG–2013–0363]

Deepwater Port License Application: Liberty Natural Gas LLC, Port Ambrose Deepwater Port

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of intent; notice of public meeting; request for comments; correction.

SUMMARY: The Maritime Administration (MarAd) published a Notice of Intent, Notice of Public Meeting, and Request for Comments regarding the Port Ambrose Deepwater Port License Application in the June 24, 2013, **Federal Register**. In the DATES section of the notice, MarAd incorrectly described July 14, 2013, as the closing date for receipt of materials in response to the request for comments. This notice corrects that error and clarifies that the closing date for receipt of materials in response to the request for comments is July 23, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Roddy Bachman, U.S. Coast Guard, telephone: 202–372–1451, email: *Roddy.C.Bachman@uscg.mil,* or Ms. Tracey Ford, Maritime Administration, telephone: 202–366–0321, email: *Tracey.Ford@dot.gov.* For questions regarding viewing the Docket, call Ms. Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

Correction

In the **Federal Register** of June 24, 2013, in FR Doc. 2013–0363, on page 37878, in the second column, under the section captioned **DATES,** in the last sentence of the second paragraph replace ''July 14, 2013'' with ''July 23, 2013'' so that the sentence reads: ''Additionally, materials submitted in response to the request for comments on the license application must reach the Docket Management Facility as detailed below, by July 23, 2013.''

Dated: July 2, 2013.

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Assistant Secretary, Maritime Administration.

[FR Doc. 2013–16358 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

[Docket No. RITA–2013–0003]

Notice of Request for Clearance of a new Information Collection: National Census of Ferry Operators

AGENCY: Bureau of Transportation Statistics (BTS), Research and Innovative Technology Administration (RITA), DOT.

ACTION: Notice.

SUMMARY: In accordance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the BTS to request the Office of Management and Budget's (OMB's) approval to make changes to an existing information collection related to the Nation's ferry operations (National Census of Ferry Operators, OMB Control Number—2139–0009). The data collected for the national census of ferry operators (NCFO) have historically been used to produce a descriptive database of existing ferry operations. Recently enacted MAP–21 legislation (Pub. L. 112–141, section 1121(b)), requires that the NCFO data be used by The Federal Highway Administration for funding allocations based on a specific set of formulae. As a result, BTS is proposing the elimination of census questions that do not support the MAP–21 requirements; while adding items needed to support the FHWA's funding algorithms. As with all previous NCFO initiatives, business sensitive information provided by ferry operators will not be made public. The Information provided will however, be shared with FHWA in order to support their funding allocations as dictated in MAP–21. For copies of the old and new

NCFO questionnaires with edits, please contact the project director.

DATES: Comments must be submitted on or before August 8, 2013.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Steve, (202) 366–4108, NCFO Project Manager, BTS, RITA, Department of Transportation, 1200 NJ Ave. SE., Room E34–431, Washington, DC 20590. Office hours are from 9:00 a.m. to 6:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* National Census of Ferry Operators (NCFO).

Type of Request: Approval of an information collection.

Affected Public: There are approximately 260 ferry operators nationwide.

Abstract: The Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178), section 1207(c), directed the Secretary of Transportation to conduct a study of ferry transportation in the United States and its possessions. In 2000, the Federal Highway Administration (FHWA) Office of Intermodal and Statewide Planning conducted a survey of approximately 250 ferry operators to identify: (1) Existing ferry operations including the location and routes served; (2) source and amount, if any, of funds derived from Federal, State, or local governments supporting ferry construction or operations; (3) potential domestic ferry routes in the United States and its possessions and to develop information on those routes; and (4) potential for use of high speed ferry services and alternative-fueled ferry services. The Safe, Accountable, Flexible Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) Public Law 109–59, Section 1801(e)) required that the Secretary, acting through the BTS, establish and maintain a national ferry database containing current information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

The newly enacted MAP–21 legislation (Pub. L. 112–141, section 1121(b)), requires that the NCFO database as previously defined in SAFETEA–LU: (1) Include ''any Federal, State, and local government funding sources;'' and (2) ''ensure that the database is consistent with the national transit database maintained by the Federal Transit Administration.'' To that end, a revised data collection form has been submitted to OMB for approval. Items removed from the old form include those designed to target ridership and terminal information that typically produce unreliable and/or incomplete data, and were not specifically required by law to be maintained as a part of the NCFO database. These items include segment data related to peak season (q12), daily passenger surges (q13), weekday passenger surges (q14), weekend passenger surges (q15), and other terminal operations (q16). Questions 2 through 5 of the old form were also refined to better meet the MAP–21 requirements. The concept of public or private ownership was also extended to individual vessel and terminals, and rate regulation to individual route segments. Finally, vessel and terminal items were refined or added to achieve content consistency with the National Transit Database.

Data Confidentiality Provisions: The National Census of Ferry Operators may collect confidential business information. The confidentiality of these data will be protected under 49 CFR 7.17. In accordance with this regulation, only statistical and non-sensitive business information will be made available through publications and public use data files. The statistical public use data are intended to provide an aggregated source of information on ferry boat operations nationwide. Business sensitive information may be shared with FHWA to support MAP–21 funding allocations.

Frequency: The survey will be conducted every other year beginning in 2013.

Estimated Burden: The total annual burden (in the year that the survey is conducted) is estimated to be just less than 130 hours (that is 30 minutes per respondent for 260 respondents equals 7,800 minutes).

Response to Comments: A 60 day notice requesting public comment was issued in the **Federal Register** on May 2, 2013. No comments were received.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the DOT; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: BTS Desk Officer.

Issued in Washington, DC, on this 3rd day of July, 2013.

Patricia Hu,

Director, Bureau of Transportation Statistics, Research and Innovative Technology Administration, U.S. Department of Transportation.

[FR Doc. 2013–16429 Filed 7–8–13; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Senior Executive Service Performance Review Board

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation Board (STB) publishes the names of the Persons selected to serve on its Senior Executive Service Performance Review Board (PRB).

FOR FURTHER INFORMATION CONTACT: Paula Chandler, Director of Human Resources, (202) 245–0340.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4314 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on STB's PRB.

Leland L. Gardner, Director, Office of the Managing Director

Rachel D. Campbell, Director, Office of Proceedings

Raymond A. Atkins, General Counsel

Lucille Marvin, Director, Office of Public Assistance, Governmental Affairs and Compliance

Dated: July 3, 2013.

Jeffery Herzig,

Clearance Clerk.

[FR Doc. 2013–16455 Filed 7–8–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of General License Related to the Zimbabwe Sanctions Program

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice, publication of general license.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is publishing General License No. 1 issued under the Zimbabwe sanctions program on April 24, 2013. Zimbabwe General License No. 1 authorizes all transactions involving Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe, subject to certain limitations.

DATES: *Effective Date:* April 24, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490, Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Policy, tel.: 202–622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202–622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202–622–0077.

Background

On April 24, 2013, OFAC issued Zimbabwe General License No. 1 authorizing all transactions involving Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe, subject to certain limitations.

At the time of its issuance on April 24, 2013, OFAC made Zimbabwe General License No. 1 available on the OFAC Web site (*www.treasury.gov/ofac*). With this notice, OFAC is publishing Zimbabwe General License No. 1 in the **Federal Register**.

Zimbabwe General License No. 1

General License with Respect to Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe

(a) Effective April 24, 2013, all transactions involving Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe are authorized, subject to the limitations set forth below.

(b) This general license does not authorize transactions involving any person whose property and interests in property are blocked pursuant to 31 CFR 541.201(a), Executive Order 13288 of March 6, 2003, Executive Order 13391 of November 22, 2005, or Executive Order 13469 of July 25, 2008, other than Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe.

(c) All property and interests in property blocked pursuant to 31 CFR 541.201(a), Executive Order 13288 of March 6, 2003, Executive Order 13391 of November 22, 2005, or Executive Order 13469 of July 25, 2008, as of April 24, 2013, remain blocked.

Dated: June 26, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–16450 Filed 7–8–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning alcohol fuel and biodiesel; renewable diesel; alternative fuel; diesel-water fuel emulsion; taxable fuel definitions; excise tax returns.

DATES: Written comments should be received on or before September 9, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Alcohol fuel and biodiesel; renewable diesel; alternative fuel; diesel-water fuel emulsion; taxable fuel definitions; excise tax returns.

OMB Number: 1545–2193.

Regulation Project Number: REG–155087–05.

Abstract: This document contains proposed regulations relating to credits and payments for alcohol mixtures, biodiesel mixtures, renewable diesel mixtures, alternative fuel mixtures, and alternative fuel sold for use or used as a fuel, as well as proposed regulations relating to the definition of gasoline and diesel fuel. These regulations reflect changes made by the American Jobs Creation Act of 2004, the Energy Policy Act of 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, and the Tax Technical Corrections Act of 2007.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 70,840.

Estimated Total Annual Burden Hours: 17,710.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 2, 2013.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2013–16368 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 14, 2013.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, August 14, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–834–2203, or write TAP Office, 2 Metro Tech Center, 100 Myrtle Avenue 7th Floor, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: July 2, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–16370 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, August 15, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, August 15, 2013, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer Communications and public input is welcome.

Dated: July 2, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–16372 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 20, 2013.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 622–8390.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Tuesday, August 20, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202) 622–8390, or write TAP Office, 1111 Constitution Avenue NW, Room 1509- National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: July 2, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–16373 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 6 and Wednesday, August 7, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Tuesday, August 6 from 8:00 a.m. to 4:30 p.m. and Wednesday, August 7, 2013 from 8:00 a.m. to 4:30 p.m. Central Time. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: July 2, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–16375 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 28, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, August 28, 2013 at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: July 2, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–16374 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, August 13, 2013.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, August 13, 2013, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Donna Powers at 1–888–912–1227 or (954) 423–7977, or write TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: July 2, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–16369 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, August 14, 2013.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, August 14, 2013, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–

912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: July 2, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–16371 Filed 7–8–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Re-pricing of Several Silver Coin Products

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: Because of the recent decrease in the market price of silver, the United States Mint is lowering the price of several silver coin products as follows:

2013 United States Mint Silver Proof Set®—$53.95
2012 and 2013 America the Beautiful Quarters Silver Proof Sets™—$31.95
2013 United States Mint Annual Uncirculated Dollar Coin Set—$44.95
2012 Making American History Coin and Currency Set—$67.95
2013 Congratulations Set—$54.95
American Eagle One Ounce Silver Proof Coin—$52.95
American Eagle One Ounce Silver Uncirculated Coin—$43.95
America the Beautiful Five Ounce Silver Uncirculated Coins™—$154.95

These prices will be effective at 12 noon on July 11, 2013.

FOR FURTHER INFORMATION CONTACT: Marc Landry, Acting Associate Director for Sales and Marketing; United States Mint; 801 9th Street NW., Washington, DC 20220; or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: July 2, 2013.

Beverly Ortega Babers,

Chief Administrative Officer, United States Mint.

[FR Doc. 2013–16430 Filed 7–8–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Fund Availability Under the Grants for Transportation of Veterans in Highly Rural Areas

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is announcing the availability of funds under the Grants for Transportation of Veterans in Highly Rural Areas. This Notice contains information concerning the Grants for Transportation of Veterans in Highly Rural Areas program, application process, and amount of funding available.

DATES: Applications for assistance under the Grants for Transportation of Veterans in Highly Rural Areas Program must be submitted to *www.grants.gov* by 4:00 p.m. eastern standard time on September 9, 2013. In the interest of fairness to all competing applicants, this deadline is firm as to date and hour, and VA will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays, computer service outages (in the case of grants.gov), or other delivery-related problems.

For a Copy of the Application Package: The application can be found at grants.gov, *http://www.grants.gov/search/basic.do,* utilizing the ''search by Catalog of Federal Domestic Assistance number'' function, and entering in that search field the number 64.035. Questions should be referred to the Veterans Transportation Program Office at (404) 828–5380 (this is not a toll-free number) or by email at *HRTG@va.gov*. For further information on Grants for Transportation of Veterans in Highly Rural Areas Program requirements, see the Final Rule published in the **Federal Register** (78 FR 19586) on April 2, 2013, which is codified in 38 CFR 17.700 through 17.730.

Submission of Applications: Applications may not be sent by facsimile. Applications must be submitted to *www.grants.gov* by the application deadline. Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. All applicable forms cited in the application description must be included.

FOR FURTHER INFORMATION CONTACT: Darren Wallace, National Coordinator, Highly Rural Transportation Grants, Veterans Transportation Program, Chief Business Office (10NB2G), 2957 Clairmont Road, Atlanta, GA 30329; (404) 828–5380 (this is not a toll-free number).

Informational Webinar: People who are interested in applying for this grant can view an informational Webinar about the Highly Rural Transportation Grants Program at the following link: *http://va-eerc-ees.adobeconnect.com/p552nvc4m5e/.*

Grantee Eligibility: The only entities eligible to apply for and receive grants are Veterans Service Organizations and State Veterans Service Agencies.

SUPPLEMENTARY INFORMATION: Pursuant to section 307 of the Caregivers and Veterans Omnibus Health Services Act of 2010, VA ''shall establish a grant program to provide innovative transportation options to veterans in highly rural areas.'' To comply with section 307, VA will award grants to eligible recipients to assist veterans in highly rural areas through innovative transportation services to travel to VA medical centers and to other VA and non-VA facilities in connection with the provision of VA medical care. Please refer to the Final Rule, published in the **Federal Register** (78 FR 19586) on April 2, 2013, which is codified in 38 CFR 17.700 through 17.730, for detailed information and requirements for the Grants for Transportation of Veterans in Highly Rural Areas Program.

A. *Purpose:* This program's purpose is to provide grants to eligible recipients to assist veterans in highly rural areas through innovative transportation services to travel to VA medical centers and to other VA and non-VA facilities to assist in providing transportation services in connection with the provision of VA medical care.

B. *Definitions:* Section 17.701 of the Final Rule and 38 CFR 17.701 contain definitions of terms used in the Grants for Transportation of Veterans in Highly Rural Areas Program. Definitions of key terms are also provided below for reference; however, 38 CFR 17.701 should be consulted for a complete list of definitions.

Applicant means an eligible entity that submits an application for a grant announced in a Notice of Funds Availability.

Eligible entity means either a Veterans Service Organization or a State Veterans Service Agency.

Grantee means an applicant that is awarded a grant under this NOFA.

Highly rural area means an area consisting of a county or counties having a population of less than seven persons per square mile. **Note:** *A listing of these highly rural areas may be found with the application materials on grants.gov.*

Notice of Funds Availability means a Notice of Funds Availability published

in the **Federal Register** in accordance with 38 CFR 17.710.

Participant means a veteran in a highly rural area who is receiving transportation services from a grantee.

Provision of VA medical care means the provision of hospital or medical services as authorized under sections 1710, 1703, and 8153 of title 38 United States Code.

State Veterans Service Agency means the element of a State government that has responsibility for programs and activities of that government relating to veterans benefits.

Subrecipient means an entity that receives grant funds from a grantee to perform work for the grantee in the administration of all or part of the grantee's program.

Transportation services means the direct provision of transportation, or assistance with transportation, to travel to VA medical centers and other VA or non-VA facilities in connection with the provision of VA medical care.

Veteran means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

Veterans Service Organization means an organization recognized by the Secretary of Veterans Affairs for the representation of veterans under section 5902 of title 38 United States Code.

C. *Approach:* Grantees will be expected to obtain grant funds to provide innovative transportation services to veterans in highly rural areas and transport veterans to and from VA medical centers and other VA and non-VA facilities that provide VA medical care.

D. *Authority:* Funding applied for under this Notice is authorized by section 307 of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law. 111–163 (the 2010 Act), codified in 38 CFR 17.700 through 17.730, Grants for Transportation of Veterans in Highly Rural Areas. Funds made available under this Notice are subject to the requirements of the aforementioned regulations and other applicable laws and regulations.

E. *Allocation:* Approximately $3 million is authorized to be appropriated for fiscal year 2014, and may be available for each subsequent year of the program's existence to fund Grants for Transportation of Veterans in Highly Rural Areas. In accordance with 38 CFR 17.710, subject to the availability of VA funds, VA may issue additional Notices of Funding Availability which would permit grantees to apply for Grants for Transportation of Veterans in Highly Rural Areas in accordance with the terms and conditions of such Notices of Funding Availability. The following requirements apply to grants awarded under this notice:

(a) One grant may be awarded to a grantee per fiscal year for each highly rural area in which the grantee provides transportation services. Transportation services may not be simultaneously provided by more than one grantee in any single highly rural area.

(b) No single grant will exceed $50,000.

(c) A grantee will not be required to provide matching funds as a condition of receiving such grant.

(d) A veteran who is provided transportation services via grant monies will not be charged for such services.

F. *Grants for Transportation of Veterans in Highly Rural Areas Award Period:* Grants for Transportation of Veterans in Highly Rural Areas awarded under this Notice will be for a 1-year period.

G. *Grantee Eligibility and Application Procedures:* Basic eligibility criteria and application procedures are as follows:

(a) The only entities eligible to apply for and receive grants are Veterans Service Organizations and State Veterans Service Agencies.

(b) Eligible entities can submit a complete grant application package to be considered for an initial grant, and would specify in the application that an initial grant is being applied for.

(c) Eligible entities can submit a complete renewal grant application package to be considered for a renewal grant, if the grantee's program would remain substantially the same, and would specify in the application that a renewal grant is being applied for.

Note: *Only initial grants will be funded in fiscal year 2014; renewal grants may be funded beginning in fiscal year 2015. Information provided on renewal grants in this Notice of Funds Availability are merely to provide advance notice for the benefit of applicants who may receive an initial grant in fiscal year 2014 that they would like to renew in fiscal year 2015.*

H. *Application Selection Methodology:* VA will review and score all initial grant applications in response to this Notice according to the following steps and criteria:

(a) *Initial grant scoring:* Applications will be scored using the following selection criteria:

(1) VA will award up to 40 points (10 points per question) based on the program's plan for successful implementation, as demonstrated by the following:

(i) Program scope is defined, and applicant has specifically indicated the mode(s) or method(s) of transportation services to be provided by the applicant or identified subrecipient.

(ii) Program budget is defined, and applicant has indicated that grant funds will be sufficient to completely implement the program.

(iii) Program staffing plan is defined, and applicant has indicated that there will be adequate staffing for delivery of transportation services according to program scope.

(iv) Program timeframe for implementation is defined, and applicant has indicated that the delivery of transportation services will be timely.

(2) VA will award up to 30 points (15 points per question) based on the program's evaluation plan, as demonstrated by the following:

(i) Measurable goals for determining the success of delivery of transportation services.

(ii) Ongoing assessment of the measurable goals for determining the success of delivery of transportation services, with a means of adjusting the program if required.

(3) VA will award up to 20 points (10 points per question) based on the applicant's community relationships in the areas to be serviced, as demonstrated by the following:

(i) Applicant has existing relationships with state or local agencies or private entities, or will develop such relationships, and has shown these relationships will enhance the program's effectiveness.

(ii) Applicant has established past working relationships with state or local agencies or private entities which have provided services similar to those offered by the program.

(4) VA will award up to 10 points (5 points per question) based on the innovative aspects of the program, as demonstrated by the following:

(i) How program will identify and serve veterans who otherwise would be unable to obtain care.

(ii) How program will utilize or integrate existing public resources (VA, state, or other).

(b) *Initial grant selection:* VA will use the following process to award initial grants:

(1) VA will rank those applicants who receive at least the minimum amount of total points (70 points) and points per category set forth in this notice. The applicants will be ranked in order from highest to lowest scores.

(2) VA will use the grantee's ranking as the basis for selection for funding. VA will fund the highest ranked grantees for which funding is available.

(c) *Renewal grant scoring:* Renewal applications will be scored using the following selection criteria: NOTE:

Renewal grants may only be funded starting in fiscal year 2015; the following criteria are provided merely as advance notice for the benefit of applicants who may receive an initial grant in fiscal year 2014 that they would like to renew in fiscal year 2015.

(1) VA will award up to 55 points based on the success of the grantee's program, as demonstrated by the following:

(i) Application shows that the grantee or identified subrecipient provided transportation services, which allowed participants to be provided medical care timely and as scheduled.

(ii) Application shows that participants were satisfied with the transportation services provided by the grantee or identified subrecipient based on the satisfaction survey.

(2) VA will award up to 35 points (17.5 points per question) based on the cost effectiveness of the program, as demonstrated by the following:

(i) The grantee or identified subrecipient administered the program on budget.

(ii) Grant funds were utilized in a sensible manner, as interpreted by information provided by the grantee to VA as required under § 17.725(a)(1) through (a)(7).

(3) VA will award up to 15 points (7.5 points per question) based on the extent to which the program complied with:

(i) The grant agreement.

(ii) Applicable laws and regulations.

(d) *Renewal Grant Selection:* VA will use the following process to award renewal grants:

(1) VA will rank those applications that receive at least the minimum amount of total points (75 points) and points per category set forth in this Notice. The applications will be ranked in order from highest to lowest scores.

(2) VA will use the applications' ranking as the basis for awarding grants. VA will award grants for the highest ranked applications for which funding is available.

I. *Application Requirements:* Additional grant application requirements are specified in the application package. Submission of an incorrect or incomplete application package will result in the application being rejected during threshold review. The application package contains all required forms and certifications. Selections will be made based on criteria described in the Final Rule published in the **Federal Register** (78 FR 19586) on April 2, 2013, which is codified in 38 CFR 17.700 through 17.730. Applicants will be notified of any additional information needed to confirm or clarify information provided in the application and the deadline by which to submit such information.

J. *Grant Agreements:* Grant agreements must be executed prior to VA obligating grant funds according to the following steps and criteria.

(a) *General.* After a grantee is awarded a grant in accordance with 38 CFR 17.705(b) or 17.705(d), VA will draft a grant agreement to be executed by VA and the grantee. Upon execution of the grant agreement, VA will obligate the approved amount. The grant agreement will provide that:

(1) The grantee must operate the program in accordance with the provisions of this section and the grant application.

(2) If a grantee's application identified a subrecipient, such subrecipient must operate the program in accordance with the provisions of 38 CFR 17.715 and the grant application.

(3) If a grantee's application identified funds that will be used to procure or operate vehicles to directly provide transportation services, the following requirements must be met:

(i) Title to the vehicles must vest solely in the grantee or identified subrecipient, or with leased vehicles in an identified lender.

(ii) The grantee or identified subrecipient must, at a minimum, provide motor vehicle liability insurance for the vehicles to the same extent they would insure vehicles procured with their own funds.

(iii) All vehicle operators must be licensed in a U.S. State or Territory to operate such vehicles.

(iv) Vehicles must be safe and maintained in accordance with the manufacturer's recommendations.

(v) Vehicles must be operated in accordance with applicable Department of Transportation regulations concerning transit requirements under the Americans with Disabilities Act.

K. *Payments under the grant:* Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System.

L. *Grantee Reporting Requirements:* VA places great emphasis on the responsibility and accountability of grantees. As described in § 17.725 of the Final Rule and 38 CFR 17.725, VA has procedures in place to monitor services provided to veterans through required reporting from grantees as follows.

(a) *Program efficacy.* All grantees who receive either an initial or renewal grant must submit to VA quarterly and annual reports which indicate the following information:

(1) Record of time expended assisting with the provision of transportation services.

(2) Record of grant funds expended assisting with the provision of transportation services.

(3) Trips completed.

(4) Total distance covered.

(5) Veterans served.

(6) Locations which received transportation services.

(7) Results of veteran satisfaction survey.

(b) *Quarterly fiscal report.* All grantees who receive either an initial grant must submit to VA a quarterly report which identifies the expenditures of the funds which VA authorized and obligated.

(c) *Program variations.* Any changes in a grantee's program activities which result in deviations from the grant agreement must be reported to VA.

(d) *Additional reporting.* Additional reporting requirements may be requested by VA to allow VA to fully assess program effectiveness.

M. *Recovery of Funds by VA:* VA may recover from the grantee any funds that are not used in accordance with a grant agreement. If VA decides to recover funds, VA will issue to the grantee a notice of intent to recover grant funds, and grantee will then have 30 days to submit documentation demonstrating why the grant funds should not be recovered. After review of all submitted documentation, VA will determine whether action will be taken to recover the grant funds. When VA determines action will be taken to recover grant funds from the grantee, the grantee is then prohibited from receipt of any further grant funds.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Interim Chief of Staff, Department of Veterans Affairs, approved this document on June 28, 2013, for publication.

Dated: June 28, 2013.

William F. Russo,

Deputy Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–16389 Filed 7–8–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee, Notice of Meeting

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will hold a meeting on July 10, 2013, at 131 M Street NE., Washington, DC. The meeting is scheduled to begin at 9 a.m. and end at 4 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion, and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (10P9CS), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, at (202) 443–5700 or by email at *grant.huang@va.gov.*

By Direction of the Secretary,
Dated: July 2, 2013.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2013–16307 Filed 7–8–13; 8:45 am]

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FEDERAL REGISTER

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Part II

Federal Trade Commission

16 CFR Part 310

Telemarketing Sales Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–AA98

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Federal Trade Commission (''Commission'' or ''FTC'') seeks public comment on proposed amendments to the Telemarketing Sales Rule (''TSR'' or ''Rule''). The proposed amendments would: Bar sellers and telemarketers from accepting remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms as payment in inbound or outbound telemarketing transactions; expand the scope of the advance fee ban on ''recovery'' services, now limited to recovery of losses in prior telemarketing transactions, to include recovery of losses in any previous transaction; and clarify other TSR provisions as discussed at the outset of the **SUPPLEMENTARY INFORMATION** section.

DATES: Written comments must be received by July 29, 2013.

ADDRESSES: Interested parties may file, online or on paper, a comment by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001,'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/FTC/tsrantifraudnprm* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex B), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Karen S. Hobbs or Craig Tregillus, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–3587 or (202) 326–2970.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. The Proposed Amendments

The Federal Trade Commission issues this Notice of Proposed Rulemaking (''NPRM'') to invite public comment on proposed amendments to the TSR. These proposed amendments reflect evolutions in the marketplace toward the use of certain retail payment methods in fraud transactions and the growing expansion of recovery services to include losses incurred in non-telemarketing transactions.

The principal proposed amendments would prohibit telemarketers and sellers in both inbound and outbound telemarketing calls from accepting or requesting remotely created checks, remotely created payment orders, money transfers, and cash reload mechanisms as payment and expand the scope of the advance fee ban on recovery services (now limited to recovery of losses sustained in prior telemarketing transactions) to include recovery of losses in *any* previous transaction.

Several additional proposed amendments are designed to clarify the language of certain existing TSR requirements to reflect Commission enforcement policy. These amendments would: (1) Specify that the recording of a consumer's express verifiable authorization must include a description of the goods or services being purchased; (2) state expressly that a seller or telemarketer bears the burden of demonstrating that the seller has an existing business relationship with, or has obtained an express written agreement from, a person whose number is listed on the Do Not Call Registry; (3) clarify that the business-to-business exemption extends only to calls to induce a sale to or contribution from a business entity, and not to calls to induce sales to or contributions from individuals employed by the business; (4) emphasize that the prohibition against sellers sharing the cost of Do Not Call Registry fees, which are non-transferrable, is absolute; and (5) illustrate the types of impermissible burdens that deny or interfere with a consumer's right to be placed on a seller's or telemarketer's entity-specific do-not-call list. A related amendment would specify that a seller's or telemarketer's failure to obtain the information necessary to honor a consumer's request to be placed on a seller's entity-specific do-not-call list pursuant to section 310.4(b)(1)(ii) will disqualify it from relying on the safe harbor for isolated or inadvertent violations in section 310.4(b)(3).

This NPRM invites written comments on all issues raised by the proposed amendments, including answers to the specific questions set forth in Section VIII of this Notice.

B. Background

On August 16, 1994, the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act'' or ''Act'') was signed into law.[1] The purpose of the Act was to curb the deceptive and abusive practices in telemarketing and provide key anti-fraud and privacy protections for consumers receiving telephone solicitations to purchase goods or services. The Telemarketing Act directed the Commission to adopt a rule prohibiting deceptive or abusive practices in telemarketing and specified, among other things, certain acts or practices the rule should address—B for example (1) a requirement that telemarketers may not undertake a pattern of unsolicited telephone calls which the reasonable consumer would consider coercive or abusive of his or her right to privacy; (2) restrictions on the time of day telemarketers may make unsolicited calls to consumers; and (3) a requirement that telemarketers promptly and clearly disclose in all calls to consumers that the purpose of the call is to sell goods or services or solicit a charitable contribution.[2] The Act also generally authorized the Commission to address in the rule other practices it found to be deceptive or abusive.[3]

Pursuant to its authority under the Telemarketing Act, the FTC promulgated the TSR on August 16, 1995.[4] The Commission subsequently amended the Rule on three occasions, in 2003,[5] 2008,[6] and 2010.[7] In 2010, the Commission also issued an Advanced Notice of Proposed Rulemaking concerning caller identification (''Caller ID'') services and disclosure of the

[1] 15 U.S.C. 6101–6108.

[2] 15 U.S.C. 6102(a)(3).

[3] 15 U.S.C. 6102(a)(1) (''The Commission shall prescribe rules prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.''). The Telemarketing Act directs the Commission to include in the TSR provisions that address three specific practices denominated by Congress as ''abusive.'' *Id.* at 6102(a)(3). However, the Act ''does not limit the Commission's authority to address abusive practices beyond these three practices legislatively determined to be abusive.'' *See* Notice of Proposed Rulemaking (''2002 Notice of Proposed Rulemaking''), 67 FR 4492, 4510 (Jan. 30, 2002).

[4] Statement of Basis and Purpose and Final Rule (''Original TSR''), 60 FR 43842 (Aug. 23, 1995). The effective date of the original Rule was December 31, 1995.

[5] *See* Statement of Basis and Purpose and Final Amended Rule (''2003 TSR Amendments''), 68 FR 4580 (Jan. 29, 2003).

[6] *See* Statement of Basis and Purpose and Final Rule Amendments (''2008 TSR Amendments''), 73 FR 51164 (Aug. 29, 2008).

[7] *See* Statement of Basis and Purpose and Final Rule Amendments (''2010 TSR Amendments''), 75 FR 48458 (Aug. 10, 2010). The Commission subsequently published correcting amendments to the text of section 310.4 the TSR. Telemarketing Sales Rule; Correcting Amendments, 76 FR 58716 (Sept. 22, 2011).

identity of the seller or telemarketer responsible for telemarketing calls.[8]

The Telemarketing Act authorizes the Commission to promulgate rules ''prohibiting deceptive telemarketing acts or practices and other abusive telemarketing acts or practices.'' [9] Section 310.3 of the TSR targets deceptive telemarketing acts or practices. It contains provisions requiring certain disclosures during telemarketing calls,[10] prohibiting specific material misrepresentations,[11] and imposing liability on third parties that provide substantial assistance to telemarketers that violate the Rule.[12] Section 310.4 of the TSR focuses on abusive telemarketing acts or practices. It includes provisions intended to curb the deleterious effects these acts or practices may have on consumers. This section of the Rule delineates five categories of abusive conduct: (1) Conduct related to a pattern of calls, including conduct prohibited under the Rule's Do Not Call provisions; [13] (2) violations of the Rule's calling time restrictions; [14] (3) failure to make required oral disclosures in the sale of goods or services; [15] (4) failure to make required oral disclosures in charitable solicitations; [16] and (5) other abusive telemarketing acts or practices.[17]

In interpreting its rulemaking authority over ''other abusive telemarketing acts or practices,'' [18] the Commission has determined that its authority includes acts or practices ''within the purview of its traditional unfairness analysis as developed in Commission jurisprudence.'' [19] Thus, the Commission employs its unfairness analysis when identifying a telemarketing practice as abusive.[20] An act or practice is unfair under Section 5 of the FTC Act if it causes or is likely to cause substantial injury to consumers, if the harm is not outweighed by any countervailing benefits to consumers or competition, and if the harm is not reasonably avoidable.[21]

II. Retail Payment Methods Susceptible to Fraud in Telemarketing

The following section of this Notice explores the features and vulnerabilities of four types of novel payment methods used in telemarketing, with a particular focus on the use of a consumer's bank account and routing number to withdraw funds from the account without authorization.[22] Noncash retail payment mechanisms used in telemarketing can be divided into two major categories: ''Conventional payment methods'' and ''novel payment methods.'' As used in this Notice, the term ''conventional payment method'' includes credit cards, debit cards, and other types of electronic fund transfers, which are processed or cleared electronically through networks that can be monitored systematically for fraud.[23] In addition, federal laws subject such conventional payments to procedures for resolving errors and statutory limitations on a consumer's liability for certain disputed transactions.[24]

As used in this Notice, the term ''novel payment method'' refers to four types of noncash payments—remotely created checks,[25] remotely created payment orders,[26] ''cash-to-cash money transfers,'' [27] and ''cash reload mechanisms.'' [28] These novel payment methods differ significantly from credit card transactions subject to the Truth-in-Lending Act (''TILA'') and Regulation Z, as well as from debit card transactions, Automated Clearinghouse (''ACH'') debits from consumer bank

[8] Advanced Notice of Proposed Rulemaking, 75 FR 78179 (Dec. 15, 2010).

[9] *Supra* note 3.

[10] The TSR requires that telemarketers soliciting sales of goods or services promptly disclose several key pieces of information during a telephone call: (1) The identity of the seller; (2) the fact that the purpose of the call is to sell goods or services; (3) the nature of the goods or services being offered; and (4) in the case of prize promotions, that no purchase or payment is necessary to win. 16 CFR 310.3(a)(1). In addition, telemarketers must, in any telephone sales call, disclose the total costs and material restrictions on the purchase of any goods or services that are the subject of the sales offer. 16 CFR 310.3(a)(1). In telemarketing calls soliciting charitable contributions, the Rule requires prompt disclosure of the identity of the charitable organization on behalf of which the request is being made and that the purpose of the call is to solicit a charitable contribution. 16 CFR 310.3(d).

[11] The TSR prohibits misrepresentations about, among other things, the cost and quantity of the offered goods or services. 16 CFR 310.3(a)(2). It also prohibits making a false or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution. 16 CFR 310.3(a)(4).

[12] The TSR prohibits any person from providing substantial assistance or support to a seller or telemarketer when that person knows or consciously avoids knowing that the seller or telemarketer is engaged in any act or practice that violates sections 310.3(a), (c) or (d), or section 310.4 of the Rule. 16 CFR 310.3(b).

[13] 16 CFR 310.4(b).

[14] 16 CFR 310.4(c).

[15] 16 CFR 310.4(d).

[16] 16 CFR 310.4(e).

[17] 16 CFR 310.4(a) (prohibiting the use of threats, intimidation, or profane or obscene language; requesting or receiving an advance fee for credit repair, debt settlement, and recovery services or for the arrangement of a loan or other extension of credit when the telemarketer guarantees or represents a high likelihood of success; disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing; causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor; and failure to transmit Caller ID information).

[18] *Supra* note 3.

[19] 2002 Notice of Proposed Rulemaking, 67 FR at 4511.

[20] 2010 TSR Amendments, 75 FR at 48469 (discussing the Commission's use of unfairness standard in determining whether a practice is ''abusive''); *see also* 15 U.S.C. 45(n) (codifying the Commission's unfairness analysis, set forth in a letter from the FTC to Hon. Wendell Ford and Hon. John Danforth, Committee on Commerce, Science and Transportation, United States Senate, Commission Statement of Policy on the Scope of Consumer Unfairness Jurisdiction, *reprinted in In re Int'l Harvester Co.,* 104 F.T.C. 949, *95–101 (1984)) (''Unfairness Policy Statement'').

[21] 15 U.S.C. 45(n).

[22] In addition to the payment methods discussed below, the Commission recognizes that there are additional noncash payment alternatives used in telemarketing transactions, including the use of billing and collection systems of mortgage, telephone, mobile phone, or utility companies and online payment intermediaries. These particular payments are not the subject of this NPRM, which focuses on payment alternatives that offer fraudulent telemarketers the most accessible and anonymous method of extracting money from consumers and for which the Commission has a record of fraud. However, the Commission continues to monitor complaints regarding the use of other billing platforms and payment methods in telemarketing fraud.

[23] Credit card transactions are processed through the credit card payment systems, operated by companies such as American Express, MasterCard, and Visa. Many debit card transactions are processed through the payment card systems, such as those operated by MasterCard and Visa. In addition, some debit card transactions, and other types of electronic fund transfers, may be cleared by the Automated Clearinghouse (''ACH'') Network, a nationwide, interbank electronic clearing house for processing and clearing electronic payments for participating financial institutions. *See infra* note 50 (describing other types of electronic fund transfers that are processed as ACH debits). ACH transactions are governed by operating rules implemented and enforced by NACHA—The Electronic Payments Association (''NACHA''), a private, self-regulatory trade association comprised of financial institutions and regional payment associations. There are two ACH operators: the Federal Reserve Bank (''FedACH'') and The Electronic Payments Network (''EPN''), the only remaining private sector operator. Terri Bradford, *The Evolution of the ACH,* Payment System Research Briefing, Federal Reserve Bank of Kansas (Dec. 2007), *available at http://www.kansascityfed.org/PUBLICAT/PSR/Briefings/PSR-BriefingDec07.pdf.*

[24] Credit card transactions are subject to the Truth-in-Lending Act (''TILA''), 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 1026. Debit card transactions, ACH debits, and other types of electronic fund transfers involving a consumer's account at a financial institution are governed by the Electronic Fund Transfer Act (''EFTA''), 15 U.S.C. 1693 *et seq.,* and Regulation E, 12 CFR 1005.

[25] *See infra* note 35 (definition of remotely created check).

[26] *See infra* note 39 (definition of remotely created payment order).

[27] *See infra* note 122 and Section IV.A (discussing the proposed definition of cash-to-cash money transfer, which includes the electronic transfer of cash from one person to another person in a different location that is conducted through a money transfer provider and is received in cash).

[28] *See infra* Section II.B (discussing the function of a cash reload mechanism, which acts as a virtual deposit slip that a person uses to convert cash into electronic format that can be added to any existing prepaid card within the same prepaid network).

accounts, and other electronic fund transfers subject to the Electronic Fund Transfer Act (''EFTA'') and Regulation E. Unlike these conventional payment methods, novel payment methods are cleared via check clearing and money transfer networks that provide little or no systematic monitoring to detect or deter fraud. Moreover, these novel payment methods are governed principally by state laws and remittance transfer regulations that do not provide consumers with adequate recourse when unauthorized transactions or telemarketing fraud occurs.[29]

The Commission proposes amending the Rule to prohibit the use of these novel payment methods—remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms—in *all* telemarketing transactions.[30] The Commission is concerned that the TSR's provision requiring ''express verifiable authorization'' for such novel payment methods,[31] which was added to the Rule during the amendment proceeding completed in 2003, has not adequately protected consumers against fraud.[32] The Commission's continuing law enforcement experience has demonstrated that, despite the requirement of express verifiable authorization when accepting a remotely created check as payment for a telemarketing purchase, unscrupulous telemarketers have increasingly exploited remotely created checks to extract or attempt to extract hundreds of millions of dollars from defrauded consumers.[33] Fraudulent telemarketers also rely on other novel payment methods—such as remotely created payment orders, cash-to cash money transfers, and cash reload mechanisms—in their telemarketing schemes. Therefore, the Commission proposes changes to the Rule that would prohibit the use of these novel payment methods in inbound and outbound telemarketing transactions.

A. Remotely Created Checks and Remotely Created Payment Orders

Checks are written orders used to instruct a financial institution to pay money from the account of the check writer (''payor'') to the check recipient (''payee''). Traditional checks have certain requirements as to the type of paper and ink used, and what information appears on the check. Traditional checks also require the signature of the authorized signatory on the checking account, which must be verified by the bank.[34] By contrast, a remotely created check is an unsigned paper check that is created by the payee (typically a merchant, seller, or telemarketer).[35] In place of the payor's signature, the remotely created check bears a statement indicating that the account holder authorized the check or that the ''signature is on file.''[36] Any merchant who obtains a consumer's bank routing and account number can print a remotely created check with the proper equipment or the help of a third-party payment processor, and deposit it into its bank account for collection.[37] Thus, remotely created checks are more susceptible to fraud than paper checks.

Changes in banking regulations and advances in technology now enable banks to accept and exchange electronic images of paper checks, including ''substitute checks,'' instead of sorting and transporting paper checks around the country on a daily basis.[38] As a result, telemarketers, sellers, and payment processors can deposit

[29] *See infra* note 54 and accompanying text (discussing the Uniform Commercial Code applicable to checks and remotely created checks); notes 129 through 134 (discussing final Remittance Transfer Rule aimed at insuring the transparency and accuracy of cross-border remittance transfers, issued by the Consumer Financial Protection Bureau (''CFPB'') in 2012).

[30] *See infra* Section IV.E (discussing proposed amendments to the general media and direct mail exemptions in sections 310.6(b)(5) and (6)).

[31] 16 CFR 310.3(a)(3). In 2003, the Commission explained that requiring express verifiable consent was necessary ''when consumers are unaware that they may be billed via a particular method, when that method lacks legal protection against unlimited unauthorized charges, and when the method fails to provide dispute resolution rights.'' 2003 TSR Amendments, 68 FR at 4606. Thus, section 310.3(a)(3) of the TSR requires telemarketers and sellers to obtain a consumer's express verifiable authorization for all telemarketing transactions where payment is made by a method other than a credit card or a debit card. 16 CFR 310.3(a)(3). This includes ACH debits and other forms of electronic fund transfers subject to the EFTA, as well as payment methods that are not subject to the EFTA.

[32] Other law enforcers and regulators have expressed concerns about the fraudulent use of remotely created checks. *See, e.g.,* NACHA Discussion Paper, *Warranty Claims on Demand Drafts Through the ACH Network* (May 1, 2008) (noting that law enforcement and consumer protection agencies continue to alert NACHA about the fraudulent use of remotely created checks, and confirming that, ''[a]s the electronic payments networks have implemented risk management and anti-fraud programs, it appears that some fraudulent activity has migrated to this form of payment''), *available at http://www.nacha.org/c/AccomplishmentsandCurrentInitiatives.cfm;* Public Comment filed with the Federal Reserve by the National Association of Attorneys General, the National Consumer Law Center, Consumer Federation of America, Consumers Union, the National Association of Consumer Advocates, and U.S. Public Interest Research Group in Docket No. R–1226 (May 9, 2005) (advocating the elimination of remotely created checks in favor of electronic fund transfers covered by the EFTA); Federal Reserve Bank of Atlanta, *2008 Risk & Fraud in Retail Payments: Detection & Mitigation Conference Summary* (Oct. 6–7, 2008) (''Anecdotally, telemarketers turned to remotely created checks as better ACH risk controls came online.''), *available at http://www.frbatlanta.org/filelegacydocs/08retailpayments.pdf.*

[33] *See infra* notes 91–99 (citing injury estimates in cases brought by the Commission).

[34] Because payment for goods or services sold through telemarketing occurs immediately over the telephone, traditional paper checks are not commonly used in telemarketing transactions. Nevertheless, in most circumstances, a consumer's written signature on a check would satisfy the express verifiable authorization requirement of section 310.3(a)(3)(i) of the TSR.

[35] A remotely created check, also commonly referred to as a ''demand draft,'' ''bank check,'' or ''bank draft,'' is defined by Regulation CC (Availability of Funds and Collection of Checks), 12 CFR 229.2(fff), as ''a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn.'' Thus, checks generated by an account holder's bank on the request of the account holder through the bank's bill pay service are not remotely created checks, despite the absence of the account holder's signature.

[36] ''As a result, they are vulnerable to misuse by fraudsters who can, for example, use [a remotely created check] to debit a victim's account without receiving proper authorization or delivering the goods or services. The risk of fraudulent [remotely created checks] is amplified in one-time purchase scenarios where the merchant is relatively unknown to the customer.'' Crystal D. Carroll, Federal Reserve Bank of Atlanta, Retail Payments Risk Forum, *Remotely Created Checks: Distinguishing the Good from the Bad* (July 6, 2009), *available at http://portalsandrails.frbatlanta.org/2009/07/remotely-created-checks-distinguishing-the-good-from-the-bad.html.*

[37] To comply with processing standards at banks that use magnetic ink character recognition line data from the bottom of a check, remotely created checks must be printed using special check paper stock and magnetic ink. Telemarketers often employ third-party processing firms to create and deposit the checks, which are accepted for deposit by the firms' bank. *See, e.g., FTC* v. *Your Money Access, LLC* (*''YMA''*), Civ. No. 07–5147 (E.D. Pa. Aug. 11, 2010) (stipulated permanent injunction against payment processor that allegedly facilitated fraudulent telemarketers by debiting accounts through remotely created checks and ACH debits); *United States* v. *Payment Processing Ctr., LLC,* Civ. No. 06–0725 (E.D. Pa. Aug. 12, 2010) (Stip. Perm. Inj.) (same); *FTC* v. *Interbill, Ltd.,* Civ. No. 2:06–01644 (D. Nev. Apr. 30, 2009) (Summ. J.), *aff'd, FTC* v. *Wells,* Civ. No. 09–16179, 385 F.App'x. 712 (9th Cir. 2010) (summary judgment against payment processor that facilitated fraudulent telemarketers by debiting accounts through remotely created checks).

[38] In 2003, Congress enacted the Check Clearing for the 21st Century Act (''Check 21 Act'' or ''Check 21''), 12 U.S.C. 5001–5018, which paved the way for the use of substitute checks. Under the Act, a substitute check qualifies as the legal equivalent of the original check if:

(1) it accurately represents all of the information on the front and back of the original check as of the time it was truncated [*i.e.,* removed from the collection or return process and supplanted by an electronic image of the check] * * * (2) it bears the legend: ''This is a legal copy of your check. You can use it the same way you would use the original check,'' and (3) a bank has made the Check 21 Act warranties with respect to the substitute check.

Federal Financial Institutions Examination Council (''FFIEC''), *Check Clearing for the 21st Century Act Foundation for Check 21 Compliance Training, available at http://www.ffiec.gov/exam/check21/Check21FoundationDoc.htm.*

scanned images of paper-based checks, including remotely created checks, into the check clearing system.

Electronic image exchange also has resulted in an ''all-electronic'' version of the remotely created check—the ''remotely created payment order''—a remotely created check that *never* exists in printed paper form.[39] Like traditional checks and remotely created checks, remotely created payment orders are deposited into and cleared through the check clearing system.[40] As with remotely created checks, remotely created payment orders are created by the merchant (payee), not the consumer (payor). In the case of remotely created payment orders, a telemarketer or seller simply enters a bank account number and bank routing number into an electronic file that is transmitted to a financial institution for processing via the check clearing system.[41] As a result, remotely created payment orders are at least as susceptible to fraud as remotely created checks.[42]

The Commission previously considered the risks associated with the use of remotely created checks (then known as ''demand drafts'') in telemarketing during the initial promulgation of the Rule and subsequent rulemaking proceedings culminating in the 2003 amendments. At the time of those prior rulemaking proceedings, there were few, if any, convenient and safe payment alternatives available for consumers without access to credit cards. Consequently, prohibiting the use of remotely created checks in telemarketing would have imposed hardships on those consumers.[43] In the past decade, however, there has been a dramatic proliferation of noncash payment alternatives for consumers, and electronic payments now surpass paper checks in popularity as noncash means of payment.[44] In light of these changes in the marketplace, the Commission preliminarily finds that the risks from using these payment methods in telemarketing transactions exceed the benefits of permitting their use. At the same time, the Commission wishes to explore whether there might be legitimate reasons that telemarketers use these payment methods instead of other available payment mechanisms.[45] To understand any potential problems posed for legitimate businesses by the proposed ban on the use of remotely created checks and remotely created payment orders, the Commission welcomes comments from the public in response to the questions posed in Section VIII.

1. Absence of Federal Consumer Protection Regulation of Remotely Created Checks and Remotely Created Payment Orders

A complicated interplay between federal and state laws results in uneven regulation of different payment methods. The type of payment mechanism used by a consumer in a particular transaction determines the level of legal protection against unauthorized charges the consumer receives. Consumers generally are not aware of the differing legal protections pertaining to the various payment methods. Significantly, consumers who provide bank debiting information to a telemarketer have virtually no control over how the telemarketer chooses to process their payment. Once a telemarketer obtains a consumer's bank account and routing number, the telemarketer (not the consumer) may choose to use that information to initiate payment via ACH debit, remotely created check, or remotely created payment order[46]—a choice that determines what level of protections the consumer receives.

When a remotely created check or a remotely created payment order is cleared through the check clearing system, consumers receive none of the federal protections that safeguard conventional payments that are processed through the credit card system or the ACH Network. Consider the protections the law affords to credit card transactions and electronic fund transfers, such as debit card and ACH transactions. Federal law subjects credit card transactions to a prescribed billing error resolution process[47] and statutory limitations on a cardholder's liability for certain transactions.[48] Similarly, when

[39] The proposed definition of ''remotely created payment order,'' therefore, closely tracks the proposed definition of remotely created check:

a payment instruction or order drawn on a person's account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the person on whose account the order is drawn, and which is cleared through the check clearing system. The term does not include payment orders cleared through the Automated Clearinghouse Network or subject to the Truth in Lending Act, 15 U.S.C. 1601, and Regulation Z, 12 CFR part 1026.

See infra Section IV.A.

[40] In 2011, while proposing certain amendments to Regulation CC (Availability of Funds and Collection of Checks), the Board of Governors of the Federal Reserve System (''Federal Reserve Board'') used the term ''electronically-created item'' to describe any all-electronic image of a check that is sent through the check clearing system. *Proposed Rule; Regulation CC,* 76 FR 16862, 16865 (Mar. 25, 2011), *available at http://www.gpo.gov/fdsys/pkg/FR-2011-03-25/pdf/2011-5449.pdf.* As such, the term encompasses ''remotely created payment orders'' (also known as ''electronic RCCs,'' ''virtual drafts,'' ''paperless checks,'' and ''non-check RCCs''), as well as smart-phone checks where the consumer ''signs'' a digital image of a check that can be emailed to a merchant or the merchant's bank. *Id.* Among other things, the Federal Reserve Board proposed amendments to Regulation CC that would provide such electronically-created items with the same interbank warranty and liability provisions as remotely created checks. *Id. See also supra* note 53 (explaining interbank warranty and liability provisions applicable to remotely created checks). To date, the Board has taken no further action on this proposal.

The Commission's proposed ban would extend to remotely created payment orders. Importantly, the ban would not prohibit the use of other ''electronically-created items,'' as defined by the Federal Reserve Board's proposed amendments to Regulation CC.

[41] FFIEC, *Retail Payment Systems Booklet—February 2010,* at 16 (Feb. 2010) (''*Retail Payment Systems Booklet* ''), *available at http://ithandbook.ffiec.gov/ITBooklets/FFIEC_ITBooklet_RetailPaymentSystems.pdf.* ''Unlike traditional checks or RCCs [remotely created checks], electronically created payment orders do not begin with a paper item. However, they are similar to RCCs in that they . . . bear no direct evidence of the customer's authorization. Because these transactions are not originally captured from paper check items, the laws and regulations pertaining to check collection do not apply.'' *Id.; see also infra* notes 61–62 and accompanying text (noting the uncertain regulatory framework for remotely created payment orders deposited into the check clearing system).

[42] In inbound telemarketing calls, the same account information could be used to initiate an electronic fund transfer through the ACH Network. Fraudulent telemarketers and unscrupulous payment processors prefer, however, to use remotely created payment orders to evade the ACH Network and exploit the weaknesses inherent in the check clearing system. *See, e.g., FTC* v. *Automated Electronic Checking, Inc. (''AEC''),* Civ. No. 3:13–cv–00056–RCJ–WGC (D. Nev. Feb. 5, 2013) (Stip. Perm. Inj.); *FTC* v. *Landmark Clearing Inc.,* Civ. No. 4:11–00826 (E.D. Tex. Dec. 15, 2011) (Stip. Perm. Inj.).

[43] Original TSR, 60 FR at 43850.

[44] Federal Reserve System, *The 2010 Federal Reserve Payments Study: Noncash Payment Trends in the United States: 2006–2009,* at 4 (April 5, 2011) (''*2010 Payments Study*'') (''Electronic payments (those made with cards and by ACH) now collectively exceed three quarters of all noncash payments while payments by check are now less than one-quarter. The increase in electronic payments and the decline of checks can be attributed to technological and financial innovations that influenced the payment instrument choices of consumers and businesses.'' (Citation omitted)), *available at http://www.frbservices.org/files/communications/pdf/press/2010_payments_study.pdf.*

[45] The 2010 Federal Reserve Payments Study concluded that ''[t]he decline in [consumer-to-business] check writing reflects, among other things, the replacement of consumer checks by electronic payments, such as online bill payments through the ACH, or point-of-sale purchases with debit cards.'' *Id.* at 11.

[46] *Cf. supra* note 42.

[47] Fair Credit Billing Act, 15 U.S.C. 1666 (correction of billing errors). Within 60 days of the financial institution's transmittal of her credit card account statement, a consumer may dispute a charge for goods or services with her credit card company, and withhold payment while the dispute is pending. Billing errors include failure of a merchant to deliver goods or services as agreed.

[48] Truth-In-Lending Act, 15 U.S.C. 1643 (liability of holder of credit card); Regulation Z, 12 CFR 1026.12(b)(2) (liability of cardholder for unauthorized use).

consumers use debit cards linked to a bank account or otherwise initiate electronic fund transfers involving a bank account, they are protected by the EFTA.[49] This is also true when consumers provide paper checks to a merchant that converts the account information from these checks into electronic ACH debits.[50] The EFTA and Regulation E provide consumers with error resolution procedures, including a requirement that funds debited in an unauthorized electronic fund transaction must be returned to the consumer's account within a maximum of ten business days, pending the outcome of further investigation,[51] and statutory limitations on a consumer's liability for unauthorized transactions.[52]

In contrast, no such federal consumer protection laws or regulations apply to remotely created checks deposited into the check clearing system.[53] These payments are governed principally by state law, Articles 3 and 4 of the Uniform Commercial Code (''UCC''), which apply to all negotiable instruments and bank deposits.[54] Unlike the dispute resolution protections provided by the TILA and Regulation Z, the UCC provides no way for a consumer to dispute or withhold payment before the funds are withdrawn from her account.[55] In addition, consumers receive superior substantive liability limits for unauthorized transactions under the TILA and, to a lesser extent, the EFTA.[56] Moreover, unlike the EFTA and Regulation E, the UCC imposes no specific obligation on a financial institution to recredit disputed funds to a consumer's account within a particular time frame,[57] and a consumer may have to pursue legal action against the bank to promptly recover money lost in telemarketing fraud.[58] Thus, consumers victimized by telemarketing schemes that deposit unauthorized remotely created checks are forced to expend a significant amount of time, effort and money to resolve disputes with their banks over unauthorized withdrawals from their accounts.[59]

The regulatory framework for remotely created payment orders is complicated and unsettled, but currently results in the same inferior protection against fraud as provided by remotely created checks. Unlike traditional checks or remotely created checks, remotely created payment orders never exist in paper form and, thus, cannot be used to create a substitute check that meets the requirements of the Check Clearing for the 21st Century Act (''Check 21 Act'').[60] The Consumer Financial

[49] The EFTA also covers payroll cards, and some prepaid debit cards (also referred to as ''general purpose reloadable'' or ''GPR'' cards) that are linked to an account at a financial institution. In addition, section 401 of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (''Credit CARD Act''), 15 U.S.C. 1693l–1, created new section 915 of the EFTA, subjecting other types of non-GPR cards (*i.e.,* gift cards) to some, but not all, requirements of the EFTA.

In May 2012, the CFPB requested public comment on whether (and to what extent) EFTA coverage should be provided to all GPR cards. Advanced Notice of Proposed Rulemaking; Electronic Fund Transfers (Regulation E) and General Purpose Reloadable Prepaid Cards (''ANPR Electronic Fund Transfers and GPR Cards''), 77 FR 30923 (May 24, 2012). In a comment submitted the CFPB, Commission staff expressed support for protecting users of GPR cards and for the CFPB's proposal to solicit information about the costs and benefits of extending additional protections to these cards. Comment, Staff of the Bureau of Consumer Protection, ANPR Electronic Fund Transfers and GPR Cards, Dkt. No. CFPB–2012–00196 (July 23, 2012), *available at http://www.ftc.gov/os/2012/07/120730cfpbstaffcomment.pdf.* The Commission will continue to monitor complaints regarding the use of prepaid debit cards in telemarketing fraud to determine whether additional amendments of the TSR would protect consumers.

[50] Examples of such electronic check conversions include point-of-purchase (''POP'') and accounts receivable conversion (''ARC''). A POP entry is created for an in-person purchase of goods or services when a retailer uses a consumer's paper check as a source document to electronically enter the consumer's bank routing and account number to initiate an ACH debit to the consumer's bank account. An ARC entry also uses a consumer's paper check as a source document to initiate an ACH debit, but the check is not received at the point-of-purchase. Instead, ''a biller receives the consumer's check in the mail, or at a lockbox location for payment of goods and services.'' Karen Furst & Daniel E. Nolle, Policy Analysis Division, Office of the Comptroller of the Currency, *ACH Payments: Changing Users and Changing Uses Policy Analysis Paper #6,* at 8 (Oct. 2005), *available* at *http://www.occ.gov/topics/bank-operations/bit/ach-policy-paper-6.pdf.* ''Under a legal sleight of hand, the check is treated as an authorization for an electronic fund transfer, bringing the transaction entirely under the EFTA.'' Gail Hillebrand, *Before the Grand Rethinking: Five Things to Do Today with Payments Law and Ten Principles to Guide New Payments Products and New Payments Law,* 83 Chi.-Kent L. Rev. 769, 780 n.22 (2008).

[51] 15 U.S.C. 1693f(c) (provisional recredit of consumer's account). When a consumer disputes an electronic funds transfer as unauthorized or otherwise in error, the EFTA provides a process for error resolution. *Id.* at 1693f. The consumer must notify the financial institution, either orally or in writing, of the reasons for the error or dispute within 60 days of transmittal of an account statement bearing the disputed transaction. The EFTA gives the financial institution up to ten business days to either resolve the dispute or provide the consumer with a provisional recredit of the disputed amount. The financial institution may take up to 45 days to complete its investigation. If the dispute is resolved in the consumer's favor before the end of the ten day period, however, the recredit must be made within one business day. These time periods can be extended under certain circumstances. *Id.*

[52] Under the EFTA, consumers are not liable for unauthorized electronic fund transfers unless an accepted card or other means of access was used—*i.e.,* a card which had been received by the consumer. 15 U.S.C. 1693g(a). If an accepted card was used, and the card provides for a means to identify the user of the card, the EFTA allows the consumer to be held responsible for certain amounts, depending on the timeliness of the consumer's discovery and report of loss, theft, or unauthorized use. If the consumer reports the loss not later than two business days of discovery of the loss, a consumer's liability is limited to $50. *Id.* at 1693g(a)(1)–(2). If not, a consumer's liability can go up to $500. If the consumer fails to report an unauthorized fund transfer that appears on a statement provided to the consumer within 60 days, however, the consumer's potential loss is unlimited. *Id.*

[53] Remotely created checks are subject to Regulation CC, 12 CFR 229.34, which provides for special transfer and presentment warranties between banks. These interbank warranties ''shift liability for the loss created by an unauthorized remotely created check to the depositary bank,'' which is generally the bank for the person that initially created and deposited the remotely created check. *Final Rule; Regulations J and CC,* 70 FR 71218, 71220 (Nov. 5, 2005). ''The warranty applies only to financial institutions and does not directly create any new rights for checking account customers.'' FFIEC, *Retail Payment Systems Booklet, supra* note 41, at 9.

[54] The UCC has been adopted (in whole or in part), with some local variation, in all 50 states, the District of Columbia, and the Virgin Islands.

[55] *See supra* note 47; Hillebrand, *supra* note 50 at 776 (explaining the limited consumer protections afforded by the UCC for many consumer check disputes); Mark E. Budnitz, Lauren K. Saunders, & Margot Saunders, § 2.3.2.3 Consumer Banking and Payments Law: Credit, Debit & Stored Value Cards, Checks, Money Orders, E-Sign, Electronic Banking and Benefit Payments (4th ed., National Consumer Law Center 2009 & Supp. 2010).

[56] *See supra* notes 47–48 and 51–52.

[57] ''Thus, only weak and indirect motivations force banks to move promptly in response to such a complaint. For example, the bank that responds slowly to such a complaint might harm its reputation for providing high-quality customer service. Similarly, if the bank refuses to return the funds promptly and subsequently dishonors a check for which the customer's funds should have been adequate, the bank would be exposed to liability for wrongful dishonor. It is safe to say that those motivations are much less effective than the specific statutory deadlines for dealing with customer complaints that appear in the EFTA.'' Expert Report of Prof. Ronald Mann, ¶ 24 (Feb. 4, 2008), *filed in FTC* v. *Neovi, Inc.* (''*Neovi*''), Civ. No. 06–1952 (S.D. Cal. Sept. 16, 2008) (Summ. J.).

[58] Hillebrand, *supra* note 50, at 780 (explaining that ''check law sets no guaranteed time period for the re-credit of disputed funds'').

[59] Mann, *supra* note 57, ¶ 25 (''As a result, a typical consumer will expend a considerable amount of time getting the bank to respond to the complaint. Among other things, the consumer ordinarily will be required to submit an affidavit regarding the forgery. For consumers that are not experienced with the legal system, and who have immediate uses to which they would put the funds in their bank accounts, these problems are likely to be most burdensome.''); *see also* Expert Report of Elliott C. McEntee, at ¶ 55 (Oct. 1, 2008), *filed in YMA, supra* note 37.

[60] Budnitz & Saunders, *supra* note 55, at § 2.6.3.5; NACHA, *Remotely Created Checks and ACH Transactions: Analyzing the Differentiators* (''*RCC and ACH Differentiators*''), at 6 (Mar. 2010), *available at http://www.macha.org/Portals/0/RCC%20White%20Paper%20031110%20Final.pdf* (''[Remotely created payment orders] that are not originally captured via a paper document cause greater risk than RCCs because they are even more difficult to identify and monitor and because their legal framework is not clearly defined.''); Richard Oliver & Ana Cavazos-Wright, Federal Reserve Bank of Atlanta, Retail Payments Risk Forum, Portals and

Protection Bureau (''CFPB'') has not yet determined whether such electronically-created items not derived from checks are electronic fund transfers subject to Regulation E.[61] Notwithstanding this uncertain regulatory framework, as a practical matter, the check clearing system cannot currently distinguish remotely created payment orders from remotely created checks (or from images of traditional checks).[62] Banks, therefore, often treat returned remotely created payment orders as if they were remotely created checks covered by the UCC, which, as previously noted, provides consumers with no meaningful protection against telemarketing fraud.

Some payment processors capitalize on this confusing regulatory framework when marketing their remotely created payment order services to high-risk merchants. These entities openly promote the ''merchant-friendly'' UCC framework and avoidance of NACHA's Operating Rules, including NACHA's 1 percent monthly threshold for unauthorized returns, as reasons to use remotely created checks and remotely created payment orders instead of credit card or ACH payments.[63]

2. Lack of Centralized Fraud Monitoring and Controls

Unlike payments processed or cleared through the credit card system or the ACH Network, remotely created checks are not subject to systematic monitoring for fraud. This makes them an irresistible payment method for fraudulent telemarketers. The credit card system is designed to deter and detect fraud by requiring that a merchant be approved for a merchant account before it may accept credit card payments. In addition, the credit card system monitors all returns and refunds, to identify unusual activity associated with fraud. Specifically, the credit card payment system can analyze the chargeback volume (*i.e.* the number of chargebacks over a particular time period), chargeback rate (*i.e.,* the percentage of attempted debits that are returned out of the total number of attempted debits for a specific merchant), and chargeback reason codes (via a numeric code used to identify why a chargeback occurred) of its participants.[64] To participate in the credit card payment systems, banks and merchants agree to abide by certain operating rules, including requirements that chargeback rates remain below established thresholds,[65] and they can be expelled or otherwise sanctioned for violating these rules.[66]

Similarly, the two ACH operators (the Federal Reserve Bank and the Electronic Payments Network) systematically monitor transactions to detect and deter fraud. The ACH operators track the volume, reason code, and rate of ''returned items'' [67] sent back to originating banks where the items were originally deposited, and forward the data to NACHA—The Electronic Payments Association (''NACHA'').[68] When NACHA identifies a merchant with unusually high returns activity, it notifies the merchant's originating bank which must review the merchant's activity and compliance with the NACHA rules.[69] NACHA's rules and guidelines emphasize the responsibility of all ACH participants, including merchants, banks, and payment processors, to monitor return rates and other suspicious activity in order to detect and prevent fraud in the ACH Network. ACH participants can determine whether a merchant's return rates are excessive by comparing the merchant's return rate with the industry average return rates, which NACHA publishes in quarterly NACHA

Rails, *Going All Digital With the Check: Check 21, ACH, or an Electronic Payment Order?* (May 10, 2010), *available at http://portalsandrails.frbatlanta.org/remotely-created-checks/.*

[61] In 2011, while proposing certain amendments to Regulation CC (Availability of Funds and Collection of Checks), the Federal Reserve Board stated that it had not made a determination as to the applicability of Regulation E to electronically-created items, such as remotely created payment orders. *Proposed Rule; Regulation CC, supra* note 40 at 16865–86. Since then, the CFBP has assumed responsibility for most rulemaking authority for Regulation E, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Pub. L. 111–203, 124 Stat. 1376 (2010). The CFPB also has not made such a determination.

[62] *Proposed Rule; Regulation CC, supra* note 40, at 16866; *see also* Ana Cavazos-Wright, Federal Reserve Bank of Atlanta, Retail Payments Risk Forum, *Remotely Created Checks: Banks of First Deposit Provide Front Line of Defense* (June 7, 2010), *available at http://portalsandrails.frbatlanta.org/remotely-created-checks/.* (''RCCs that exist in [electronic-only] format may easily bypass detection because, when they are sent forward for clearing, they appear in a format indistinguishable from files of images captured from paper checks.'').

Moreover, in explaining amendments to the Federal Reserve Operating Circular 3, the Retail Payments Office of the Federal Reserve System advised depository institutions that these items ''actually fall under the requirements of the EFTA and Reg E.'' Letter from Richard Oliver, Retail Payments Product Manager, Retail Payments Office of the Federal Reserve to Chief Executive Officers of Depository Institutions (June 16, 2008); *see also* Federal Reserve Bank of New York, *Operating Circular No. 3 Revised, Circular 11962* (June 23, 2008), *available at http://www.newyorkfed.org/banking/circulars/11962.html.*

[63] For example, the defendants in *AEC* urged their merchant clients to avoid NACHA's 1 percent monthly threshold on unauthorized returns by switching from ACH debits to RCPOs. *FTC* v. *AEC, supra* note 42, at ¶29.

Similarly, the defendants in *Landmark* expressly advertised their remotely created payment order processing product as a less regulated alternative to ACH transactions. *FTC* v. *Landmark Clearing, supra* note 42, at ¶23. The defendants declared on their Web site and promotional materials that:

NACHA, the governing body over check processing rules and regulations, has stated businesses with return rates of higher than 1% unauthorized return rate cannot process ACH transactions. If your company is at risk of higher return rates, [RCPO] processing is a great solution for your business needs.

Id. at Exhibit A, *Screen Capture of Landmark Web site, Virtual Draft page.*

[64] A ''chargeback'' is a payments industry term used to describe the process through which a disputed charge to a consumer's credit card is refunded to the consumer and charged back to the entity, often a merchant, that placed the charge on her account. This dispute process is governed by the Fair Credit Billing Act, TILA and Regulation Z. *See supra* notes 47 and 48.

[65] For example, Visa's operating rules state:

Visa monitors the total volume of U.S. Domestic and International Interchange and Chargebacks for a single Merchant Outlet and identifies U.S. Merchants that experience all of the following activity levels during any month:

- 100 or more interchange transactions
- 100 or more Chargebacks
- A 1% or higher ratio of overall Chargeback-to-Interchange volume

Visa, U.S.A, *Visa International Operating Regulations* 756 (Apr. 15, 2013), *available at http://usa.visa.com/download/merchants/visa-international-operating-regulations-main.pdf.* MasterCard maintains similar, but not identical, thresholds for its chargeback monitoring programs (at least 100 chargebacks a chargeback ratio of 1.5 percent). MasterCard, *Security Rules and Procedures: Merchant Edition* 8–13 (Feb. 22, 2013), *available at http://www.mastercard.com/us/merchant/pdf/SPME-Entire_Manual_public.pdf.*

[66] MasterCard maintains the Member Alert to Control High-risk Merchants (''MATCH'') file, a database that acquiring banks and payment processors use to report merchants that they have terminated for risk-related reasons. In turn, banks and payment processors must check prospective merchants against the MATCH file as part of the underwriting process. *MasterCard Security Rules and Procedures, id.* at 11–1.

[67] A ''returned item'' is a check sent through the check clearing network or an electronic debit processed through the ACH Network that has been returned unpaid to the originating bank. Consumers may initiate returns of checks and electronic debits by disputing the payment with their bank. For traditional checks, this process is governed by the UCC; for electronic debits, it is governed by the EFTA and Regulation E.

[68] FFIEC, *Retail Payment Systems Booklet, supra* note 41, at 16.

[69] NACHA may initiate a rules enforcement proceeding against an originating depository financial institution (''ODFI'') when its merchant generates a return rate for unauthorized transactions that exceeds 1 percent in a month. NACHA Operating Rules, Art. II, § 2.17.2 (ODFI Return Rate Reporting) and § 10.4.3 (Initiation of a Rules Enforcement Proceeding) (2013). A read-only version of the 2013 edition of the NACHA Rules is available at *www.achrulesonline.org* at no cost to registered users.

On March 15, 2013, NACHA tightened the timeline from 60 days to 30 day for ODFIs to reduce a merchant's return rate for unauthorized transactions below the 1 percent threshold before initiation of a Rules enforcement proceeding. NACHA, *ODFI Return Rate Reporting (Risk Management) March 15, 2013, available at https://www.nacha.org/ODFI-Return-Rate-Reporting-(Risk%20Management)-March-15-2013.*

newsletters. NACHA rules apply additional restrictions on ''telephone-initiated'' (abbreviated as ''TEL'') transactions, which historically have been fertile ground for fraud.[70]

Merchant returns and chargebacks[71] that exceed either the thresholds set by credit card system operators or the average return rate experienced by ACH participants often may indicate either that the merchant is submitting transactions that consumers have not authorized, or that the merchant engaged in deceptive conduct to obtain any such authorization.[72] The Commission's law enforcement experience also confirms that high total return rates are a strong indicator of fraud.[73] In more than a decade of Commission enforcement actions alleging that payment processors made unauthorized debits to consumer bank accounts on behalf of fraudulent merchants, the return rates were staggeringly high and vastly out of proportion with industry norms.[74] Although telemarketers engaged in fraud obviously continue to look for ways to subvert the anti-fraud mechanisms of the credit card systems and the ACH Network,[75] the specific initial due diligence and subsequent monitoring of return activity undertaken by the operators of these systems—as well as a steady stream of law enforcement actions by the Commission and other federal and state law enforcement agencies—make it more difficult for wrongdoers to gain and, critically, to maintain access to these payment systems.[76]

Therefore, telemarketers engaged in fraud and the payment processors who assist them have increasingly turned to remotely created checks and remotely created payment orders to defraud consumers.[77] The systemic weaknesses of the check clearing system make it much more accommodating for them than the credit card system or ACH Network. It is much easier for a merchant to open an ordinary business checking account and use it to create and deposit remotely created checks or remotely created payment orders into the check clearing system than it is to establish a credit card merchant account or qualify for ACH origination services.

Moreover, based on current practices, it is impossible for banks to systematically distinguish remotely created checks from conventional checks, or to calculate their isolated rates of return. The reason for this is rooted in the structure and history of the check collection system, which is highly decentralized and originally paper-based. In these respects, it stands in marked contrast to the credit card system and the ACH Network. The interbank check clearing process involves one bank (the ''depository bank'') presenting a check to another bank (the ''payor bank'') for payment. When a depository bank receives a check, it encodes the amount of the check in magnetic ink at the bottom of the check, and forwards the magnetic ink character recognition (''MICR'') information to the payor bank for settlement.[78] Enactment of the Check 21 Act[79] permits banks now to capture an image of the front and back of the original check and exchange the image and MICR line data in the clearing and

[70] NACHA's ''TEL rule'' specifically prohibits the use of the ACH Network by *outbound* telemarketers that initiate calls to consumers with whom they have no existing relationship. NACHA Operating Rules, Art. II, § 2.5.15 (Specific Provisions for TEL Entries (Telephone-Initiated Entry)) (2013). For inbound telephone orders and transactions in which the merchant has an existing business relationship with the consumer, a merchant may obtain a consumer's authorization to initiate an ACH debit. As evidence of a consumer's authorization of a TEL transaction, the merchant or seller must either: (1) Record the oral authorization of the consumer, or (2) provide the consumer with written notice confirming the oral authorization prior to the settlement date of the entry.

Historically, NACHA limited consumer-authorized TEL transactions to single-entry payments. However, in 2011 NACHA amended its operating rules to permit recurring TEL transactions. NACHA, *Enhancements to ACH Applications FAQs,* (Jan. 19, 2011), *available at http://admin.nacha.org/userfiles/File/ACH_Rules/Application%20Enhancements%20rule%20changes%20FAQs.pdf.* For recurring TEL entries to be compliant with NACHA's rules, a merchant must record the oral authorization and provide the consumer with a copy of the authorization. *Id.*

[71] For ease of reference, this section of the NPRM uses the term ''returns'' to refer to both chargebacks and returned items, as defined *supra* in notes 64 and 67.

[72] *See, e.g.,* Financial Crimes Enforcement Network (''FinCEN''), Advisory FIN–2012–A010, Risk Associated with Third-Party Payment Processors (October 22, 2012), *available at http://www.fincen.gov/statutes_regs/guidance/html/FIN-2012-A010.html* (noting that high numbers of consumer complaints and ''particularly high numbers of returns or charge backs (aggregate or otherwise), suggest that the originating merchant may be engaged in unfair or deceptive practices or fraud, including using consumers' account information to create unauthorized RCCs or ACH debits.''); McEntee, *supra* note 59, ¶ 32.

[73] Total return rate refers to the total number of ACH debit transactions that were returned for any reason code, divided by the total number of ACH debit transactions processed nationwide for that time period. For example, the average total return rate for all ACH debit transactions in 2011 was 1.52 percent. *FTC* v. *Ideal Financial Solutions, Inc.,* Civ. No. 2:13–00143–MMD–GWF (D. Nev. filed Jan. 28, 2013) at ¶ 37, *available at http://www.ftc.gov/os/caselist/1123211/index.shtm.*

[74] *See, e.g., Landmark, supra* note 42 (alleging defendants accepted merchants with anticipated return rates of 70 to 75 percent, and continued processing remotely created payment orders for merchant that generated return rates ranging from 50 to 80 percent); *YMA, supra* note 37 (defendants allegedly processed ACH and demand draft debits on behalf of merchants that generated return rates ranging from 32 to 82 percent); *FTC* v. *3d Union Card Serv.,* Civ. No. S–04–0712, ¶ 15 (D. Nev. July 19, 2005) (default judgment finding nearly 70 percent of defendants' debits to consumers' accounts were returned or refused by the consumers' banks); *FTC* v. *Interbill, Ltd.,* Civ. No. 2:06–01644 (D. Nev. Apr. 30, 2009) (summary judgment against defendants that continued to process transactions for merchant, Pharmacycards.com, despite a return rate of nearly 70 percent); *FTC* v. *Universal Processing, Inc.,* Civ. No. 05–6054 (C.D. Cal. Aug. 18, 2005) (stipulated permanent injunction in case with an alleged return rate exceeding 70 percent); *FTC* v. *Electronic Financial Group, Inc.,* Civ. No. 03CA0211 (W.D. Tex. Mar. 23, 2004) (stipulated permanent injunction in case with alleged return rates between 40 and 70 percent).

States also have sued payment processors that assisted fraudulent telemarketers by continuing to process transactions in spite of their high return rates and telephone sales scripts evidencing misrepresentations or violations of the law. *See, e.g., Ohio* v. *Capital Payment Sys. Inc.,* Civ. No. 08 H 5 7234 (Franklin County, OH Ct. Com. Pl. (Jan. 31, 2012) (entry of summary judgment finding defendants processed ACH debits and remotely created checks for fraudulent telemarketers that generated return rates ranging from 19 to 68 percent); *Ohio* v. *Cimicato,* Civ. No. 06 H 3 04698 (Franklin County, OH Ct. Com. Pl. Oct. 12, 2012) (Stip. J.) (alleged return rates ranging from 32 to 90 percent); *Iowa* v. *Teledraft Inc.,* Civ. No. 4:04–90507 (S.D. Iowa Dec. 9, 2005) (Stip. J.) (defendants allegedly processed ACH debits for merchants with total return rates ranging from 51 to 77 percent); *Vermont* v. *Amerinet, Inc.,* Civ. No. 642–10–05 (Super. Ct. filed Oct. 31, 2005) (defendants allegedly continued to process bank debits despite return rates as high as 80 percent).

[75] Many fraudulent telemarketers who engage in outbound telemarketing violate NACHA's TEL rule by processing payments through the ACH Network. *See, e.g., FTC* v. *Elec. Fin. Group Inc.,* Civ. No. 03–211 (W.D. Tex. Mar. 23, 2004) (Stip. Perm. Inj.); *FTC* v. *First Am. Payment Processing, Inc.,* Civ. No. 04–0074 (D. Ariz. Nov. 2, 2004) (Stip. Perm. Inj.). When compared to the check fraud losses experienced by banks, however, ''ACH transactions have had a relatively good track record.'' Furst & Nolle, *supra* note 50, at 10–11.

[76] Since 1995, the Commission has filed more than 300 cases involving violations of the TSR, many of which have included fraudulent or unauthorized charges to consumers' credit card or bank accounts.

[77] *See, e.g., FTC* v. *Landmark, supra* note 63 (describing defendants' promotion of their remotely created payment order processing product as a less regulated alternative to ACH transactions for merchants with a history of high return rates); Expert Report of Dennis M. Kiefer, ¶¶ 31–32 (Oct. 2, 2008), *filed in YMA, supra* note 37 (describing the defendants' efforts to migrate client merchants with high return rates from ACH to demand draft transactions); *see also* George F. Thomas, Digital Transactions, *It's Time to Dump Demand Drafts,* at 39 (July 2008), *available at http://www.radixconsulting.com/TimetoDumpDemandDrafts.pdf* (''[Y]ou will find merchant-processing sites that advise merchants in high-risk categories or with high unauthorized-return rates to avoid the scrutiny of the ACH by using demand drafts.'').

[78] Before advances in electronic check processing, the physical processing of checks relied on high-speed reader/sorter equipment to scan the MICR line at the bottom of each check, which contains very limited information—numbers that identify the bank branch, bank routing number, check number, and account number at the payor bank.

[79] *See supra* note 38.

payment process instead of relying on the paper check.

Remotely created checks contain no unique identifier distinguishing them as such; and they are cleared in the same manner as traditional paper checks. Without examination of the signature block on each check, there is currently no feasible way for banks to analyze the volume, use, or return rate for remotely created checks.[80]

Like remotely created checks, remotely created payment orders cannot be distinguished from other check images deposited into the check clearing system.[81] Thus, the Federal Financial Institutions Examination Council notes that:

> [w]hen a financial institution permits the creation of electronic [remotely created] payment orders, substantial risk-management oversight for unauthorized returns and other unlawful activity is lost because the check-clearing networks do not provide the level of technological and organizational controls of those in the ACH network [or the credit card system]. This lack of systemized monitoring of electronically created payment orders increases their susceptibility to fraud by Web-based vendors and telemarketers.[82]

As a result of these combined factors, there exists no *systemwide* transaction data available for remotely created checks or remotely created payment orders that are returned through the check clearing system,[83] and scant data on the overall number of such transactions that results in consumer complaints. Nevertheless, substantial harm resulting from unauthorized remotely created checks is documented in a number of enforcement cases.[84]

As the law enforcement cases discussed in the next section demonstrate, *individual* banks and payment processors, however, can detect remotely created checks, investigate the total return rates of their clients' check transactions, compare the percentage of returned remotely created checks to the return rate for all checks transacted through the national banking system (approximately one half of one percent or .5 percent),[85] attempt to categorize the specific reasons for returns, compare their clients' return rates to industry average return rates for other payment mechanisms (such as credit card payments and ACH debits), and watch closely for other signs of suspicious or fraudulent merchant activity. As the complaint in *United States* v. *First Bank of Delaware*[86] highlights, banks and payment processors have perverse financial incentives to begin processing remotely created checks for ''high-risk'' merchants and originators.[87] This is because they charge higher transaction fees to such merchants, and receive additional fees for each returned check.[88] Thus, unscrupulous banks and payment processors often continue to process transactions for fraudulent operations such as these, even in the face of high return rates or other *indicia* of fraud.

3. Law Enforcement Experience with Remotely Created Checks and Remotely Created Payment Orders in Fraudulent Telemarketing

There is substantial evidence that remotely created checks are being widely misused in telemarketing, resulting in very significant consumer injury.[89] The Commission's law enforcement experience demonstrates that telemarketers engaged in fraud use a variety of methods to deceive or pressure consumers into divulging their bank account information in order to debit money from their bank accounts. Wrongdoers exploiting remotely created checks have promoted any number of phony or pretextual offers,[90] including: advance fee credit cards;[91] solicitations for bogus charities;[92] purported medical

[80] In an attempt to quantify the number of remotely created checks being automatically processed through the check clearing system, in 2007, the Federal Reserve System conducted a check sampling study of 30,000 randomly-selected checks. The study required ''three independent investigators to 'interrogate,' i.e., systematically collect information from, each sampled check.'' Federal Reserve System, *The Check Sample Study: A Survey of Depository Institutions for the 2007 Federal Reserve Payments Study,* 8 (Mar. 2008) (''2007 Check Sample Study''), *available at http://www.frbservices.org/files/communications/pdf/research/2007_check_sample_study.pdf.* The study estimated that approximately 0.95 percent or 308 of the 32,448 checks sampled in 2006 were remotely created. *Id.* at 33.

[81] *See Proposed Rule; Regulation CC, supra* note 40 and accompanying text.

[82] FFIEC, *Retail Payment Systems Booklet, supra* note 41, at 16.

[83] Despite the continued decline in overall check volume, the Federal Reserve's 2010 Payments Study revealed a significant increase in the volume of remotely created checks from .95 percent in 2006 to 2.1 percent in 2009. 2010 Payments Study, *supra* note 44, at 37; 2007 Check Sample Study, *supra* note 80. *See also* Carroll, *supra* note 36 (estimating the number of remotely created checks in 2006 at 286 million items, and noting the substantial adverse consumer impact of fraudulent remotely created checks).

[84] *See, e.g., United States* v. *First Bank of Delaware,* Civ. No. 12–6500, §§ 3, 73–75 (E.D. Pa. Nov. 19, 2012) (settlement of case alleging defendant originated more than 2.6 million remotely created check transactions totaling approximately $123 million ''on behalf of third-party payment processors in cahoots with fraudulent Internet and telemarketing merchants,'' including Landmark Clearing, Check21, Check Site, and Automated Electronic Checking); *FTC* v. *FTN Promotions, Inc.* (''*Suntasia*''), Civ. No. 8:07–1279 (M.D. Fla. Dec. 30, 2008) (Stip. Perm. Inj.) (defendants allegedly caused more than $171 million in unauthorized charges to consumers' accounts for bogus travel and buyers clubs in part by using unauthorized remotely created checks); *FTC* v. *Universal Premium Servs., Inc.,* Civ. No. 06–0849 (C.D. Cal. Feb. 27, 2007), *aff'd, FTC* v. *MacGregor,* 360 F.App'x. 891 (9th Cir. 2009) (final order after summary judgment for more than $28 million against defendants that used unauthorized remotely created checks as payment in fake shopping spree scam); Dep't of Justice Press Release, *International Bank Fraud Ring Busted for Attempt to Debit 100,000 Customer Accounts for Over $20 Million,* (Jan. 13, 2009) (announcing the arrest of one of nine co-conspirators in a purported telemarketing scheme that used ACH debits and remotely created checks to make unauthorized withdrawals or attempted withdrawals from approximately 100,000 consumer bank accounts), *available at http://www.justice.gov/usao/nj/Press/files/pdffiles/2009/sale0113%20rel.pdf. See also infra* notes 91–104 and accompanying text, describing numerous enforcement actions.

[85] *See infra* note 107 and *First Bank of Delaware, supra* note 84, at § 52.

[86] *First Bank of Delaware, supra* note 84.

[87] According to bank regulators, ''[e]xamples of high-risk parties include online payment processors, certain credit-repair services, certain mail order and telephone order (MOTO) companies, illegal online gambling operations, businesses located offshore, and adult entertainment businesses. These operations are inherently more risky and incidents of unahtorized (sic) returns are more common with these businesses.'' Office of the Comptroller of the Currency (''OCC'') Bulletin 2006–39 (Sept. 1, 2006), *available at http://www.occ.gov/news-issuances/bulletins/2006/bulletin-2006-39.html.*

[88] *See, e.g., FTC* v. *Landmark, supra* note 63 at ¶ 27 (defendants' pricing structure enabled them to earn significantly higher fee income from returned transactions than the income generated by cleared transactions); *First Bank of Delaware, supra* note 84, at ¶¶ 54 and 63 (bank allegedly took on higher risk for potential profit and earned higher fees for unauthorized returns); *see also* Kiefer, *supra* note 77, at ¶ 33 (''[YMA defendants] charged fees resulting from bad ACH and [demand] Draft transactions that were many multiples of the fees they otherwise would have charged.'').

[89] In the past, law enforcement actions primarily involved remotely created checks and not remotely created payment orders. As recent law enforcement actions demonstrate, remotely created payment orders are subject to the same, if not greater, risks as remotely created checks. *See, e.g., FTC* v. *Landmark, supra* note 63; *First Bank of Delaware, supra* note 84. The Commission, therefore, proposes that remotely created payment orders should be treated in the same way as remotely created checks.

[90] The majority of the Commission's fraud cases involving remotely created checks have involved outbound telemarketing campaigns; however, the risks associated with this payment method exist equally in the inbound telemarketing context. *See, e.g., FTC* v. *LowPay, Inc.,* Civ. No. 09–1265 (D.O. Sept. 10, 2010) (stipulated permanent injunction against advance fee credit card scheme using inbound calls).

[91] *See, e.g., FTC* v. *Group One Networks, Inc.,* Civ. No. 09–00352 (M.D. Fla. Mar. 19, 2010) (Stip. Perm. Inj.); *FTC* v. *Capital Choice Consumer Credit, Inc.,* Civ. No. 02–21050 (S.D. Fla. Feb. 19, 2004) (Stip. Perm. Inj.); *FTC* v. *Bay Area Bus. Council, Inc.,* Civ. No. 02–5762 (N.D. Ill. Apr. 14, 2003) (Summ. J.), *aff'd, FTC* v. *Bay Area Bus. Council, Inc.,* 423 F.3d 627 (7th Cir. 2005); *FTC* v. *Sainz Enters., LLC,* Civ. No. 04–2078 (D. Colo. Nov. 4, 2004) (Stip. Perm. Inj.).

[92] *See, e.g., FTC* v. *Handicapped & Disabled Workshops, Inc.,* Civ. No. 08–0908 (D. Ariz. Dec. 9,

Continued

discount plans [93] or pharmacy discount cards; [94] useless fraud-prevention services; [95] and misrepresented products or deceptive buyers club memberships.[96] In these ways, fraudulent telemarketers have bilked hundreds of millions of dollars from consumers using remotely created checks.

Numerous law enforcement actions show that telemarketers engaged in fraud frequently rely on third-party processors to create, print, and deposit remotely created checks drawn on consumers' accounts.[97] By providing the means to extract money from consumers' bank accounts via remotely created checks and remotely created payment orders, payment processors play an indispensable role in furtherance of their clients' fraudulent and deceptive schemes.[98] The Commission and the Department of Justice have sued such non-bank payment processors, alleging they engaged in unfair practices under Section 5 of the FTC Act, as well as violations of mail and wire fraud statutes and the TSR's prohibition on assisting and facilitating fraud by processing remotely created checks for telemarketers, while knowing or consciously avoiding knowledge that the telemarketers were violating the TSR.[99]

Unscrupulous merchants and third-party processors must establish relationships with banks that accept deposits of remotely created checks and remotely created payment orders. Aggressive action taken by federal prosecutors and bank regulators against banks that engaged in such fraud further illustrates the problematic use of remotely created checks and remotely created payment orders in telemarketing. Most recently, the United States Attorney for the Eastern District of Pennsylvania obtained a $15 million civil penalty against First Bank of Delaware, based on its origination of remotely created checks, remotely created payment orders, and ACH debits on behalf of merchants and payment processors engaged in fraud, including the defendants in *FTC* v. *Landmark.*[100] First Bank of Delaware allegedly ignored significant signs of fraud, including the fact that its third-party payment processors had aggregate return rates for remotely created checks exceeding 50 percent from 2009 to 2011. In an earlier action against First Bank of Delaware brought by the Federal Depository Insurance Corporation (''FDIC''), the bank agreed to terminate, among other things, ''any and all services, products and/or relationships pertaining to or involving payment processing by or through an automated clearing house, the origination and/or processing of remotely created checks and/or merchant acquiring.'' [101]

In a 2006 proceeding, the Office of the Comptroller of the Currency (''OCC'') alleged that telemarketers victimized more than 740,000 consumers using remotely created checks processed by three payment processors through Wachovia accounts.[102] All three of these payment processors allegedly knew their clients had return rates well above accepted industry standards.[103] The bank agreed to pay over $150 million in

2008) (stipulated permanent injunction against defendants that allegedly used remotely created checks to defraud elderly consumers out of nearly $10 million in connection with high-pressure, deceptive sales of products that purportedly help blind and disabled workers). In just two months, Handicapped & Disabled Workshops' telemarketers allegedly used unauthorized remotely created checks to withdraw over $5,513.55 (including $1,025.90 in a single day) from an 82 year old woman's bank account. *Id.,* Decl. of Patricia W. Bunge, ¶ 6 (Apr. 15, 2008).

[93] *See, e.g., FTC* v. *NHS Sys., Inc.,* Civ. No. 08–2215 (E.D. Pa. Mar. 28, 2013) (Summ. J.); *FTC* v. *6554962 Canada, Inc.,* Civ. No. 1:08–02309 (N.D. Ill. Aug. 19, 2009) (Default J.); *FTC* v. *9107–4021 Quebec, Inc.,* Civ. No. 08–1051 (E.D. Ohio July 17, 2009) (Stip. Perm. Inj.). *See also, e.g., United States* v. *Borden,* Cr. No. 1:08–00196 (N.D.N.Y. sentenced Dec. 3, 2009) (defendant pleaded guilty and was sentenced to 56 months' imprisonment in connection with a fake medical benefits telemarketing scheme that used remotely created checks to bilk elderly consumers).

[94] *See, e.g., FTC* v. *3d Union Card Servs., Inc.,* Civ. No. S–04–0712 (D. Nev. July 19, 2005) (Default J.) (complaint alleged telemarketers initiated $10 million in unauthorized remotely created checks and other debits from more than 90,000 consumers' accounts in three months for fraudulent discount pharmacy cards).

[95] *FTC* v. *4086465 Canada, Inc.,* Civ. No. 04–1351 (N.D. Ohio Nov. 7, 2005) (stipulated permanent injunction against telemarketers allegedly used unauthorized remotely created checks as payment for fake consumer protection service that promised to protect consumers from telemarketing and unauthorized banking).

[96] *See supra* note 84.

[97] *United States* v. *Cimicato,* Cr. No. 1:10–0012 (W.D.N.Y. Jan. 26, 2010) (defendant pled guilty to wire fraud in connection with Integrated Check Technologies' processing of remotely created checks for fraudulent Canadian telemarketers); *United States* v. *Guastaferro,* Cr. No. 1:09–347 (W.D.N.Y. Jun. 27, 2011) (sentenced to 24 months in prison and fined $100,000 for his involvement in Integrated Check Technologies' payment processing scheme); *United States* v. *Whitworth,* Cr. No. 1:10–324 (W.D.N.Y. Jan 6, 2012) (same, sentenced to 18 months); *YMA, supra* note 37; *Payment Processing Ctr., supra* note 37; *FTC* v. *Interbill, Ltd.,* Civ. No. 2:06–01644 (D. Nev. 2007); *FTC* v. *Windward Mktg., Ltd.,* Civ. No. 1:96–615 (N.D. Ga. 1996); *see also Capital Payment Sys., supra* note 74; *Ohio* v. *Cimicato, supra* note 74; *Iowa* v. *Teledraft, Inc.,* Civ. No. 04–90507 (S.D. Iowa filed Sept. 17, 2004). *Cf., FTC* v. *Neovi, Inc.,* 598 F. Supp. 2d 1104 (S.D. Cal. Sept. 16, 2008), *aff'd,* 604 F.3d 1150, 1158 (9th Cir. 2010) (defendants' Internet-based business facilitated fraudulent operations that created more than 150,000 unauthorized checks totaling more than $400 million).

[98] As the FFIEC has advised, ''[s]ome higher-risk merchants routinely use third parties to process their transactions because of the difficulty they have in establishing a direct bank relationship.'' FFEIC, *Bank Secrecy Act Anti-Money Laundering Examination Manual: Third-Party Payment Processors—Overview (2010),* at 240. *See also* George F. Thomas, *Not Your Father's ACH,* ICBA Indep. Banker (July 2007), *available at http://www.radixconsulting.com/icbaarticle.pdf* (''Many of the merchants that use third-party processors do so because they could not pass the standard know-your-customer procedure if they approached [a] financial institution directly. Like cockroaches, these merchants cannot withstand the light of scrutiny.'').

[99] For example, between June 23, 2004 and March 31, 2006, the YMA defendants allegedly processed over $200 million in debits and attempted debits to consumers' bank accounts, more than $69 million of which were returned or rejected by consumers or their banks. *YMA, supra* note 37, Compl. at ¶ 29; McEntee, *supra* note 59, ¶¶ 44–46. One of the Commission's experts in the case uncovered evidence that the defendants intentionally shifted merchants with excessive return rates from ACH debits to remotely created checks in order to continue assisting merchants in defrauding consumers. Kiefer, *supra* note 77, at ¶ 31.

In yet another case, the United States Attorney for the Eastern District of Pennsylvania alleged that during a ten-month period, a payment processor assisted telemarketers in attempting to withdraw $142 million from consumers' accounts using unauthorized remotely created checks, causing more than $50 million in consumer losses. *Payment Processing Ctr., supra* note 37.

[100] *First Bank of Delaware, supra* note 84; *Landmark, supra* note 42. According to the complaint filed by the Commission in *FTC* v. *Leanspa,* First Bank of Delaware also processed payments for the defendants, who allegedly used fake news Web sites to promote their products, made deceptive weight-loss claims, and misrepresented the terms of their ''free trial'' offers. *FTC* v. *LeanSpa,* Civ. No. 3:11–1715 (Nov. 22, 2011) (Stip. Prelim. Inj.). *See also, e.g. In the Matter of Meridian Bank,* FDIC 12–367b (Oct. 19, 2012) (consent order requiring, among other things, cessation of all third party payment processing unless and until bank completes comprehensive due diligence on each payment processor and its merchant-clients), *available at http://www.fdic.gov/news/news/press/2012/pr12136a.html*; *In the Matter of Metro Phoenix Bank,* FDIC 111–083b (Jun. 21, 2011) (same, including cessation of all third party payment processing for CheckGateway LLC and Teledraft, Inc.), *available at http://www.fdic.gov/bank/individual/enforcement/2011-06-001.pdf.*

[101] *In the Matter of First Bank of Delaware,* FDIC–11–669b, 2 (Dec. 3, 2011), *available at http://fdic.gov/bank/individual/enforcement/2011-12-03.pdf.*

[102] OCC Press Release, *OCC, Wachovia Enter Revised Agreement to Reimburse Consumers Directly* (Dec. 11, 2008), *available at http://www.occ.gov/ftp/release/2008-143.htm.*

[103] The FTC previously had sued two of the three payment processors (YMA and Suntasia) and the U.S. Department of Justice sued the third (Payment Processing Center). The FTC also brought cases against many of the telemarketers that worked with the three processors. *See, e.g., Universal Premium Servs. supra* note 84; *FTC* v. *Sun Spectrum Commc'ns. Org., Inc.,* Civ. No. 03–81105 (S.D. Fla. Oct. 3, 2004) (Stip. Perm. Inj.); *FTC* v. *Xtel Marketing, Inc.,* Civ. No. 04–7238 (N.D. Ill. July 22, 2005) (Stip. Perm. Inj.); *FTC* v. *120194 Canada, Ltd.,* Civ. No. 1:04–07204 (N.D. Ill. Mar. 8, 2007) (Summ. J.); *FTC* v. *Oks,* Civ. No. 05–5389 (N.D. Ill. Mar. 18, 2008) (Perm. Inj.); *FTC* v. *Frankly Speaking, Inc.,* Civ. No. 1:05–60 (M.D. Ga. May 14, 2005) (Stip. Perm. Inj.).

restitution to resolve the matter. Based on these and other allegations, the U.S. Attorney's Office in the Southern District of Florida and the Asset Forfeiture and Money Laundering Section of the Criminal Division of the Department of Justice filed a criminal case against Wachovia.[104] The case resulted in a deferred prosecution agreement and payment of $160 million in restitution and other penalties.[105]

In another case, the OCC entered into a settlement agreement with T Bank, N.A. in which it agreed to pay a $100,000 civil penalty and make payments totaling $5.1 million in restitution to more than 60,000 consumers affected by the bank's relationships with a third-party payment processor, Giact Systems Inc. The OCC alleged that Giact and several of Giact's merchant-clients (telemarketers and Internet merchants) used remotely created checks to make unauthorized withdrawals from consumers' accounts.[106] The OCC's investigation revealed that over 60 percent of these remotely created checks were returned to the bank by or on behalf of individuals who said they never authorized the checks or that they had never received the products or services promised by the telemarketers or merchants.[107]

State Attorneys General also have sued payment processors along with the telemarketers who have swindled consumers using remotely created checks.[108] In addition, state and Canadian law enforcement authorities have been active in attempting to regulate and halt abuses of remotely created checks. To combat the vulnerability of remotely created checks to fraud, several states and the Canadian Payments Authority (''CPA'') have restricted or prohibited the use of remotely created checks in telemarketing transactions.[109] In May 2005, thirty-seven Attorneys General also signed a letter urging the Board of Governors of the Federal Reserve to prohibit remotely created checks.[110]

Despite these efforts, telemarketers engaged in fraud face no effective impediment to their use of remotely created checks and remotely created payment orders. And, as the credit card systems and ACH Network have redoubled their efforts to detect and deter fraud—by monitoring returns and transaction data, imposing fines and penalties on participants that violate their operating rules, and requiring banks to conduct more robust up-front due diligence on client merchants—wrongdoers are forced to turn to more novel payment methods that fall outside this zone of increased scrutiny. To close off this avenue to fraudulent telemarketers, the Commission therefore proposes to prohibit the use of remotely created checks and remotely created payment orders in all telemarketing transactions.

In doing so, the Commission recognizes that, for certain transactions, remotely created checks and remotely created payment orders may offer advantages over electronic fund transfers via the ACH Network,[111] such as same-day availability of funds for merchants.[112] In light of significant changes in the marketplace, and to ensure that the rulemaking record adequately reflects the potential impact of the proposed ban against remotely created checks and remotely created payment orders on legitimate telemarketing businesses, the Commission encourages the submission of comments describing the types of telemarketing transactions in which remotely created checks or remotely created payment orders are essential, including the types of products or services involved, whether the telemarketing calls are inbound or outbound, whether certain telemarketing transactions could be processed via the ACH Network under NACHA's rules for recurring TEL transactions, as well as the resulting cost increase or savings, if any, from the use or avoidance of the ACH Network.

4. The Use of Remotely Created Checks and Remotely Created Payment Orders Is an Abusive Telemarketing Act or Practice

As explained in Section I.B above, when the Commission considers identifying a telemarketing practice as abusive, it does so within the purview of the Commission's traditional unfairness analysis.[113] An act or

[104] *United States* v. *Wachovia, N.A.,* Cr. No. 10–20165 (S.D. Fla. Mar. 16, 2010) (alleging that defendant maintained account relationships with certain payment processors that deposited more than $418 million using remotely-created checks into Wachovia accounts on behalf of fraudulent telemarketers).

[105] According to the press release announcing the deferred prosecution, ''Wachovia admitted that it failed to identify, detect, and report the suspicious transactions in the third-party payment processor accounts, as required by the BSA [Bank Secrecy Act, 31 U.S.C 1051 *et seq.*], due to deficiencies in its anti-money laundering program. Specifically, Wachovia failed to conduct appropriate customer due diligence by delegating most of this responsibility to business units instead of compliance personnel. Wachovia also failed to monitor high return rates for remotely-created checks and report suspicious wire transfer activity from the processors' accounts.'' U.S. Att'y's Office (S.D. Fla.) Press Release, *Wachovia Enters Into Deferred Prosecution Agreement* (Mar. 17, 2010), *available at http://www.justice.gov/usao/fls/Press Releases/100317-02.html.*

[106] *In the Matter of T Bank, N.A.,* #2010–068, AA–EC 09–103 (Apr. 15, 2010) (in addition, the formal agreement requires the bank to develop and adhere to strict ''policies, procedures, and standards for payment processor relationships'' before entering into a banking relationship with a payment processor), *available at http://www.occ.gov/news-issuances/news-releases/2010/nr-occ-2010-45a.pdf. See also* OCC Press Release, *OCC, T Bank Enter Agreement to Reimburse Consumers* (Apr. 19, 2010), *available at http://www.occ.gov/news-issuances/news-releases/2010/index-2010-news-releases.html.*

[107] To provide context for the return rates identified above, in the 2010 Payments Study, the Federal Reserve Board estimated that from 2006 to 2009, ''[t]he ratio of [unpaid] returned checks to paid checks by value declined from 0.44 percent to 0.40 percent.'' *Supra* note 44, at 9. In previous years, the Board estimated the return rate for checks at 0.6 percent in 2000, and 0.5 percent in 2003. Federal Reserve System, *2004 Federal Reserve Board Payments Study* 6 (Dec. 15, 2004), *available at http://www.frbservices.org/files/communications/pdf/research/2004Payment ResearchReport.pdf.* Like the return rates expected for legitimate merchants in the credit card systems and ACH Network, the return rate for checks (including remotely created checks) should be very low. McEntee, *supra* note 59, & 44 (''[T]here is no legitimate business reason why there would be a significant difference between ACH and demand draft return rates, assuming the merchant is engaged in the same line of business.'').

[108] *See, e.g., Capital Payment Sys., supra* note 74; *Ohio* v. *Cimicato, supra* note 74; *State of Ohio ex rel.* v. *Simplistic Advertising, Inc.,* Civ. No. 08–7232 (Franklin County, OH Ct. Com. Pl. filed May 16, 2008); *State of Ohio ex rel.* v. *6450903 Canada, Inc.,* Civ. No. 05CVH7233 (Franklin County, OH Ct. Com. Pl. May 8, 2009) (Default J.).

[109] In 2003, the CPA adopted a policy prohibiting the use of remotely created checks (or ''tele-cheques'') as a preemptive measure based on the heightened risk of fraud and unauthorized payments. Ana Cavazos-Wright, Federal Reserve Bank of Atlanta, *An Examination of Remotely Created Checks,* at n.8, *available at http://www.frbatlanta.org/documents/rprf/rprf_resources/RPRF_wp_0510.pdf; see also, e.g.,* ARK. CODE ANN. § 4–99–203 (1987) (prohibiting telemarketers from obtaining or submitting for payment a check drawn on a person's bank account without the consumer's express written authorization); N.Y. GEN. BUS. LAW § 399-pp (McKinney 2006) (same); VT. STAT. ANN. tit. 9, § 2464 (2006 & Supp. 2010) (same).

[110] Comment, National Association of Attorneys General, *Proposed Amendment to Regulation CC Remotely Created Checks,* FRB Dkt. No. R–1226 (May 9, 2005), *available at http://www.federalreserve.gov/SECRS/2005/May/20050512/R-1226/R-1226_264_1.pdf.*

[111] Electronic fund transfers via the ACH Network are available to all inbound telemarketers and to those outbound telemarketers who have a pre-existing relationship with the consumer. *See supra* note 70 (explaining NACHA's TEL rule).

[112] NACHA, *RCC and ACH Differentiators, supra* note 60, at 9 (describing the advantage of using remotely created checks in effectuating insurance coverage on the same day the payment is submitted). The current ACH settlement schedules are next-day or, for some credits, two days. NACHA has been exploring ways to reduce the settlement times for certain types of ACH entries. Letter from NACHA to Regional Payments Associations Direct Financial Institution Members (revised July 10, 2012), *available at https://www.nacha.org/EPS_SupplementalInfoandMaterials#epsattachments.*

[113] *Supra* notes 3, 19—20 and accompanying text.

practice is unfair under Section 5 of the FTC Act if it causes or is likely to cause substantial injury to consumers, if the harm is not outweighed by any countervailing benefits to consumers or competition, and if the harm is not reasonably avoidable.[114] The Commission preliminarily concludes that the use of remotely created checks and remotely created payment orders in telemarketing transactions meets this unfairness test.

As discussed above, the Commission's law enforcement experience demonstrates the substantial consumer injury that results from telemarketers' use of remotely created checks and remotely created payment orders.[115] Second, the economic harm from the use of remotely created checks and remotely created payment orders in telemarketing outweighs any countervailing benefits to consumers or competition.[116] The Commission is aware that remotely created checks and remotely created payment orders processed through the bank clearing system may make funds available to merchants more quickly than certain types of electronic fund transfers, such as ACH debits, and are used for recurring payments authorized by telephone.[117] However, it is the Commission's understanding that this advantage is less critical in telemarketing transactions than in other contexts, such as making last minute bill payments and collecting debts owed by consumers. Innovations in payment cards and access devices have increased the number and availability of convenient, fast, noncash payment alternatives to the use of remotely created checks.[118] These alternatives offer both dispute resolution rights and protection against unlimited liability for unauthorized charges to consumers and are available to consumers who do not possess or do not wish to use credit cards.[119] Thus, it appears that the significant injury and risk of harm to consumers is not outweighed by the benefits of using remotely created checks and remotely created payment orders in telemarketing transactions.[120]

Finally, it appears that consumers cannot reasonably avoid the injury. When consumers give their bank account numbers to a telemarketer to make a purchase, they have little or no ability to control whether the telemarketer will process the charge via the ACH system, which is monitored for fraud and provides EFTA and Regulation E protections, or as a remotely created check or remotely created payment order. In addition, consumers do not understand the differences in protections they have with a payment that clears through the ACH system and those that are available when a payment is processed as a remotely created check or remotely created payment order. Finally, consumers cannot avoid injury by checking their account records and disputing any unauthorized charges that may be there. As discussed above, disputing an unauthorized remotely created check or remotely created payment order is a long and time-consuming process that may be futile, since the UCC lacks significant consumer protections.

Telemarketers that choose to use remotely created checks and remotely created payment orders effectively deprive consumers of the anti-fraud monitoring, accountability, and dispute resolution mechanisms of other payment methods.[121] Thus, the harm to consumers is unavoidable; and the harm, in the form of unauthorized charges and limited consumer protections against fraud, is significant and does not appear to be outweighed by any countervailing benefits to consumers or competition given the widespread availability of alternative payment methods that provide greater consumer protection.

B. Cash-to-Cash Money Transfers and Cash Reload Mechanisms

Cash-to-cash money transfers offer individuals a fast and convenient method for sending funds to someone they know and trust in a different location.[122] This speed and ease, however, make these money transfers a preferred payment method in telemarketing to perpetrate cross-border fraud. To initiate a cash-to-cash money transfer, a sender provides currency to a money transfer provider (such as Western Union or MoneyGram), fills out a ''send form'' designating the name and address of the recipient to whom the money transfer is to be sent, and pays a transaction fee.[123] The money transfer provider's employee or agent inputs the transaction information into a computer network, whereupon the value of the money the sender paid is made available within minutes to the recipient. At that point, the recipient can claim the funds in cash at any of the money transfer provider's locations, with little or no need to provide any personal identification or identifying

[114] 15 U.S.C. 45(n).

[115] Remotely created checks are subject to the UCC and lack both dispute resolution rights and protection against unlimited liability for unauthorized charges, which compounds the injury caused by fraudulent telemarketing. As previously discussed, it remains unclear whether remotely created payment orders are subject to the EFTA. Regardless, without changes to the interbank clearing system that would enable banks to distinguish remotely created payment orders from remotely created checks, banks may continue to treat remotely created payment orders as if they are remotely created checks covered by the UCC. *See supra* note 62 and accompanying text.

[116] *Neovi, supra* note 97, at 1116 (finding this prong of unfairness test satisfied ''[w]hen a practice produces clear adverse consequences for consumers that are not accompanied by an increase in services or benefits to consumers or by benefits to competition'').

[117] *See supra* notes 70 and 112 (discussing NACHA operating rules that permit recurring TEL transactions). Any person initiating recurring electronic debits from a consumer's bank account must comply with the preauthorized transfer rules of Regulation E, 12 CFR 1005.10(b). Regulation E requires the person to: (1) Obtain the consumer's authorization for the recurring debits in a writing signed or similarly authenticated; (2) provide the consumer a clear and readily understandable statement of the terms of the agreement; and (3) give to the consumer a copy of the signed authorization. *Id.*

[118] According to the Federal Reserve Bank of Boston, 94.4 percent of American consumers have adopted one or more types of payment card: credit (72.2 percent), debit (77.0 percent), or prepaid (32.3 percent). Federal Reserve Bank of Boston, *2009 Survey of Consumer Payment Choice,* 41–42 (Apr. 2011).

[119] See supra notes 49—52 (discussing EFTA protections for various debit cards and ACH payments) and infra note 122 (discussing protections for consumers using payment intermediaries, such as PayPal).

[120] In March 2010, NACHA's Risk Management Advisory Group concluded: ACH debit transactions, such as TEL transactions, offer a payment choice where the safeguards to [consumers] outweigh the conveniences that RCCs currently offer to [merchants]. This conclusion is based on the following factors: (1) The heightened risk profile of RCC transactions that bear no evidence of authorization, (2) the fact that ACH transactions can be identified and monitored with relative ease, and (3) the fact that the Rules include clear and explicit authorization requirements for capturing evidence of a consumer's authorization of a transaction.

NACHA, *RCC and ACH Differentiators, supra* note 60, at 12.

[121] 2003 TSR Amendments, 68 FR at 4605.

[122] As explained below in Section IV.A, and used in this NPRM, the term ''cash-to-cash money transfer'' describes a transfer of cash from one person to another person in a different location that is sent by a money transfer provider and received in cash. This term would include a ''remittance transfer,'' as defined in section 919(g)(2) of the EFTA, that is a cash-to-cash transaction. *See infra* note 129 (discussing Remittance Transfer Rule). It does *not* include a remittance transfer or other transfer—such as a transfer from a consumer's account balance with a payment service provider or at a financial institution—that is an electronic fund transfer subject to the EFTA or Regulation E, or a transaction subject to the TILA or Regulation Z. *See* Ronald J. Mann, *Regulating Internet Payment Intermediaries,* 82 Tex. L. Rev. 681, 695 (2004) (noting that payments made via an online payment intermediary (*e.g.,* PayPal) may be covered by the TILA (when funded by a credit card) or the EFTA (when funded by a consumer's account at a financial institution)).

[123] U.S. Gov't Accountability Office, Rep. to the S. Comm. on Banking, Hous., and Urban Affairs, *International Remittances: Information on Products, Costs, and Consumer Disclosures,* 10–11 (Nov. 2005) (''GAO Report''), *available at http://www.gao.gov/new.items/d06204.pdf.*

information in order to do so.[124] For example, when initiating money transfers of less than $900 at MoneyGram, the sender has the option of using a ''Test Question and Answer,'' which enables the recipient to claim the funds without presenting photo identification by instead correctly answering the sender's test question.[125]

Like a cash-to-cash money transfer, a cash reload mechanism offers a convenient method for consumers to convert cash into electronic form. A cash reload mechanism acts as a virtual deposit slip for consumers who wish to load funds onto a general-use prepaid debit card without the use of a bank transfer or direct deposit. A consumer simply pays cash, plus a small fee, to a retailer that sells cash load mechanisms such as MoneyPak or REloadit. In exchange, the consumer receives a unique access or authorization code that corresponds with the specific amount of funds paid. Using the authorization code, a consumer can load the funds onto any existing prepaid debit card within the same prepaid network or an online account with a payment intermediary (*e.g.,* PayPal) using the phone or Internet.[126] The primary function of a cash reload mechanism is to provide a method for consumers to add money to their own prepaid cards and online accounts, or to transfer money to a relative or friend by supplying the authorization code that corresponds to the funds.[127] The consumer's relative or friend simply uses the authorization code to load the funds onto her own prepaid card or online account. Thus, the cash reload mechanism itself is not a general-use prepaid card that can be swiped or redeemed at a retail location or automated teller machine (''ATM'').

Fraudulent telemarketers demand or request payment by cash-to-cash money transfer and cash reload mechanism because they are essentially equivalent to a cash payment B once the money is picked up or offloaded from a prepaid card, there is virtually no chance for the sender to recover the money, obtain a refund, or even verify the identity of the recipient.[128] When a consumer is deceived into transferring money in these ways—particularly across national borders—a telemarketer can receive it anonymously. A cash-to-cash money transfer can be picked up at any one of multiple locations within minutes. Similarly, once a scam artist obtains the authorization code for a cash reload mechanism from a consumer over the phone, he can quickly load the funds onto an existing prepaid card and withdraw the funds immediately at an ATM. This makes it difficult to identify or track down the perpetrator of the fraud and return funds to defrauded consumers.

1. Existing Regulation of Money Transfers Fails to Protect Consumers Against Telemarketing Fraud

New federal remittance transfer rules, as well as existing federal and state laws pertaining to money transfers, are designed to regulate money transfer providers, not to protect consumers from telemarketing fraud. Specifically, the Remittance Transfer Rule is aimed at preventing money transfer providers from taking advantage of their customers, many of whom are foreign-born workers sending payments back to their home country.[129] As a result, the Rule's disclosure and error resolution procedures apply only to covered ''remittance transfers'' B those transfers that originate in the United States and are received in another country.[130] In addition, the definition of remittance transfer excludes cash reload mechanisms, which are not ''sent by a remittance transfer provider'' [131] to a ''designated recipient,'' [132] but instead are provided directly to consumers by a retailer at the point of sale. Moreover, the disclosure and error resolution procedures in the Remittance Rule focus on the transparency and accuracy of the transaction between the remittance sender and the remittance provider.[133]

[124] GAO Report, *supra* note 123, at 10–11.

[125] MoneyGram's Web site states: ''In the absence of a proper ID, test questions can serve as an identification method for most transaction[s] below a certain dollar amount. Test questions can be included in a transaction, and should address something only the receiver could answer.'' MoneyGram, *Money Transfers, Receiving a Money Transfer, What if my receiver doesn't have identification?, available at https://www.moneygram.com/wps/portal/moneygramonline/home/CustomerService/FAQs* (located under the ''MoneyGram'' tab and ''Receiving a Money Transfer'').

[126] Currently, Green Dot's MoneyPak is the only cash reload mechanism accepted by PayPal as a funding source. PayPal, *Now There's A New Way to Add Cash* to Your PayPal Account With MoneyPak, available at https://www.paypal.com/webapps/mpp/greendot-moneypak.*

[127] Green Dot also enables MoneyPak consumers to make same-day payments to certain billers using a MoneyPak. However, only approved billing partners are authorized to accept MoneyPak authorization codes directly from consumers as a method of payment. *See, e.g.,* GreenDot MoneyPak, *Where can I use a MoneyPak? available at https://www.moneypak.com/WhoAccepts.aspx.* In contrast, scam artists must load the funds onto a prepaid card before they can withdraw the money at an ATM or spend down the balance.

[128] Unlike cash-to-cash money transfers which can be completely anonymous, electronic fund transfers to and from accounts maintained at financial institutions or with online payment service providers require senders and recipients to open and maintain accounts, which may be identified and traced to a particular person or entity. *See, e.g.,* FFEIC, *Bank Secrecy Act Anti-Money Laundering Examination Manual, Customer Identification Program—Overview, available at http://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_011.htm* (describing the Customer Identification Program rules requiring banks to obtain, at a minimum, the name, date of birth, address, and identification number from each customer before opening an account). Similarly, bank secrecy and anti-money laundering laws require issuers of prepaid cards to verify the identity of each prepaid cardholder. Fraudulent telemarketers, however, frequently register cards using the personal information of identity theft victims. *See infra* note 135 (discussing the new Prepaid Access Rule).

[129] Section 1073 of the Dodd-Frank Act mandated changes to the EFTA that resulted in some coverage of cross-border money transfers (*i.e.,* ''remittance transfers'' initiated in the United States and sent to recipients in other countries). In 2012, the CFPB issued the Remittance Rule in three parts to implement the remittance transfer provisions of the Dodd-Frank Act by adding a new Subpart B to Regulation E (12 CFR 1005.30–36). *Final Rule; Remittance Transfer Rule, Electronic Fund Transfers (Regulation E),* 77 FR 6194 (Feb. 7, 2012); *Technical Correction to Final Remittance Transfer Rule; Electronic Fund Transfers (Regulation E),* 77 FR 40459 (Jul. 10, 2012); *Final Remittance Transfer Rule; Official Interpretation,* 77 FR 50244 (Aug. 20, 2012). The Rule covers these cross-border remittance transfers, whether or not the sender holds an account with the remittance transfer provider and whether or not the remittance transfer is also an ''electronic fund transfer,'' as defined in section 903 of the EFTA.

On January 22, 2013, the CFPB announced that it would continue to temporarily postpone the original February 2013 effective date for the Rule until after the Bureau issued a new proposal to refine three elements of the Rule: ''(1) errors resulting from incorrect account numbers provided by senders of remittance transfers; (2) the disclosure of certain foreign taxes and third-party fees; and (3) the disclosure of sub-national, foreign taxes.'' David Silberman, CFPB, *Temporarily Delaying the Implementation of Our International Remittance Transfer Rule* (Jan. 22, 2013), *available at http://www.consumerfinance.gov/blog/temporarily-delaying-the-implementation-of-our-international-remittance-transfer-rule/;* CFPB, *CFPB Bulletin 2012–08 Re: Remittance Rule Implementation (Subpart B of Regulation E)* (Nov. 27, 2012), *available at http://files.consumerfinance.gov/f/201211_cfpb_remittance-rule-bulletin.pdf.* On April 30, 2013, the CFPB announced final revisions to the Rule with an effective date of October 28, 2013. The text of the final rule is available at *http://files.consumerfinance.gov/f/201211_cfpb_remittance-rule-bulletin.pdf.*

[130] 12 CFR 1005.30(e) (definition of remittance transfer).

[131] *Official Staff Commentary,* 12 CFR part 1005 (Supp. I), Comment 30(e)(2) (explaining that ''sent by a remittance transfer provider'' ''means that there must be an intermediary that is directly engaged with the sender to send an electronic transfer of funds on behalf of the sender to a designated recipient.'').

[132] *Official Staff Commentary,* 12 CFR part 1005 (Supp. I), Comment 30(c)(2)(iii) (clarifying that when a remittance transfer provider mails or delivers a prepaid card (for example) directly to the consumer, there is no ''designated recipient'' because ''the provider does not know whether the consumer will subsequently send the prepaid card to a recipient in a foreign country.'').

[133] Among other things, remittance transfer providers must disclose transfer fees and exchange rates, and provide error resolution procedures in

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Thus, the Rule fails to ameliorate the need for restrictions on cash-to-cash money transfers and cash reload mechanisms in telemarketing, where a telemarketer fraudulently induces the consumer to initiate the money transfer or provide access to a cash reload mechanism.[134]

Similarly, other federal and state laws pertaining to cash-to-cash money transfers and cash reload mechanisms do not address the abuse of these payment methods by fraudulent telemarketers and con artists, and fail to provide consumers with the means to recoup their money once they discover the fraud. The Bank Secrecy Act and related laws target terrorism financing, tax evasion, and money laundering activity,[135] and state statutes provide licensing requirements for money transfer providers.[136] The proposed TSR ban on cash-to-cash money transfers and cash reload mechanisms would serve to close this regulatory gap and fortify the existing regulatory regime. The Commission's experience in combating telemarketing fraud operators that use these transfers to pocket consumers' money, and pursuing the third parties that assist and facilitate them, suggests that the use of these transfers in telemarketing is an unfair practice, and that prohibiting them would serve the public interest.

2. Survey Data Linking Cash-to-Cash Money Transfers to Telemarketing Fraud

The Commission has observed a striking correlation between cash-to-cash money transfers and telemarketing fraud through its survey of consumers who sent money transfers via MoneyGram, one of the largest commercial money transfer services in the United States. The FTC survey demonstrated that at least 79 percent of all MoneyGram transfers of $1,000 or more from the United States to Canada over a four-month period in 2007 were fraud-induced.[137] A similar survey of Western Union customers, conducted by Attorneys General in several states, concluded that approximately one-third of the person-to-person transfers of over $300 to Canada were fraud-induced.[138] The Western Union survey revealed that fraud-induced transfers represented 58 percent of the total dollars transferred by the surveyed consumers, and that the average transfer by a defrauded consumer was $1,500.[139]

In addition, the Commission, consumer advocates, AARP, and the Better Business Bureau have observed a significant increase in the number of scams involving cash reload mechanisms.[140] These schemes have involved payments made to cover taxes on purported lottery winnings, settle phony debts, pay for advertised goods and services, and obtain advance fee loans. Consumers have reported that telemarketers required them to purchase a cash reload mechanism from a local retailer and provide the authorization code as payment for the promised goods or services. With the authorization code in hand, the scam artist can quickly load the funds to existing prepaid card and withdraw the money at an ATM or by spending down the balance. Despite fraud warnings provided by two major cash reload networks on their Web sites[141] and packaging,[142] telemarketers engaged in fraud continue to extract money from consumers using cash reload mechanisms.

3. Law Enforcement Experience With Cash-to-Cash Money Transfers and Cash Reload Mechanisms Used in Telemarketing Fraud

The experience of the Commission and other federal and state law enforcers further documents the high risk to consumers and widespread injury caused by fraud-induced money transfers and cash reload mechanisms in inbound and outbound telemarketing. The Commission has sued telemarketers for using a variety of means to dupe or pressure consumers into sending cash-to-cash money transfers, including fake foreign lottery or sweepstakes prizes,[143] phony mystery shopper scams,[144] and

the event the provider transmitted funds in error (*e.g.,* to the wrong recipient or in the wrong amount). 12 CFR 1005.31–33. In addition, for covered remittance transfers, a provider must comply with a sender's timely request to cancel a transfer, as long as the funds have not been picked up by the recipient or deposited into an account held by the recipient. *Id.* at 1005.34.

[134] Unless the remittance provider commits an error (*i.e.,* sending the wrong amount, transferring to the wrong recipient, etc.), the victim of telemarketing fraud would have little recourse under the Remittance Rule.

[135] The Financial Crimes Enforcement Network (''FinCEN'') provides the following explanation of the Bank Secrecy Act regulations:

The Currency and Foreign Transactions Reporting Act of 1970 (which legislative framework is commonly referred to as the ''Bank Secrecy Act'' or ''BSA'') . . . requires [financial institutions] to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. It was passed by the Congress of the United States in 1970. The BSA is sometimes referred to as an 'anti-money laundering' law (>AML=) or jointly as >BSA/AML=. Several AML acts, including provisions in Title III of the USA PATRIOT Act of 2001, have been enacted up to the present to amend the BSA. (See 31 USC 5311–5330 and 31 CFR Chapter X [formerly 31 CFR Part 103]).

U.S. Department of Treasury, FinCEN, *Statutes & Regulations: Bank Secrecy Act, available at http://www.fincen.gov/statutes_regs/bsa/.* In 2011, FinCEN issued the Prepaid Access Rule, which amended the money services businesses rules of the Bank Secrecy Act regulations to mandate similar reporting and transactional information collection requirements on providers and sellers of certain types of prepaid access. *Final Rule; Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access,* 76 FR 45403–02 (Jul. 29, 2011).

[136] *See, e.g.,* Ariz. Rev. Stat. § 6–1202 (2011) (licensing requirements for money transfer providers); Kan. Stat. Ann. § 9–509 (2010 Supp.) (same).

[137] *FTC* v. *MoneyGram Int'l., Inc.,* Civ. No. 1:09–06576, § 27 (N.D. Ill. Oct. 19, 2009) (Stip. Perm. Inj.).

[138] The survey was conducted by the Attorneys General of North Carolina and six other states in 2003. Virginia H. Templeton & David N. Kirkman, *Fraud, Vulnerability and Aging, published in* 8 ALZHEIMER'S CARE TODAY 265–277 (2007), *available at http://www.ftc.gov/bcp/workshops/fraudforum/docs/ACTElderFraudArticle9-07.pdf.*

[139] *Id.*

[140] *See, e.g.,* AARP Bulletin, *Scam Alert: Beware of Green Dot MoneyPak Scams—The crooks' other preferred payment method has become the weapon of choice* (Apr. 23, 2012), *available at http://www.aarp.org/money/scams-fraud/info-04-2012/avoid-moneypak-scams.html;* Better Business Bureau, *Fraud Task Force Warns Consumers Of Scams Using Western Union, MoneyGram, Green Dot MoneyPaks* (Aug. 2, 2012), *available at http://www.bbb.org/us/article/fraud-task-force-warns-consumers-of-scams-using-western-union-moneygram-green-dot-moneypaks-36126.*

[141] On its Web site, Blackhawk Network, Inc. warns its REloadit Pack customers:

REloadit should ONLY be used to reload your prepaid cards or for accounts that YOU control.

Beware of any offers that do not accept a VISA or MasterCard payment and asks for you to purchase a REloadit Pack where you provide the REloadit Pack number and PIN in an email or over the phone.

Never use a REloadit Pack to pay for taxes or fees on foreign lottery winnings, grants, or any offer that requires you to pay first before getting something back.

REloadit, *Frequently Asked Questions: What is the best way to protect my REloadit Pack?, available at https://reloadit.com/faqs2.aspx#safe.* GreenDot Corporation includes similar warnings to consumers on its Web site. GreenDot MoneyPak, *MoneyPak FAQs: 7 Tips on How to Protect Yourself From Fraud, available at https://www.moneypak.com/ProtectYourMoney.aspx.*

[142] On the back of each MoneyPak card, Green Dot posts the following warning:

FRAUD ALERT: Use your MoneyPak number **only** with businesses listed at *moneypak.com.* If anyone else asks for your MoneyPak number, it's probably a scam. If a criminal gets your money, Green Dot is not responsible to pay you back. (Emphasis original.)

[143] *See, e.g., FTC* v. *Bezeredi,* Civ. No 05–1739 (W.D. Wash. Apr. 3, 2007) (Summ. J.); *FTC* v. *627867 B.C. Ltd.,* No C03–3166 (W.D. Wash. Aug. 4, 2006) (Stip. Perm. Inj.); *FTC* v. *World Media Brokers, Inc.,* No. 02C6985 (N.D. Ill. June 22, 2004), *aff'd,* 415 F.3d 758 (7th Cir. 2005) (Partial Summ. J.).

[144] In mystery shopping scams, fraud artists call U.S. consumers or send them direct mail in which they claim to be hiring consumers to visit well-known retail stores to evaluate MoneyGram's money transfer operations. The telemarketers send consumers a cashier's check, and instruct them to deposit it in their checking account and send most of the money back to the telemarketer using a cash-to-cash money transfer. By the time the counterfeit checks bounce, however, the scam artists have

work-at-home opportunities.[145] In some of the scams, wrongdoers used counterfeit checks to trick consumers into sending money back to them via money transfer.[146] In all of these cases, consumers received nothing in exchange for their payments, and had no ability to reclaim their money once they discovered the fraud.

For example, in the *Cash Corner* case,[147] the defendants sent letters to consumers with fake checks and instructions on how to claim a cash prize the consumers had purportedly won. When a consumer called, as instructed, to claim her prize, a Cash Corner representative directed her to deposit the check she had received, which appeared to be drawn on a legitimate U.S. bank in an amount ranging from $2,500 to $3,800. The representative then instructed the consumer to send Cash Corner a MoneyGram transfer to cover the fees or taxes associated with her ''winnings.'' Only after depositing the check and wiring the money, did consumers later find out that the checks they had deposited and had been posted to their accounts failed to clear because the checks were counterfeit. In some cases, instead of sending counterfeit checks, Cash Corner's telemarketers cold-called consumers and persuaded them to send the ''required'' taxes or fees in advance via money transfer to receive their prize winnings. Despite sending thousands of dollars via money transfers, none of these consumers received anything in return for their payments.

The Department of Justice and state Attorneys General also have targeted telemarketing operations that used fraud-induced money transfers to steal millions of dollars from consumers.[148] For example, in 2006 and 2007, the Department of Justice indicted 45 individuals involved in an enormous Costa Rican telemarketing scam targeting American senior citizens.[149] The defendants operating the scheme defrauded consumers of millions of dollars by telling them that each had won a large monetary prize in a sweepstakes contest. The telemarketers claimed they were from the ''Sweepstakes Security Commission'' and told consumers that to receive their prize, they had to send a money transfer to Costa Rica for a refundable ''insurance fee.'' The telemarketers made their calls from Costa Rica using Voice over Internet Protocol (''VoIP''), which disguised the originating location of the calls. To date, the case has yielded at least 34 guilty pleas and more than 280 years in combined prison sentences.

In some cases, the receiving agents of the money transfer company may be complicit in the fraud.[150] These agents have a strong financial incentive to continue facilitating such transactions despite unmistakable signs of fraud. In November 2012, the U.S. Attorney for the Middle District of Pennsylvania filed a criminal case against MoneyGram charging the company with knowingly and intentionally aiding and abetting wire fraud and failing to implement an effective anti-money laundering program from early 2003 through 2009.[151] The charges were based on MoneyGram's willful disregard of obvious signs that its money transfer network was being used by fraudulent telemarketers and other con-artists, including its own money transfer agents. To resolve the case, MoneyGram entered into a deferred prosecution agreement that, among other things, required the company to forfeit $100 million, undertake enhanced compliance monitoring procedures, and employ a corporate compliance monitor.[152]

The Commission previously sued MoneyGram, alleging that from 2004 through 2009, the company's money transfer agents helped fraudulent telemarketers trick U.S. consumers into sending more than $84 million to wrongdoers located in Canada and within the United States.[153] The Commission claimed that MoneyGram knew that its system was being used to defraud people but did very little about it, and that in some cases its agents in Canada actually participated in these schemes. MoneyGram agreed to a permanent injunction to settle the case, and paid $18 million which was distributed by the Commission to consumers.[154] Attorneys General in

already vanished with the money. *See, e.g.,* FTC Consumer Alert, *Mystery Shopper Scams* (Nov. 2012), *available at http://www.ftc.gov/bcp/edu/pubs/consumer/alerts/alt151.shtm.*

[145] *See, e.g., FTC* v. *USS Elder Enters., Inc.,* Civ. No. 04–1039 (C.D. Cal. Jul. 26, 2005) (default judgment against defendants using telemarketing sales pitches and ads in various Spanish-language newspapers and magazines to lure consumers to transfer money for a bogus work-at-home opportunity, causing at least $885,196 in consumer injury).

[146] *See, e.g., United States* v. *Alexander,* Cr. No. 1:2008–00105 (D.R.I. Apr. 23, 2009) (defendant sentenced to a year in prison for participating in a $1.7 million fraud scheme in which wrongdoers sent victims counterfeit checks, instructed them to cash the checks, keep some of the money, and wire the balance of the money to the perpetrators of the scam). *See also Neovi, supra* note 97 (defendants' Internet-based business facilitated fraud by, among other things, creating unauthorized checks that malefactors could send to victims, instructing them to cash the checks, keep some of the money, and wire the balance back to the wrongdoer).

[147] *FTC* v. *B.C. Ltd. 0763496,* Civ. No. 07–1755 (W.D. Wash. Jan. 30, 2009) (default judgment against foreign lottery). The U.S. Attorney in Los Angeles filed a criminal action against *Cash Corner* defendant Odowa Roland Okuomose, who was arrested in British Columbia on November 6, 2007, on a U.S. warrant based on a criminal indictment for mail and wire fraud filed in federal court in Los Angeles. *See United States* v. *Okuomose,* Cr. No. 2:10–00507 (C.D. Cal. May 20, 2010). *See also* FTC Consumer Alert, *Customized Cons* (June 2002), warning consumers about calls from telemarketers posing as Customs agents and requesting payment by money transfer of taxes and fees in order to release a prize or package supposedly being held at the U.S.-Canada border for the consumer. The alert was prompted by the proliferation of the scheme, based on evidence collected by a U.S. Customs officer assigned to Project Colt in Montreal and confirmed by data compiled in the FTC's Consumer Sentinel system.

[148] *See, e.g., United States* v. *Porcelli,* Cr. No. 3:07–30037 (S.D. Ill. Oct. 29, 2007) (defendant sentenced to 13 years imprisonment for his role in an advance fee credit card telemarketing scheme that used money transfers to defraud individuals throughout the United States of approximately $12 million); Dep't. of Justice Press Release, *Four Defendants Indicted In Nigerian ''Advance-Fee'' Fraud Scam* (Mar. 23, 2006), *available at http://www.justice.gov/opa/pr/2006/March/06_crm_167.html*; Dep't. of Justice Press Release, *Eleven Arrested in Israel on U.S. Charges for Phony ''Lottery Prize'' Scheme that Targeted Elderly Victims in U.S.* (Jul. 21, 2009), *available at http://newyork.fbi.gov/dojpressrel/pressrel09/nyfo072109.htm.*

[149] A description of the cases and links to case summaries is available on the Department of Justice Web site at *http://www.justice.gov/criminal/vns/caseup/costarican.html.*

[150] *See, e.g.,* Press Release, U.S. Attorney for the Middle District of Pennsylvania, *Three Receive Prison Sentences, Nine Indicted in Continuing Federal Prosecution of Mass-marketing Schemes* (Mar. 1, 2012), *available at http://www.justice.gov/usao/pam/news/2012/MoneyGram_3_1_2012.htm* (announcing the sentencing of three Moneygram agents to imprisonment of up to 135 months and new indictments of nine others as part of investigation of fraudulent telemarketing schemes using MoneyGram and Western Union money transfer systems to defraud thousands of U.S. citizens); *Cash Corner, supra* note 147 (foreign lottery scheme perpetrated by defendant who was a money transfer agent); *Okuomose, supra* note 147 (indictment of defendant in *Cash Corner* for mail and wire fraud); *United States* v. *Asieru,* Cr. No. 2:09–00457– (C.D. Cal. Jan. 25, 2010) (former MoneyGram agent sentenced to 97 months in federal prison for his role in a scheme that bilked hundreds of victims out of more than $1.5 million in lottery scam); *United States* v. *Bellini,* Cr. No. 2:07–01402 (C.D. Cal. July 21, 2010) (guilty plea of defendant who was one of at least 22 defendants indicted on federal fraud-related criminal charges for their roles in a Canadian cross-border sweepstakes fraud; five of the defendants allegedly operated money transfer stores to which some of the victims were instructed to wire money).

[151] *United States* v. *MoneyGram Int'l, Inc.,* Cr. No. 1:12–291 (M.D. Pa. Nov. 9, 2012).

[152] *Id.*

[153] *FTC* v. *MoneyGram, supra* note 137.

[154] *Id.* MoneyGram's settlement with the Commission requires it to implement a comprehensive anti-fraud program and to provide important disclosures to consumers. As a part of this anti-fraud program, MoneyGram must conduct background checks on prospective agents; educate and train its employees about consumer fraud; and review and analyze transaction data to flag MoneyGram agents with any unusual or suspicious

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forty-six states separately reached a settlement with MoneyGram requiring the company to implement an extensive anti-fraud program and notify consumers about fraud-induced money transfers.[155]

Similarly, in 2005, Attorneys General in forty-seven states and the District of Columbia entered into a settlement with Western Union, resolving allegations of consumer fraud involving the company's money transfer system.[156] The settlement required Western Union to pay more than $8 million for consumer education programs, take steps to discipline wayward agents, track fraud complaints, cancel transactions and refund fees (if the recipient had not yet picked up the money), and warn consumers about the risks of fraud-induced money transfers in telemarketing.

Although the Commission's law enforcement record primarily involves cash-to-cash money transfers, federal and state criminal authorities have prosecuted individuals who tricked consumers into providing the authorization codes for cash reload mechanisms over the phone.[157] Telemarketers engaged in fraud are using familiar tactics and schemes to induce consumers to provide cash reload mechanisms, including phony prizes or sweepstakes winnings, fake debt collection, and bogus sales of goods advertised online.[158] Cash reload mechanisms offer a quick and irreversible method of payment, and are subject to the same risks as cash-to-cash money transfers. The Commission, therefore, proposes that cash reload mechanisms should be treated in the same way as cash-to-cash money transfers.

4. The Use of Cash-to-Cash Money Transfers and Cash Reload Mechanisms in Telemarketing Is an Abusive and Unfair Act or Practice

The Commission has preliminarily determined that the use of cash-to-cash money transfers and cash reload mechanisms in telemarketing is an abusive practice under the TSR and an unfair act or practice in violation of Section 5 of the FTC Act because it causes or is likely to cause substantial injury to consumers that is not outweighed by countervailing benefits and is not reasonably avoidable.[159] First, there has been substantial injury to consumers resulting from the misuse of cash-to-cash money transfers in telemarketing, and the injury resulting from cash reload mechanisms is mounting. As survey data and recent law enforcement cases demonstrate, consumers have paid hundreds of millions of irretrievable dollars to fraudulent telemarketers and con artists via such transfers.

Second, this enormous economic harm is not outweighed by countervailing benefits to consumers or competition. Although the benefits of cash-to-cash money transfers and cash reload mechanisms in other contexts may be clear (*e.g.,* when sending money to family members located abroad and reloading a consumer's own prepaid debit card), the use of these payment methods in telemarketing appears to be unnecessary and to generate only harm to consumers. Today, there are numerous low-cost and electronic payment alternatives that offer the same or more convenience as cash-to-cash money transfers and cash reload mechanisms, but with better consumer protection features or, at the very least, that provide less anonymity for a wrongdoer. These payment alternatives may include credit cards, electronic fund transfers, such as debit cards (including certain prepaid debit cards), ACH debits, and the use of online payment intermediaries (*e.g.,* PayPal) to facilitate transfers from a consumer's online account balance. Despite the availability of these lower cost and time-saving payment alternatives, the Commission's law enforcement experience and consumer complaint data suggest that fraudulent telemarketers frequently request or demand payment by money transfers. ''[W]hen a practice produces clear adverse consequences for consumers that are not accompanied by an increase in services or benefits to consumers or by benefits to competition,'' the second prong of the unfairness test is satisfied.[160]

Finally, consumers cannot reasonably avoid the economic injury caused by the use of these types of payments in telemarketing. Telemarketers that direct consumers to pay via cash-to-cash money transfers and cash reload mechanisms effectively and deliberately deprive consumers of the anti-fraud monitoring, accountability, and dispute resolution rights of other payment methods. Given the complexity of regulations governing various payment methods, consumers do not understand the effect of the telemarketer's choice on their important consumer protections. Furthermore, the Commission's law enforcement record shows that telemarketers often use these payment mechanisms in connection with deceptive and high-pressure sales pitches, which are orchestrated to distract consumers from fully appreciating the risks associated with sending a cash-to-cash money transfer or providing a cash reload mechanism to a telemarketer.[161] Thus, the substantial and unavoidable injury to consumers resulting from the use of cash-to-cash money transfers and cash

money transfer activities. The settlement also requires MoneyGram to provide clear and conspicuous fraud warnings on the front of all its money transfer forms and on its Web site. These notifications urge consumers not to send money to strangers; describe the most common types of scams currently utilizing MoneyGram's money transfer system; and warn consumers that after the money is collected by the recipient, consumers cannot obtain a refund from MoneyGram even if the transfer was the result of fraud. The settlement also requires MoneyGram to cancel and refund money transfers if consumers claim the transfer was the result of fraud and if the recipient has not yet picked up the money.

[155] A copy of the 2008 Assurance of Voluntary Compliance between these states and MoneyGram can be found on the Web site of the Texas Attorney General at *https://www.oag.state.tx.us/newspubs/releases/2008/070208moneygram_avc.pdf.*

[156] *See, e.g.,* State of Alaska Department of Law Press Release, *Western Union Enters Agreement with Majority of States' Attorneys General to Fund a Consumer Protection Awareness Program Aimed at Reducing Risks of Fraudulent Wire Transfers* (Nov. 14, 2005), *available at http://www.law.state.ak.us/press/releases/2005/111405-WesternUnion.html.*

[157] *See, e.g., United States* v. *Moynihan,* 2:12–cr–00248–JAM (E.D. Cal. Jul. 31, 2012) (guilty plea to access device fraud involving use of MoneyPak to obtain money from victims); K. Dickers, News, *Couple gets prison time for ticket scam,* Coshocton Trib. (Feb. 9, 2012), *available at* 2012 WLNR 2797286; Jeremy Hunt, *Police Investigating Phone Scam in City,* Daily News-Rec. (Sept. 21, 2011), *available at* 2011 WLNR 22028079.

[158] *See, e.g.,* North Dakota Attorney General's Office, *Green Dot MoneyPak Card Scam Involving Phony Publishers Clearinghouse Calls* (Nov. 12, 2012), *available at http://www.ag.nd.gov/NewsReleases/2012/11-20-12.pdf*; Idaho Attorney General's Office, *Consumer Alert: Prepaid Cash Cards Lottery Scam Won't End With the First Loss* (Jul. 9, 2012), *available at http://www.ag.idaho.gov/media/consumerAlerts/2012/ca_07092012.html;* Oklahoma Attorney General's Office, *Attorney General Issues Green Dot Card Scam Warning* (Jun. 21, 2012), *available at http://www.oag.state.ok.us/oagweb.nsf/srch/DAFA7D5B8A59BDC98625 7A24007325B8?OpenDocument.*

[159] *See supra* notes 19–20 (discussing the Commission's use of its unfairness analysis when identifying certain telemarketing practices as abusive).

[160] *FTC* v. *J.K. Publ'ns, Inc.,* 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000) *(citing FTC* v. *Windward Mktg., Ltd.,* 1997 WL 33642380, at *11 (N.D. Ga. 1997)).

[161] As the Commission explained in its 1980 Policy Statement on Unfairness: However, it has long been recognized that certain types of sales techniques may prevent consumers from effectively making their own decisions, and that corrective action may then become necessary. . . . [Such cases] are brought, not to second-guess the wisdom of particular consumer decisions, but rather to halt some form of seller behavior that unreasonably creates or takes advantage of an obstacle to the free exercise of consumer decisionmaking.

Unfairness Policy Statement, *In re Int'l Harvester Co., supra* note 20, at *97.

reload mechanisms in telemarketing is not outweighed by the benefit to consumers or competition.

As discussed above, the enforcement experience of the Commission and other federal and state authorities, as well as consumer complaint evidence and industry guidance to consumers, indicate that telemarketers committing fraud engage in the prevalent and widespread use of cash-to-cash money transfers [162] and they are increasingly turning to cash reload mechanisms.[163] At the same time, the Commission wishes to explore whether there might be legitimate reasons that telemarketers use these payment methods instead of other available payment alternatives. To understand any potential problems posed for legitimate businesses by the proposed ban on the use of cash-to-cash money transfers and cash reload mechanisms, the Commission welcomes comments from the public in response to the questions posed in Section VIII. In particular, the Commission seeks information and data describing any type of legitimate commercial telemarketing transactions for which these payment methods are needed, including the types of products involved, whether the telemarketing calls are inbound or outbound, and whether the need is limited to certain groups of consumers—*e.g.,* those who do not have bank accounts. In addition, the Commission seeks information as to why these transactions could not be conducted using safer and less anonymous payment alternatives, including what additional costs, if any, would result from using such payment methods.

[162] Because of the well-documented abuse of money transfers in telemarketing, the Commission, law enforcement, and consumer advocates contend that consumers should never use money transfers to send money to a stranger or in response to a telemarketing offer. *See, e.g.,* FTC Videos, *Scam Watch: Money Transfer Scams* (Aug. 22, 2012), *available at http://www.ftc.gov/video-library/index.php/for-consumers/scam-watch/money-transfer-scams/1402334883001*; FTC Consumer Alert, *Money Transfers Can Be Risky Business* (Oct. 2009), *available at http://permanent.access.gpo.gov/gpo17968/alt034.pdf*; FBI, *Common Fraud Schemes, available at http://www.fbi.gov/majcases/fraud/fraudschemes.htm*; Texas Att'y Gen. Gregg Abbott, *Avoid Fraudulent Check-Cashing Scheme* (Aug. 2008), *available at http://www.oag.state.tx.us/agency/weeklyag/2008/0808ckcashing.pdf*; Kayce T. Ataiyero & Jon Yates, AARP, *Con men see an opportune time to prey on desperate public* (Jan. 1, 2009), *available at http://www.aarp.org/money/scams-fraud/info-01-2009/con_men_see_an_opportune_time_to_prey_on_a_desperate_public.html.*

[163] *See supra* notes 140–142 (alerts and consumer warnings about the risks of fraud-induced cash reload mechanisms in telemarketing schemes).

III. Abusive Telemarketing of Recovery Services

Telemarketers pitching ''recovery services'' contact consumers who have lost money, failed to win a promised prize, or never received merchandise purchased in a previous scam. They promise to recover the lost money, or obtain the promised prize or merchandise, in exchange for a fee paid in advance. After the fee is paid, consumers rarely receive the promised services or recoup their losses. To protect consumers from this abusive practice, the Rule prohibits any telemarketer or seller from requesting or receiving payment for such recovery services ''until seven (7) business days after such money or other item is delivered to that person.'' [164]

As originally proposed in the 1995 Notice of Proposed Rulemaking, the recovery services provision was not limited to the recovery of money or value lost as the result of a telemarketing transaction.[165] The provision was revised in the Final Rule, however, to address the concerns of several commenters, including one who opined that this section, as proposed, could impair the ability of newspapers to accept classified advertisements for lost and found items.[166] Moreover, at the time the original Rule was promulgated, the Commission's experience with recovery services was limited to the recovery of money lost through telemarketing fraud.[167] Thus, the scope of this provision was restricted to services claiming to recover money consumers lost ''in a previous telemarketing transaction.'' [168]

Since then, numerous advances in technology, including the widespread commercial use of the Internet, have increased the communication channels used by wrongdoers to defraud their victims.[169] Consumer complaints and the Commission's law enforcement experience reveal that such Internet transactions are susceptible to the same unfair and deceptive acts and practices as telemarketing transactions. For example, in 2011 the Department of Justice (upon referral from the Commission) sued Business Recovery Services and its principal, Brian Hessler, for allegedly telemarketing recovery services to consumers who lost money to business opportunity and work-at-home scams.[170] Although the defendants targeted victims of both online and telemarketing scams, the TSR counts of the complaint were necessarily limited to the victims of prior telemarketing fraud.

The Commission's Consumer Sentinel data show that the vast majority of companies identified in those complaints use the Internet to reach their victims. In 2012, for example, the Internet—including email and Web sites—was the method of contacting consumer victims in 50 percent of fraud complaints.[171] Similarly, in 2011 the Internet Crime Complaint Center (''IC3''),[172] a clearinghouse for receiving, developing, and referring complaints regarding Internet crime, reported receiving 314,246 complaints of online crime and fraud involving money loss, including work-at-home scams, non-delivery of merchandise, and auto-auction frauds.[173] Like victims of telemarketing fraud, consumers who lose money in these online schemes are susceptible to telemarketing pitches for advance fee recovery services.

Today, telemarketers selling recovery services are just as likely to obtain lists of victims of online scams as they are to obtain lists of victims of telemarketing fraud. In fact, telemarketers engaged in recovery frauds now can easily avoid the Rule's advance fee prohibition simply by targeting only victims of online scams. Moreover, as with the original provision, the impact of this proposed change would not be to ban the telemarketing of such recovery services,

[164] 16 CFR 310.4(a)(3).

[165] 1995 Notice of Proposed Rulemaking, 60 FR 8313, 8330 (Feb. 14, 1995).

[166] 1995 Revised Notice of Proposed Rulemaking, 60 FR 30406, 30416 (June 8, 1995).

[167] *Id.* During 1995 and 1996, the Commission initiated or settled lawsuits involving nearly a dozen recovery services operations. 68 FR at 4614 n.403. *See, e.g., FTC* v. *Meridian Capital Mgmt., Inc.,* Civ. No. S–96–63 (D. Nev. Nov. 20, 1996) (Stip. Perm. Inj.); *FTC* v. *Fraud Action Network, Inc.,* Civ. No. S–96–191 (D. Nev. July 30, 1996) (Default J.); *FTC* v. *Telecomm. Prot. Agency, Inc.,* Civ. No. 96–344 (E.D. Okla. Dec. 9, 1996) (Stip. Perm. Inj.).

[168] 16 CFR 310.4(a)(3).

[169] For example, Internet (E-commerce) sales accounted for 50.6 percent of the more than $260 billion of 2010 non-store merchandise sales, indicating how common such purchases have become. U.S. Census Bureau, *2010 E-commerce Multi-sector Report, Table 6—U.S. Electronic Shopping and Mail-Order Houses (NAICS 4541)—Total and E-Commerce Sales by Merchandise Line: 2010 and 2009* (May 10, 2012), *available at http://www.census.gov/econ/estats/2010/all2010tables.html.*

[170] *United States* v. *Business Recovery Services LLC,* Civ. No. 2:11–0390–PHX–JAT (D. Ariz. Apr. 15, 2011) (Prelim. Inj.).

[171] FTC, *Consumer Sentinel Network Data Book for January–December 2012,* at 9 (Feb. 2013), (''*2012 Consumer Sentinel Data Book*''), *available at http://www.ftc.gov/sentinel/reports/sentinel-annual-reports/sentinel-cy2012.pdf.* In 2012, 608,958 (57 percent) of consumers reported this information in their Consumer Sentinel Network complaints. *Id.*

[172] IC3 is a joint operation of the National White Collar Crime Network and the FBI.

[173] IC3, *2011 Internet Crime Report, Appendix II,* at 2 (2011), *available at http://www.ic3.gov/media/annualreport/2011_IC3Report.pdf.*

but instead would require telemarketers to abstain from requesting or receiving payment for recouping money, value, or non-delivered merchandise until seven business days after the consumer received the recovered money or merchandise.[174]

As the Commission determined in prior rulemaking proceedings, including in particular the 2002 Notice of Proposed Rulemaking, the abusive practices relating to recovery services meet the criteria for unfairness. The same analysis supports expanding the scope of the Rule's current restriction on when telemarketers can ask for and accept payment from consumers for recovery services. The Commission therefore proposes to amend section 310.4(a)(3) to prohibit telemarketers and sellers of recovery services from accepting advance fees from consumers who have lost money in any prior transaction until seven business days after the consumers receive the recovered money or item, without regard to whether the loss occurred in a telemarketing transaction, on the Internet, or through some other means or medium.

IV. Proposed Revisions

In view of changes in the marketplace, and the harmful ways in which unscrupulous telemarketers have adapted their schemes to take advantage of consumers, the Commission is proposing to amend the TSR in the manner and for the reasons discussed in Sections II and III above.[175] The Commission invites written comments on the proposed amendments, and, in particular, seeks answers to the specific questions set forth in Section VIII below to assist it in determining whether it should amend the TSR as proposed, and whether the amendments under consideration strike an appropriate balance between protecting consumers from deceptive and abusive telemarketing and imposing unnecessary compliance burdens on legitimate businesses.

In addition, as discussed below, the Commission proposes to amend the TSR to make explicit five requirements of the TSR that have been overlooked or inadequately understood by the industry. These proposed amendments would: (1) Expressly state that a seller or telemarketer bears the burden of demonstrating that the seller has an existing business relationship (''EBR'') with a customer whose number is listed on the Do Not Call Registry, or has obtained an express written agreement (''EWA'') from such a customer, as required by section 310.4(b)(1)(iii)(B)(i); (2) clarify that any recording made to memorialize a customer's or donor's express verifiable authorization pursuant to section 310.3(a)(3)(ii) must include an accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought; (3) clarify that the exemption for calls to businesses in section 310.6(b)(7) extends only to calls inducing a sale or contribution from the business, and not to calls inducing sales or contributions from individuals employed by the business; (4) modify the prohibition against sellers sharing the cost of registry fees to emphasize that the prohibition is absolute; and (5) illustrate the types of impermissible burdens on consumers that violate section 310.4(b)(1)(ii) by denying or interfering with their right to be placed on a seller's or telemarketer's entity-specific do-not-call list. A related amendment would specify that a seller's or telemarketer's failure to obtain the information needed to place a consumer on a seller's entity-specific do-not-call list pursuant to section 310.4(b)(1)(ii) will disqualify it from relying on the safe harbor for isolated or inadvertent violations in section 310.4(b)(3).

A. Section 310.2—Proposed Amendments of Definitions

The proposed Rule would retain all of the definitions from the original Rule, as amended in 2010.[176] The Commission proposes adding four new definitions: ''remotely created check,'' ''remotely created payment order,'' ''cash-to-cash money transfer,'' and ''cash reload mechanism'' in connection with the proposed amendments to section 310.4(a)(9) and (10), which would prohibit telemarketers or sellers from using these payment methods in telemarketing.

The proposed Rule would define ''remotely created check'' as a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, account means an account as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR part 229, as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.[177]

This definition is the same as the definition of ''remotely created check'' found in Regulation CC, 12 CFR 229.2(fff). The Federal Reserve Commentary to the 2005 amendments to Regulation CC clarifies that the inclusion of the phrase ''signature applied by, or purported to be applied by, the person on whose account the check is drawn'' refers to ''the physical act of placing the signature on the check.'' [178] This proposed definition thus includes unsigned checks that have been converted into electronic form, but excludes all *signed* checks, even those that have been converted into electronic form pursuant to Check 21 standards.[179]

The proposed Rule would define a ''remotely created payment order'' as a payment instruction or order drawn on a person's account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the person on whose account the order is drawn, and which is cleared through the check clearing system. The term does not include payment orders cleared through the Automated Clearinghouse Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 1026.

This definition is limited to electronic payment orders that most closely resemble remotely created checks—payment orders that are unsigned, created by the payee, and sent through the check clearing system. Thus, a payment order sent through the ACH Network would not qualify as a remotely created payment order. Similarly, a payment order or electronic

[174] Lost and found advertisements are not likely to qualify for coverage under the Rule, which applies to sellers or telemarketers engaged in ''telemarketing,'' as defined in section 310.2(dd).

[175] Section IV of the preamble was edited to meet the requirements for official publication in the **Federal Register**. Text setting out verbatim proposed changes to the current TSR text can be viewed at *http://www.ftc.gov/os/2013/05/130521telemarketingsalesrulefrn.pdf.*

[176] In 2011, the Commission issued a technical amendment to make minor corrections to the text of TSR. *TSR Correcting Amendments,* 76 FR 58716 (Sept. 22, 2011), *available at http://www.gpo.gov/fdsys/pkg/FR-2011-09-22/pdf/2011-24361.pdf.*

[177] Regulation CC, 12 CFR 229.2(a).

[178] Commentary to Regulations J and CC, 12 CFR parts 210 and 229, at 8 (Nov. 21, 2005), *available at http://www.federalreserve.gov/boarddocs/press/bcreg/2005/20051121/attachment.pdf* (''The term signature as used in this definition has the meaning set forth at U.C.C. 3–401. The term 'applied by' refers to the physical act of placing the signature on the check.''). *Id.* at 16. The Electronic Signatures in Global and National Commerce Act (''ESIGN Act''), 15 U.S.C. 7001 *et seq.,* governs, among other things, the acceptance of electronic signatures in contracts and many commercial transactions. The ESIGN Act, however, expressly exempts from coverage, among other things, negotiable instruments governed by the UCC. *Id.* at 7003(a)(3).

[179] Commentary to Regulations J and CC, *supra* note 178, at 16 (''A check that bears the signature applied, or purported to be applied, by the person on whose account the check is drawn is not a remotely created check . . . The definition of a remotely created check includes a remotely created check that has been reconverted to a substitute check.'').

check that is either initiated or signed by a consumer, for example, via a smart-phone application, would not be covered by the definition because it is not created by the merchant and it is signed by the consumer.

The terms ''cash-to-cash money transfer'' and ''cash reload mechanism'' are referenced in proposed section 310.4(a)(10), which would prohibit telemarketers or sellers from accepting or receiving payment via a cash-to-cash money transfer or cash reload mechanism for goods or services or charitable contributions in telemarketing. The proposed definition of ''cash-to-cash money transfer'' is limited to transfers of cash—and excludes any transfers that are electronic fund transfers under the EFTA, and thus subject to the full protections of that Act, as amended by section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[180] Unlike the transfers covered by the new Remittance Rule, however, the proposed TSR provision includes no geographic limitations. Thus, the proposed ban against the receipt of such money transfers in telemarketing would extend to those sent within or outside of the U.S., whether or not such transfers are also covered by the Remittance Rule.

Accordingly, the Commission proposes to define ''cash-to-cash money transfer'' as the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. The term includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act (''EFTA''), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is (1) an electronic fund transfer as defined in section 903 of the EFTA; (2) covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or (3) subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* For purposes of this definition, money transfer provider means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution.

The proposed definition of ''cash reload mechanism'' would include virtual deposit slips that enable consumers to convert cash into electronic form, so that it can be loaded onto an existing prepaid card or an online account with a payment intermediary, such as PayPal. As described above, the cash reload mechanism does not function as a prepaid card that can be swiped at retail locations or ATMs, and it is not intended for use in purchasing goods and services. To implement the proposed ban against the use of cash reload instruments in telemarketing, the Commission proposes to define ''cash reload mechanism'' as a mechanism that makes it possible to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) form that a person can use to add money to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an online account with a payment intermediary. For purposes of this definition, a cash reload mechanism (1) is purchased by a person on a prepaid basis, (2) enables access to the funds via an authorization code or other security measure, and (3) is not itself a general-use prepaid card.

B. Section 310.3(a)(3)(ii)—Proposed Amendment of Oral Verification Recording Requirements

Section 310.3(a)(3) prohibits sellers and telemarketers from billing for telemarketing purchases or donations without a customer's or donor's ''express verifiable authorization,'' unless payment is made by a credit or debit card. Section 310.3(a)(3)(ii) permits the use of an audio recording to produce the required verification of an express oral authorization, provided that the recording ''evidences clearly both the customer's or donor's authorization of payment for the goods or services or charitable contribution that are the subject of the telemarketing transaction,'' and the customer's or donor's receipt of specified material information about the transaction.[181]

Although it is difficult to imagine how a verification recording could ''evidence clearly'' a payment authorization ''for the goods or services or charitable contribution that are the subject of the telemarketing transaction'' without mentioning the goods, services, or charitable contribution, Commission staff have found that sellers and telemarketers often omit this information from their audio recordings, contrary to this provision's mandate to include it. In fact, the Commission's law enforcement record indicates that in some cases the omission has been intentional and has concealed from consumers the real purpose of the verification recording and the fact that they will be charged.[182]

Accordingly, in order to make explicit the requirement that a verification recording describe the goods, services or charitable contribution for which payment authorization is sought, the Commission proposes to amend section 310.3(a)(3)(ii) by adding a requirement that the telemarketer or seller include an accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought.

C. Section 310.4(a)—Abusive Practices in Telemarketing

1. Proposed Section 310.4(a)(3)—Expansion of Advance Fee Ban on Recovery Services

To protect consumers from unscrupulous telemarketers that have adapted their methods to defraud consumers, the Commission proposes to expand the scope of the Rule's advance fee ban on recovery services. Accordingly, the text of the proposed amended section 310.4(a)(3) would be amended to eliminate the word ''telemarketing'' from the phrase ''previous telemarketing transaction''.

[180] *See supra* note 129 and accompanying text (explaining the new Remittance Transfer Rule).

[181] 16 CFR 310.3(a)(3)(ii). This section also specifies additional disclosures the seller or telemarketer must make and include in the recording; namely, the number of debits, charge or payments (if more than one; the date(s) the debit(s), charge(s), or payment(s) will be submitted for payment; the amount(s) of the debit(s), charges(s), or payment(s); the customer's or donor's name; the customer's or donor's billing information identified with sufficient specificity that the customer or donor understands what account will be used to collect payment for the goods or services or charitable contraction that are the subject of the telemarketing transaction; a telephone number for customer or donor inquiry that is answered during normal business hours; and the date of the customer's or donor's oral authorization. *Id.* at 310.3(a)(3)(ii)(A)–(G).

[182] *See, e.g., FTC* v. *Integrity Fin. Enters., LLC,* Civ. No. 8:08–914 (M.D. Fla. Dec. 5, 2008) (stipulated permanent injunction preventing corporate defendants from allegedly changing pre-sale description of promised general purpose credit cards in their verification recordings); *FTC* v. *NHS Sys., Inc., supra* note 93 (defendants used deception to obtain recorded verifications from defrauded consumers); *FTC* v. *Publishers Bus. Servs., Inc.,* Civ. No. 2:08–00620 (D. Nev. Apr. 7, 2010) (summary judgment against defendants that allegedly changed material terms of initial offer of free or low-cost magazine subscriptions in verification call); *FTC* v. *4086465 Canada, Inc.,* Civ. No. 10:4–1351 (N.D. Ohio Nov. 7, 2005) (stipulated permanent injunction preventing defendants from allegedly misrepresenting themselves as government or bank officials to obtain recorded authorizations after falsely representing that goods or services were free or would be charged in low monthly payments).

2. Proposed Sections 310.4(a)(9) and (10)—Prohibitions Against Use of Certain Retail Payment Methods

As discussed above in Section II, telemarketers engaged in fraudulent practices are exploiting the systematic and regulatory weaknesses of certain payment methods to siphon money from the consumers they defraud. The Commission's law enforcement experience demonstrates that neither the TSR's prohibition against false and misleading statements to induce payment,[183] nor its authorization requirements,[184] have prevented the substantial consumer injury that results from the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms. In view of the significant consumer injury involved, and the alternative payment mechanisms now widely available that afford greater protections to consumers, the Commission has preliminarily concluded that the unavoidable harm associated with remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms in telemarketing outweighs the benefits to consumers or competition.

For these reasons, the Commission believes that section 310.4(a) of the Rule should be amended to include new subsections (9) and (10) that would provide that it is an abusive practice for a seller or telemarketer to engage in (1) creating or causing to be created, directly or indirectly, a remotely created check or a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or (2) accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

D. Section 310.4(b)—Proposed Amendments of Do Not Call Provisions

1. Proposed Section 310.4(b)(1)(ii)—Amendment of Prohibition Against Denying or Interfering With A Consumer's Right to Opt-Out

Section 310.4(b)(1)(ii) prohibits sellers and telemarketers from ''[d]enying *or interfering in any way, directly or indirectly*'' with a consumer's right to be placed on an entity-specific do-not-call list.[185] Although the TSR Compliance Guide provides some examples of actions that ''deny or interfere with'' a consumer's right to be placed on such an entity-specific do-not-call list, such as harassing consumers who make such a request, hanging up on them, and failing to honor the request,[186] the Commission has received recurring consumer complaints about these very practices. The Commission also has received complaints about companies that require consumers to listen to a sales pitch before accepting a do-not-call request, requiring a person to call a different number to submit the request, refuse to accept such a request unless the consumer can identify the seller responsible for the call, and fail to honor a request because they neglected to ask for (or, where an automated opt-out system is used, give the consumer an opportunity to speak or key in) the telephone number that received the call.

In the Commission's view, all of these practices violate section 310.4(b)(1)(ii). Consumers are often uncertain about the identity of the seller on whose behalf a call is made. Even telemarketers with multiple clients are in a better position than consumers to determine from their calling lists or other call records the seller on whose behalf the call was made. The Commission believes there is no reason why a multi-client telemarketer could not determine which of its clients' calls prompted the request. Such a determination could easily be made, for example, by obtaining the telephone number of the consumer making the request.

Because telemarketers place calls pitching specific products on behalf of specific sellers, they obviously are in a better position than consumers to have or be able to obtain the information they need to honor a do-not-call request. Thus, the TSR places the burden of doing so squarely on the telemarketer. The telemarketer must be able to identify the seller on whose behalf it is placing a call. Consequently, if a telemarketer with multiple clients lacks the means to identify the sellers on whose behalf it has placed calls that result in do-not-call requests, the TSR withholds from such a telemarketer the benefits of the safe harbor provided by section 310.4(b)(3).

For these reasons, in order to make the prohibition more explicit and to put sellers and telemarketers clearly on notice of the practices it prohibits, the Commission proposes to amend section 310.4(b)(1)(ii) to prohibit sellers and telemarketers from denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii)(A), including, but not limited to, harassing any person who makes such a request; terminating a telephone call with a person making such a request; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; or requiring the person to identify the seller making the call or on whose behalf the call is made.

In addition, in order to clarify that the burden of obtaining the information necessary to honor an opt-out request falls on sellers and telemarketers, the Commission proposes to amend Section 310.4(b)(3)(vi) as follows: Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to § 310.4(b)(1)(iii)(A) not to receive further calls by or on behalf of a seller or charitable organization.

2. Proposed Section 310.4(b)(1)(iii)(B)—Amendment of Outbound Call Ban Exception for Express Written Agreements and Established Business Relationships

The Commission proposes to amend section 310.4(b)(1)(iii)(B) to make it unmistakably clear that the burden of proof for establishing an express written agreement (''EWA'') or existing business relationship (''EBR'') falls on the seller or telemarketer relying on it. As exceptions to the general prohibition against outbound calls to consumers whose numbers are on the Registry, the EWA and EBR exemptions each provide a defense on which a seller or telemarketer is entitled to rely if—and only if—it can demonstrate that the exemption applies to the telemarketing calls it has made to consumers whose numbers are on the Registry. Reliance on either exemption thus serves as an affirmative defense to a Commission complaint alleging that a seller or telemarketer has placed calls to numbers on the Registry in violation of section 310.4(b)(1)(iii)(B). Accordingly, as the Commission has previously stated, the burden of proof of that

[183] 16 CFR 310.3(a)(4).

[184] 16 CFR 310.3(a)(3).

[185] 16 CFR 310.4(b)(1)(ii) (emphasis added).

[186] FTC, *Complying with the Telemarketing Sales Rule* (February 2011), *available at http://business.ftc.gov/documents/bus27-complying-telemarketing-sales-rule.*

affirmative defense falls on the seller or telemarketer asserting it.[187]

For these reasons, the Commission proposes to amend section 310.4(b)(1)(iii)(B) to clarify that calls are permitted to a person listed on the Registry only if the seller or telemarketer (1) can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or (2) can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section.

Although the Commission believes that the current TSR language is clear, and that no amendment therefore is necessary for transparency, the Commission also wishes to emphasize that neither the EWA nor EBR exception is available to sellers or telemarketers with respect to calls to numbers on the Registry resulting from the use of calling lists purchased from third-party list brokers. Section 310.4(b)(1)(iii)(B)(i) plainly states that an EWA is limited to the ''specific party'' from which a person listed on the Registry wishes to receive calls, permitting such calls only if the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person.[188]

Similarly, section 310.4(b)(1)(iii)(B)(ii) states that an EBR is limited to the ''seller'' that has an EBR with a person whose number is on the Registry, allowing calls only if the ''seller'' has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section.[189]

Consequently, the use of calling lists obtained from a third-party for ''cold calls'' to consumers whose numbers are on the Registry is not permitted by either of these two exceptions to the prohibition against outbound calls to numbers on the Registry.

E. Section 310.6—Proposed Amendments of Exemptions to the TSR

Sections 310.6(b)(5) and (b)(6) of the TSR exempt consumer-initiated calls responding, respectively, to general media advertisements (such as ads appearing in newspapers or on radio, television, or the Internet), or to direct mail solicitations that clearly, conspicuously, and truthfully disclose all material information required by section 310.3(a)(1).[190] Each of these exemptions, however, excludes several types of offers that have been susceptible to fraud—advance fee loans, credit card loss protection plans, credit repair services, investment opportunities, business opportunities other than business arrangements covered by the Franchise or Business Opportunity Rules, debt settlement services, and prize promotions.[191] In addition, the Rule expressly excludes upsell transactions from each of these two exemptions.[192]

The Commission proposes to add four new exclusions to the general media and direct mail exemptions that would prohibit sellers and telemarketers from accepting payment by remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms. Specifically, these new exclusions would require telemarketers and sellers that receive inbound calls from consumers in response to general media advertisements and direct mail solicitations to comply with the proposed prohibitions on payment enumerated in sections 310.4(a)(9) and (10). Thus, the direct mail and general media exemptions would be available to a seller or telemarketer only if the seller or telemarketer did not accept these novel payment methods during an otherwise exempt inbound telemarketing call.

As discussed above, in the outbound or inbound context, remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms are fraught with fraud monitoring and consumer protection weaknesses, and have been misused to harm consumers. Given the widespread availability of other payment mechanisms for inbound telemarketers and sellers, the Commission believes there is no evident justification for limiting the protections of proposed sections 310.4(a)(9) and (10) to outbound telemarketing calls; however, the Commission seeks comment on that question in Section VIII and expects these proposed amendments will be among the topics examined in detail.

In sum, to implement the proposed changes discussed above, the text of the direct mail and general media exemptions in section 310.6(b) would be amended to exclude calls that do not comply with the new prohibition on accepting remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms.

1. Section 310.6(b)(7)—Proposed Amendment of Business Exemption

The exemption in section 310.6(b)(7) for telephone calls between a telemarketer and a business is designed to exempt only business-to-business solicitations. It has never been construed by the Commission to exempt calls to a business to solicit its individual employees to buy products or services for their own use, or to make a personal charitable contribution. Indeed, the Commission has permitted business telephone numbers to be listed in the National Do Not Call Registry, because, among other reasons, telemarketers who seek to circumvent the Registry have solicited employees at their places of business to buy goods or services such as dietary products, auto warranties, and credit assistance. Thus, in order to emphasize that this exemption is limited to business-to-business solicitations, the Commission proposes to amend the provision so that telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; provided, however, that § 310.4(b)(1)(iii)(B) and § 310.5 of this Rule shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

[187] Denial of Petition for Proposed Rulemaking, 71 FR 58716, 58723 & n.89 (Oct. 5, 2006); *see also* 71 FR at 58719; 2008 TSR Amendments, 73 FR at 51181.

[188] 16 CFR 310.4(b)(1)(iii)(B)(i).

[189] 16 CFR 310.4(b)(1)(iii)(B)(ii).

[190] Direct mail solicitations include, but are not limited to, postcards, letters, or other advertisements sent ''via facsimile transmission or similar electronic mail, and other methods of delivery in which a solicitation is directed to specific address(es) or person(s).'' 16 CFR 310.6(b)(6).

[191] Franchise Rule, 16 CFR part 436; Business Opportunity Rule, 16 CFR part 437.

[192] The Rule's definition of ''upselling'' encompasses any solicitation for goods or services that follows an initial transaction of any sort in a single telephone call—whether or not the subsequent solicitation is made by or on behalf of the same seller involved in the initial transaction. Thus, the Rule covers both internal and external upsells. 2003 TSR Amendments, 68 FR at 4596.

F. Section 310.8(c)—Proposed Amendment of Fee Sharing Prohibition

Section 310.8(c), which specifies the fees sellers and telemarketers must pay to access the National Do Not Call Registry, also prohibits them from sharing the cost of Registry access.[193]

The Commission adopted this prohibition to conform the TSR's fee requirements to the Do Not Call Registry fee provisions previously adopted by the Federal Communications Commission (''FCC''). The FCC provisions absolutely ban any sharing or division of costs for accessing the Do Not Call Registry,[194] and that was also the Commission's intent.

The Commission proposes to amend this prohibition to prevent any possibility that it might be read as permitting a person to sign up to access the Registry and, before ever actually accessing it, sell or transfer the registration for consideration to others wishing to share the cost of Registry access, contrary to the Commission's intent. Accordingly, the Commission proposes to clarify that no person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (''RFA'') [195] requires a description and analysis of proposed and final rules that will have a significant economic impact on a substantial number of small entities.[196] The RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') [197] with the proposed Rule and a Final Regulatory Flexibility Analysis (''FRFA'') [198] with the final rule, if any. The Commission is not required to make such analyses if a rule would not have such an economic effect,[199] or if the rule is exempt from notice-and-comment requirements.[200]

The Commission does not have sufficient empirical data at this time regarding the industry to determine whether the proposed amendments to the Rule may affect a substantial number of small entities as defined in the RFA. It is also unclear whether the proposed amendments to the Rule would have a significant economic impact on small entities. Thus, to obtain more information about the impact of the proposed rule on small entities, the Commission has decided to publish the following IRFA pursuant to the RFA and to request public comment on the impact on small businesses of the proposed amendments.

A. Description of the Reasons Why Action by the Agency Is Being Considered

As described in Section II above, the proposed amendments are intended to address telemarketing sales abuses arising from the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, cash reload mechanisms, recovery services, and entity-specific do-not-call requests. Other proposed amendments would clarify several TSR requirements in order to reflect longstanding Commission enforcement policy.

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

The objective of the proposed amendments is to curb deceptive and abusive practices occurring in telemarketing. The legal basis for the proposed amendments is the Telemarketing Act.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Amendments Will Apply

The proposed amendments to the Rule affect sellers and telemarketers engaged in ''telemarketing,'' as defined by the Rule to mean ''a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.'' [201] For the majority of entities subject to the proposed amendments—sellers and telemarketers—a small business is defined by the Small Business Administration as one whose average annual receipts do not exceed $7 million.[202]

Determining a precise estimate of how many of these are small entities, or describing those entities further, is not readily feasible because the staff is not aware of published data that report annual revenue or employment figures for the industry. The Commission invites comment and information on this issue.

D. Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Amendments, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The Commission does not believe that the proposed amendments impose any new disclosure, reporting, recordkeeping or other compliance burdens. Rather, the proposed amendments do no more than add to or revise existing TSR prohibitions and clarify existing requirements. The new prohibitions would: (1) Add new prohibitions barring the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms in both outbound and inbound telemarketing; and (2) revise the existing prohibition on advance fee recovery services, now limited to recovery of losses in prior telemarketing transactions, to include recovery of losses in *any* previous transaction.

The proposed amendments also include a number of minor technical revisions that do not impose any new disclosure, reporting, recordkeeping or other compliance burdens, but merely clarify existing TSR requirements to reflect Commission enforcement policy. These amendments would state expressly (1) that the seller or telemarketer bears the burden of demonstrating under 16 CFR 310.4(b)(1)(iii)(B) that the seller has an existing business relationship (''EBR'') with a customer whose number is listed on the Do Not Call Registry, or has obtained the express written agreement (''EWA'') of such a customer to receive a telemarketing call, as previously stated

[193] 16 CFR 310.8(c).

[194] 2003 TSR Amendments, 68 FR at 45136 n.27 (citing 47 CFR 64.1200(c)(2)(i)(E), as amended July 3, 2003).

[195] 5 U.S.C. 603(a), 604(a).

[196] The RFA definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small-business concern'' as a business that is ''independently owned and operated and which is not dominant in its field of operation.'' 15 U.S.C. 632(a)(1).

[197] 5 U.S.C. 603.

[198] 5 U.S.C. 604.

[199] 5 U.S.C. 605(b).

[200] *See supra* note 195.

[201] 16 CFR 310.2(dd). The Commission notes that, as mandated by the Telemarketing Act, the interstate telephone call requirement in the definition excludes small business sellers and the telemarketers who serve them in their local market area, but may not exclude some sellers and telemarketers in multi-state metropolitan markets, such as Washington, DC.

[202] These numbers represent the size standards for most sellers in retail and service industries ($7 million total receipts). The standard for ''Telemarketing Bureaus and Other Contact Centers'' (NAICS Code 561422) is also $7 million. A list of the SBA's current size standards for all industries can be found in SBA, *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_Standards_Table.pdf.*

by the Commission; (2) the requirement in 16 CFR 310.3(a)(3)(ii) that any recording made to memorialize a customer's or donor's express verifiable authorization must include an accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought; (3) that the business-to-business exemption in 16 CFR 310.6(b)(7) extends only to calls inducing a sale or contribution from the business itself, and not to calls inducing sales or contributions from individuals employed by the business; (4) that under 16 CFR 310.8(c) no person can participate in an arrangement to share the cost of accessing the National Do Not Call Registry; and (5) the types of impermissible burdens on consumers that violate 16 CFR 310.4(b)(1)(ii) by denying or interfering with their right to be placed on a seller's or telemarketer's entity-specific do-not-call list. A related amendment would specify that a seller's or telemarketer's failure to obtain the information necessary to honor a consumer's request to be placed on a seller's entity-specific do-not-call list pursuant to 16 CFR 310.4(b)(1)(ii) will disqualify it from relying on the safe harbor in 16 CFR 310.4(b)(3) for isolated or inadvertent violations.

The classes of small entities affected by the proposed amendments include telemarketers or sellers engaged in acts or practices covered by the Rule. The Commission does not believe that any professional skills would be required for compliance with the proposed amendments because the amendments do not impose any new reporting, recordkeeping, disclosures or other compliance requirements, and do not extend the scope of the TSR to cover additional entities. The Commission invites comment on this issue.

E. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap or Conflict With the Proposed Amendments

The FTC has not identified any other federal statutes, rules, or policies currently in effect that may duplicate, overlap or conflict with the proposed rule. The Commission invites comment and information regarding any potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies.

F. Description of any Significant Alternatives to the Proposed Amendments

The Commission believes that there are no significant alternatives to the proposed amendments. Nonetheless, in formulating the proposed amendments, the Commission has made every effort to avoid imposing unduly burdensome requirements on sellers and telemarketers. To that end, the Commission has limited the applicability of the TSR to inbound calls that violate the proposed prohibitions on the use of remotely created checks and payment orders, cash-to-cash money transfers, and cash reload mechanisms, so that inbound marketers that comply with these prohibitions will remain otherwise exempt from the TSR's requirements. The Commission believes that the proposed amendments regarding the advance fee ban on recovery services and the inapplicability of the safe harbor for telemarketers that fail to obtain the information necessary to honor a request to be placed on a seller's entity-specific do-not-call list do not add additional disclosure or recordkeeping burdens or unduly expand the scope of the TSR, and are necessary to protect consumers.

The Commission seeks comments on the ways in which the proposed amendments could be modified to reduce any costs or burdens for small entities.

VI. Paperwork Reduction Act

The proposed amendments would not create any new recordkeeping or disclosure requirements, or expand the existing coverage of those requirements to marketers not previously covered by the TSR. Accordingly, they do not invoke the Paperwork Reduction Act.[203]

The new prohibitions on the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms would apply not only to marketers making outbound calls that are currently subject to the TSR, but also to those who receive inbound calls from consumers as a result of direct mail or general media advertising. Although these inbound calls are now exempt from the TSR,[204] these proposed amendments would cover them only to the extent that one of the new proposed prohibitions is violated, but this would not trigger the TSR's disclosure or recordkeeping obligations.

The proposed expansion of the current TSR ban on advance fees for recovery services to apply to funds lost in *any* prior transaction also has no discernible PRA ramifications because it, too, requires no disclosures or recordkeeping. The same is true for the proposed amendment making sellers and telemarketers ineligible for the safe harbor for isolated or inadvertent TSR violations if they fail to obtain the information necessary to honor a request to be placed on a seller's entity-specific do-not-call list. Nothing in this proposed amendment requires any disclosure or recordkeeping.[205] Likewise, the Commission believes that the five proposed technical amendments intended to make explicit the existing requirements of the TSR would not impose any new disclosure or recordkeeping obligations.

VII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[206]

VIII. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 29, 2013. Write ''Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001,'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm*. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or

[203] 44 U.S.C. 3501–3521. The PRA also addresses reporting requirements, but neither the TSR nor the proposed amendments present them.

[204] 16 CFR 310.6(b)(5)–(6).

[205] Even though some sellers and telemarketers, in order to prove that they are eligible for the safe harbor, might seek to document the fact that they have honored such requests, neither the proposed amendment nor the TSR requires them to do so.

[206] *See* 16 CFR 1.26(b)(5).

financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[207] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

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

If you file your comment on paper, write ''Telemarketing Sales Rule, 16 CFR Part 310, Project No. R411001'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex B), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 29, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

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

A. General Questions for Comment

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the TSR. The Commission requests that comments provide factual data upon which they are based. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

1. What would be the impact (including any benefits and costs), if any, of the proposed amendments on consumers?

2. What would be the impact (including any benefits and costs), if any, of the proposed amendments on individual firms (including small businesses) that must comply with them?

3. What would be the impact (including any benefits and costs), if any, on industry, including those who may be affected by the proposed amendments but not obligated to comply with the Rule?

4. What changes, if any, should be made to the proposed amendments to minimize any costs to consumers or to industry and individual firms (including small businesses) that must comply with the Rule?

5. How would each change suggested in response to Question 4 affect the benefits that might be provided by the proposed amendment to consumers or to industry and individual firms (including small businesses) that must comply with the Rule?

6. How would the proposed amendments impact small businesses with respect to costs, profitability, competitiveness, and employment? What other burdens, if any, would the proposed amendments impose on small businesses, and in what ways could the proposed amendments be modified to reduce any such costs or burdens?

7. How many small businesses would be affected by each of the proposed amendments?

8. With respect to each of the proposed amendments, are there any potentially duplicative, overlapping, or conflicting federal statutes, rules, or policies that are currently in effect?

B. Questions on Specific Issues

In response to each of the following questions, please provide: (1) Detailed comment, including data, statistics, consumer complaint information, and other evidence, regarding the issue referred to in the question; (2) comment as to whether the proposed amendment adequately solves the problem it is intended to address, and why or why not; and (3) suggestions for additional changes that might better maximize consumer protections or minimize the burden on industry and on small businesses within the industry.

Novel Payment Methods: Remotely Created Checks, Remotely Created Payment Orders, Cash-to-Cash Money Transfers, and Cash Reload Mechanisms

9. Does the proposed definition of ''remotely created check'' adequately, precisely, and correctly describe this payment alternative? If not, please provide alternative language or suggestions as to how the Commission could improve the definition.

10. Does the proposed definition of ''remotely created payment order'' adequately, precisely, and correctly describe this payment mechanism? If not, please provide alternative language or suggestions as to how the Commission could improve the definition.

11. Does the proposed definition of ''cash-to-cash money transfer'' adequately, precisely, and correctly describe this payment mechanism? If not, please provide alternative language or suggestions as to how the Commission could improve the definition.

12. Does the proposed definition of ''cash reload mechanism'' adequately, precisely, and correctly describe this payment mechanism? If not, please provide alternative language or suggestions as to how the Commission could improve the definition.

13. Should the Commission amend the TSR to prohibit the use in telemarketing of remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms as payment options?

14. What, if any, systematic fraud monitoring exists for remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms?

15. What, if any, dispute resolution rights for consumers are provided in connection with remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms?

16. Are there widely available payment alternatives to remotely created checks, remotely created payment orders, cash-to-cash money

transfers, and cash reload mechanisms sufficient for use in telemarketing by consumers who lack access to credit or traditional debit cards? If not, please describe the reasons why these novel payment methods are necessary and the types of telemarketing transactions for which these novel payment methods are necessary, including the types of products or services involved, whether the telemarketing calls are inbound or outbound, etc.

17. What, if any, adverse effect would a prohibition on the use of remotely created checks and remotely created payment orders in telemarketing have on legitimate electronic bill payment transactions?

18. Do banks have any feasible way of distinguishing among traditional checks, remotely created checks, images of remotely created checks and remotely created payment orders flowing through the check clearing system?

19. Is it feasible to obtain systematic, centralized monitoring of the volume, use, or return rates of remotely created checks and remotely created payment orders flowing through the check clearing system?

20. Do payment processors and depositary banks typically receive additional fees when processing payments and returns for merchants with high return rates? Do they incur additional costs in dealing with merchants with high return rates? Please describe the nature and amount of any such fees and costs, including how the additional fees charged compare to the increased costs incurred by the payment processors and banks.

21. Do consumers generally understand the differences among different payment options for purchases with regard to their dispute resolution rights and ability to recover payments procured by fraud?

22. Are there legitimate uses for cash-to-cash money transfers and cash reload mechanisms in telemarketing? If so, please describe the reasons why such transfers are necessary and the types of telemarketing transactions for which such transfers are necessary, including the types of products involved, whether the telemarketing calls are inbound or outbound, and whether the need is limited to certain groups of consumers—*e.g.,* those who do not have bank accounts. In addition, please provide information as to why these transactions could not be conducted using alternative payment mechanisms such as electronic fund transfers or debit or credit cards, including what additional costs, if any, would result from using such payment alternatives.

23. What specific costs and burdens would the proposed prohibition on the use of remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms in telemarketing impose on industry and individual firms (including small businesses) that would be required to comply with the prohibition, or on consumers?

24. Is the harm caused by remotely created checks, remotely created payment orders, cash-to-cash money transfers, and cash reload mechanisms in telemarketing outweighed by countervailing benefits to consumers or competition? If so, please identify and quantify the countervailing benefits.

25. Are there other payment mechanisms used in telemarketing that cause or are likely to cause unavoidable consumer harm without countervailing benefits to consumers or competition that the Commission should consider prohibiting or restricting?

Advance Fees for Recovery Services

26. Is there any material difference between telemarketing sales and Internet sales that would require the use of advance fees for recovery services aimed at victims of Internet fraud?

27. What, if any, specific costs and burdens would the proposed expansion of the advance fee ban on recovery services impose on industry and individual firms (including small businesses)?

28. Please describe the types of businesses that seek advance fees for recovery services, and whether these businesses require significant capital or labor outlays prior to providing the services.

General Media Exemption

29. How many sellers and how many telemarketers that accept payment by remotely created checks, remotely created payment orders, cash-to-cash money transfers, or cash reload mechanisms solicit calls from consumers by means of general media advertisements?

30. What specific costs or burdens, if any, would the proposed exclusion from the general media exemption for calls to sellers or telemarketers that accept payment by remotely created checks, remotely created payment orders, cash-to-cash money transfers, or cash reload mechanisms impose on industry, on individual firms (including small businesses) that would be required to comply with the prohibition, or on consumers?

31. Does the TSR's general media exemption have so many exclusions that the Commission should consider eliminating the exemption entirely?

Direct Mail Exemption

32. How many sellers and how many telemarketers that accept payment by remotely created checks, remotely created payment orders, cash-to-cash money transfers, or cash reload mechanisms solicit calls from consumers by means of direct mail offers?

33. What specific costs or burdens, if any, would the proposed amendment to the direct mail exemption impose on industry, on individual firms (including small businesses) that would be required to comply with the prohibition, or on consumers?

34. Should the proposed changes to the direct mail exemption be limited to certain types of industries (or goods or services) that are susceptible to abuse?

IX. Proposed Rule

List of Subjects in 16 CFR Part 310

Telemarketing, trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend title 16, Code of Federal Regulations, as follows:

PART 310—TELEMARKETING SALES RULE 16 CFR PART 310

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 15 U.S.C. 6101–6108.

■ 2. Amend § 310.2 by redesignating paragraphs (f) through (z) as paragraphs (h) through (bb), redesignating paragraphs (aa) through (ee) as paragraphs (ee) through (ii), and adding new paragraphs (f) through (g) and (cc) through (dd), to read as follows:

§ 310.2 Definitions.

* * * * *

(f) *Cash-to-cash money transfer* means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) transfer of the value of cash received from one person to another person in a different location that is sent by a money transfer provider and received in the form of cash. The term includes a remittance transfer, as defined in section 919(g)(2) of the Electronic Fund Transfer Act (''EFTA''), 15 U.S.C. 1693a, that is a cash-to-cash transaction; however it does not include any transaction that is:

(1) An electronic fund transfer as defined in section 903 of the EFTA;

(2) Covered by Regulation E, 12 CFR 1005.20, pertaining to gift cards; or

(3) Subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.* For purposes

of this definition, *money transfer provider* means any person or financial institution that provides cash-to-cash money transfers for a person in the normal course of its business, whether or not the person holds an account with such person or financial institution.

(g) *Cash reload mechanism* makes it possible to convert cash into an electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2)) form that a person can use to add money to a general-use prepaid card, as defined in Regulation E, 12 CFR 1005.2, or an online account with a payment intermediary. For purposes of this definition, a cash reload mechanism:

(1) Is purchased by a person on a prepaid basis;

(2) Enables access to the funds via an authorization code or other security measure; and

(3) Is not itself a general-use prepaid card.

* * * * *

(cc) *Remotely created check* means a check that is not created by the paying bank and that does not bear a signature applied, or purported to be applied, by the person on whose account the check is drawn. For purposes of this definition, *account* means an account as defined in Regulation CC, Availability of Funds and Collection of Checks, 12 CFR part 229, as well as a credit or other arrangement that allows a person to draw checks that are payable by, through, or at a bank.

(dd) *Remotely created payment order* means a payment instruction or order drawn on a person's account that is initiated or created by the payee and that does not bear a signature applied, or purported to be applied, by the person on whose account the order is drawn, and which is deposited into or cleared through the check clearing system. The term does not include payment orders cleared through the Automated Clearinghouse Network or subject to the Truth in Lending Act, 15 U.S.C. 1601 *et seq.,* and Regulation Z, 12 CFR part 1026.

* * * * *

■ 3. Amend § 310.3 by redesignating paragraphs (a)(3)(ii)(A) through (G) as paragraphs (a)(3)(ii)(B) through (H), and adding new paragraph (a)(3)(ii)(A) to read as follows:

§ 310.3 Deceptive telemarketing acts or practices.

(a) * * *

(3) * * *

(ii) * * *

(A) An accurate description, clearly and conspicuously stated, of the goods or services or charitable contribution for which payment authorization is sought;

* * * * *

■ 4. Amend § 310.4 by:

■ a. Revising paragraph (a)(3);

■ b. Amending paragraph (b)(7)(ii)(B) by removing ''or'' from the end of the paragraph;

■ c. Amending paragraph (b)(8) by removing the final period and adding a semicolon in its place;

■ d. Adding new paragraphs (a)(9) and (10); and

■ e. Revising paragraphs (b)(1)(ii), (b)(1)(iii)(B), and (b)(3)(vi), to read as follows:

§ 310.4 Abusive telemarketing acts or practices.

(a) * * *

(3) Requesting or receiving payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous transaction, until seven (7) business days after such money or other item is delivered to that person. This provision shall not apply to goods or services provided to a person by a licensed attorney;

* * * * *

(9) Creating or causing to be created, directly or indirectly, a remotely created check or a remotely created payment order as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing; or

(10) Accepting from a customer or donor, directly or indirectly, a cash-to-cash money transfer or cash reload mechanism as payment for goods or services offered or sold through telemarketing or as a charitable contribution solicited or sought through telemarketing.

* * * * *

(b) * * * (1) * * *

(ii) Denying or interfering in any way, directly or indirectly, with a person's right to be placed on any registry of names and/or telephone numbers of persons who do not wish to receive outbound telephone calls established to comply with § 310.4(b)(1)(iii)(A), including, but not limited to, harassing any person who makes such a request; hanging up on that person; failing to honor the request; requiring the person to listen to a sales pitch before accepting the request; assessing a charge or fee for honoring the request; requiring a person to call a different number to submit the request; and requiring the person to identify the seller making the call or on whose behalf the call is made;

(iii) * * *

(B) That person's telephone number is on the ''do-not-call'' registry, maintained by the Commission, of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services unless the seller or telemarketer:

(i) Can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature[6] of that person; or

(ii) Can demonstrate that the seller has an established business relationship with such person, and that person has not stated that he or she does not wish to receive outbound telephone calls under paragraph (b)(1)(iii)(A) of this section; or

* * * * *

(3) * * *

(vi) Any subsequent call otherwise violating § 310.4(b)(1)(ii) or (iii) is the result of error and not of failure to obtain any information necessary to comply with a request pursuant to § 310.4(b)(1)(iii)(A) not to receive further calls by or on behalf of a seller or charitable organization.

* * * * *

■ 5. Amend § 310.6 by revising paragraphs (b)(5)–(7) to read as follows:

§ 310.6 Exemptions.

* * * * *

(b) * * *

(5) Telephone calls initiated by a customer or donor in response to an advertisement through any medium, other than direct mail solicitation, *provided,* however, that this exemption does not apply to:

(i) Calls initiated by a customer or donor in response to an advertisement relating to investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or advertisements involving offers for goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)–(4);

(ii) Calls to sellers or telemarketers that do not comply with the prohibitions in §§ 310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls;

[6] For purposes of this Rule, the term ''signature'' shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.

(6) Telephone calls initiated by a customer or donor in response to a direct mail solicitation, including solicitations via the U.S. Postal Service, facsimile transmission, electronic mail, and other similar methods of delivery in which a solicitation is directed to specific address(es) or person(s), that clearly, conspicuously, and truthfully discloses all material information listed in § 310.3(a)(1), for any goods or services offered in the direct mail solicitation, and that contains no material misrepresentation regarding any item contained in § 310.3(d) for any requested charitable contribution; *provided,* however, that this exemption does not apply to:

(i) Calls initiated by a customer in response to a direct mail solicitation relating to prize promotions, investment opportunities, debt relief services, business opportunities other than business arrangements covered by the Franchise Rule or Business Opportunity Rule, or goods or services described in §§ 310.3(a)(1)(vi) or 310.4(a)(2)–(4);

(ii) Calls to sellers or telemarketers that do not comply with the prohibitions in § 310.4(a)(9) or (10); or

(iii) Any instances of upselling included in such telephone calls; and

(7) Telephone calls between a telemarketer and any business to induce the purchase of goods or services or a charitable contribution by the business, except calls to induce the retail sale of nondurable office or cleaning supplies; *provided,* however, that § 310.4(b)(1)(iii)(B) and § 310.5 shall not apply to sellers or telemarketers of nondurable office or cleaning supplies.

■ 6. Amend § 310.8 by revising paragraph (c) to read as follows:

§ 310.8 Fee for access to the National Do Not Call Registry.

* * * * *

(c) The annual fee, which must be paid by any person prior to obtaining access to the National Do Not Call Registry, is $54 for each area code of data accessed, up to a maximum of $14,850; provided, however, that there shall be no charge to any person for accessing the first five area codes of data, and provided further, that there shall be no charge to any person engaging in or causing others to engage in outbound telephone calls to consumers and who is accessing area codes of data in the National Do Not Call Registry if the person is permitted to access, but is not required to access, the National Do Not Call Registry under this Rule, 47 CFR 64.1200, or any other Federal regulation or law. No person may participate in any arrangement to share the cost of accessing the National Do Not Call Registry, including any arrangement with any telemarketer or service provider to divide the costs to access the registry among various clients of that telemarketer or service provider.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–12886 Filed 7–8–13; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for Six West Texas Aquatic Invertebrates; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0029; 4500030113]

RIN 1018–AX70

Endangered and Threatened Wildlife and Plants; Determination of Endangered Species Status for Six West Texas Aquatic Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine the following six west Texas aquatic invertebrate species meet the definition of an endangered species under the Endangered Species Act of 1973: Phantom springsnail *(Pyrgulopsis texana),* Phantom tryonia *(Tryonia cheatumi),* diminutive amphipod *(Gammarus hyalleloides),* Diamond tryonia *(Pseudotryonia adamantina),* Gonzales tryonia *(Tryonia circumstriata),* and Pecos amphipod *(Gammarus pecos).* This final rule implements the Federal protections provided by the Endangered Species Act for these species. The effect of this regulation is to add these species to the lists of Endangered and Threatened Wildlife under the Endangered Species Act.

DATES: This rule becomes effective August 8, 2013.

ADDRESSES: This final rule and other supplementary information are available on the Internet at *http://www.regulations.gov* (Docket No. FWS–R2–ES–2012–0029) and also at *http://www.fws.gov/southwest/es/AustinTexas/.* These documents are also available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **ADDRESSES**). 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

This document consists of final rules to list six west Texas aquatic invertebrate species as endangered species. The six west Texas aquatic invertebrate species are: Phantom springsnail *(Pyrgulopsis texana),* Phantom tryonia *(Tryonia cheatumi),* diminutive amphipod *(Gammarus hyalleloides),* Diamond tryonia *(Pseudotryonia adamantina),* Gonzales tryonia *(Tryonia circumstriata),* and Pecos amphipod *(Gammarus pecos).* The current range for the first three species is limited to spring outflows in the San Solomon Springs system near Balmorhea in Reeves and Jeff Davis Counties, Texas. The current range of the latter three species is restricted to spring outflow areas within the Diamond Y Spring system north of Fort Stockton in Pecos County, Texas.

Why we need to publish a rule. On August 16, 2012, we published proposed rules to list the six west Texas aquatic invertebrates as endangered species. In these rules we are finalizing our determinations to list these six species as endangered species under the Endangered Species Act. The Act requires that a final rule be published in order to add species to the lists of endangered and threatened wildlife to provide protections under the Act. The table below summarizes the status of each species:

Species	Present range	Status of species
Phantom springsnail	San Solomon Spring system (four springs)	common in a very restricted range.
Phantom Lake springsnail	San Solomon Spring system (four springs)	very rare in a very restricted range.
diminutive amphipod	San Solomon Spring system (four springs)	common in a very restricted range.
Diamond tryonia	Diamond Y Spring system (two springs)	very rare in a very restricted range.
Gonzales tryonia	Diamond Y Spring system (two springs)	very rare in a very restricted range.
Pecos amphipod	Diamond Y Spring system (two springs)	common in a very restricted range.

These rules will result in all six of these species being listed as endangered under the Act. By listing these six species of aquatic invertebrates from west Texas as endangered, we are extending the full protections of the Act to these species.

The Endangered Species Act provides the basis for our action. Under the Endangered Species Act, we can determine that a species is endangered or threatened 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 all six species meet the definition of endangered species due to the combined effects of:

- Habitat loss and degradation of aquatic resources, particularly the current and ongoing decline in spring flows that support the habitat of all the species, and the potential for future water contamination at the Diamond Y Spring system.
- Other natural or manmade factors, including the presence of nonnative snails and the small, reduced ranges of the species.

Peer review and public comment. With the publication of our August 16, 2012, proposed rules, we sought comments from independent specialists to ensure that our designation is based on scientifically sound data, assumptions, and analyses. We received comments from four knowledgeable individuals with scientific expertise to review our technical assumptions, 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. We also considered all comments and information received during two comment periods.

Previous Federal Actions

We proposed all six species be listed as endangered on August 16, 2012 (77 FR 49602). We also reopened the public comment on the proposed rules on February 5, 2013 (78 FR 8096). A complete description of the previous Federal actions for these species can be found in the Previous Federal Actions section of the August 16, 2012, proposed rules (77 FR 49602).

Summary of Comments and Recommendations

In the proposed rules published on August 16, 2012 (77 FR 49602), we requested that all interested parties submit written comments by October 15, 2012. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. We reopened the comment period on February 5, 2013 (78 FR 8096), for these proposed rules and to accept additional public comment. This second comment period closed on March 22, 2013. We received a request for a public hearing, and one was held on February 22, 2013, at Balmorhea State Park in Toyahvale, Texas. Newspaper notices inviting general public comment were published in the *Alpine Avalanche* and *Fort Stockton Pioneer* newspapers on February 14, 2013.

During the comment period for the proposed rule, we received 27 comments addressing the proposed listing and critical habitat for the west Texas invertebrates. During the February 22, 2013, public hearing, one individual made a comment on the proposed rules. All substantive information provided during comment periods has either been incorporated directly into our final determinations or addressed below in our response to comments. Elsewhere in today's **Federal Register**, we have published a final rule that addresses additional comments on the designation of critical habitat for these species.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from five knowledgeable individuals with scientific expertise that included familiarity with the species or their habitats, biological needs, and threats. We received comments from four peer reviewers.

The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rule. Information received from peer reviewers has been incorporated into our final rules, and comments are addressed in our response to comments below.

(1) Comment: The common (or vernacular) names applied to the four species of snails are not in accord with the ''standardized'' English names for North American mollusks as provided in Turgeon *et al.* (1988, 1998).

Our Response: We agree and have revised the common names of the four snails throughout the final rules. See ''Summary of Changes from Proposed Rule'' sections of the final rules for a list of the changes to the common names.

(2) Comment: We received a number of comments from peer reviewers, State agencies, and the public regarding the groundwater origins of the spring outflows at Diamond Y Spring. We originally indicated that the Rustler Aquifer was the likely source of flows at Diamond Y Spring, recognizing a fair amount of uncertainty. We received new information from a peer reviewer (U.S. Geological Survey hydrogeologist) indicating that, while the Rustler Aquifer may be contributing flow to the Edwards–Trinity (Plateau) Aquifer, it cannot be considered the source of the spring flow because the spring issues from the Edwards–Trinity geologic formation. The Texas Water Development Board provided seemingly contradictory comments stating that the strata underlying the Edwards–Trinity (Plateau) Aquifer provide most of the spring flow at Diamond Y Spring and that the artesian pressure causing the groundwater to issue at Diamond Y Spring is likely from below the Rustler Aquifer. Finally, the Middle Pecos Groundwater Conservation District also commented that Diamond Y Spring is a mixture of discharge from the Edwards–Trinity (Plateau) Aquifer and leakage from the other Permian-age formations, including the Rustler, Salado, Transill, and Yates formations and possibly even deeper strata.

Our Response: The scientific community has not reached consensus about the source of spring flows for Diamond Y Spring. We carefully reviewed the information provided and substantially revised the appropriate sections in the final rules to reflect the uncertainties around the best available information.

(3) Comment: A peer reviewer commented that the Service does not discuss how pumping in the Edwards–Trinity (Plateau) Aquifer may affect the spring flows at Diamond Y Spring. A related comment from the public stated that the Service has not substantiated that pumping from the Rustler Aquifer is causing declines in spring flow at Diamond Y Spring. The commenter indicates that the Rustler Aquifer levels appear to have risen since heavy irrigation from the Rustler Aquifer ceased decades ago.

Our Response: Given the uncertainties about the source aquifer or aquifers for Diamond Y Spring, we have revised our discussions of this issue to recognize that the source of Diamond Y Spring is unknown. As a result, it is not feasible to estimate how pumping from any particular aquifer may have affected the spring flows in the past or how future pumping will affect future spring flows. However, if substantial groundwater is removed in the future from the source aquifer or aquifers, wherever they may be, spring flows at Diamond Y Spring are very susceptible to loss because they have such a small discharge rate.

(4) Comment: A peer reviewer commented that spring flows in the San Solomon Springs and Diamond Y Spring systems, though they lack sufficient studies, are protected by Groundwater Management Area 3 or 4's desired future conditions, as well as by the groundwater conservation districts in the area. A number of other comments from State agencies and the public made similar comments indicating that our assessment of the ''inadequacy of existing regulatory mechanisms'' was not accurate because of the existing groundwater protection provided by the groundwater conservation districts and groundwater management areas.

Our Response: We agree that groundwater management areas and groundwater conservation districts are vital mechanisms to protect and conserve groundwater resources in Texas. We recognize these substantial efforts are critical for maintaining future groundwater conditions to support both human uses of the groundwater and the ecological communities that depend on the outflows from the aquifers. The lack of regulatory mechanisms for groundwater conservation is not the only reason these species are in danger of extinction. Their extreme rarity makes the species particularly vulnerable to all of the threats discussed. However, due in part to their extreme rarity, the loss of spring flows is a primary concern that contributes to the risk of extinction for these species.

For the San Solomon Spring species, we found that the existing regulations from groundwater conservation districts are not serving to alleviate or limit the threats to the species because it is uncertain whether the planned groundwater declines will allow for maintenance of the spring flows that provide habitat for the species. We assume that, absent more detailed studies, the large levels of anticipated declines in the presumed supporting aquifers are likely to result in continuing declines of spring flows in the San Solomon Spring system. We revised the final rule discussion under Factor D for the San Solomon Spring species with this further explanation.

For the Diamond Y Spring species, we found three reasons why the existing regulatory mechanisms provided by the groundwater conservation districts and groundwater management areas are inadequate to sufficiently reduce the threats of spring flow loss to the six species. First, the lack of conclusive science on the groundwater systems and sources of spring flow for Diamond Y Spring means that we cannot be sure which aquifers are the most important to protect. Until we can reliably determine the sources of spring flows, it is impossible to know if existing regulations are adequate to ensure long-term spring flows. Second, and similarly, due to the lack of understanding about the relationships between aquifer levels and spring flows, we cannot know if the current or future desired future conditions adopted by the groundwater management areas are sufficient to provide for the species' habitats. To our knowledge, none of the desired future conditions, which include large reductions in aquifer levels in 50 years, have been used to predict future spring flows at Diamond Y Spring. Finally, other sources of groundwater declines outside of the control of the current groundwater conservation districts could lead to further loss of spring flows. These sources include groundwater pumping not regulated by a local groundwater conservation district or climatic changes that alter recharge or underground flow paths between aquifers. Therefore, although important regulatory mechanisms are in place, such as the existence of groundwater conservation districts striving to meet desired future conditions for aquifers, we find that the mechanisms may not be able to sufficiently reduce the identified threats related to future habitat loss. We revised the final rule discussion under Factor D for the Diamond Y Spring species with this further explanation.

(5) Comment: Why did the Service include East Sandia Spring as part of the San Solomon Spring System since the spring discharges in the alluvial sand and gravel from a shallow groundwater source that is different from the other three springs included in this system?

Our Response: We acknowledge that the East Sandia Spring has a different source from the other three springs referred to as the San Solomon Spring System. However, we use this term as a common reference for the four springs, which are geographically close together and which contain similar biological communities. We have clarified our discussion of this issue in the final rules.

(6) Comment: The Service dismisses the potential for contamination from agricultural contaminants to the springs because there is currently limited agriculture upgradient of the springs and there is an informal agreement for continued limitation. The Service might include the potential for contamination from agricultural return flows based on the hydrogeologic setting if the informal agreement is not honored.

Our Response: Based on the best available information, we found no indication of any agricultural activities in areas that could result in contamination in return flows impacting the springs in either the Diamond Y Spring System or the San Solomon Spring System. Because the agricultural areas are such a large distance from the springs, we conclude the chances of effects to the species are remote. The informal agreement to avoid use of potential contaminants in the area immediately near San Solomon Spring is in areas with limited or no agricultural activity so the risk of contamination is remote there as well. Therefore, based on the best available information at this time, we do think that a significant potential exists for water contamination from agricultural sources.

(7) Comment: The discussion of using toxicants for the management of nonnative fish at Diamond Y Spring seems to downplay the likely damage that was inflicted upon the invertebrate communities at Diamond Y Spring. The possible damage is presented only in terms of the species being proposed for listing. However, the entire invertebrate community, and its proper functioning, was impacted by the application of fish toxicants. Therefore, the damage done may be more at the community or even ecosystem level, rather than just the species level.

Our Response: While there could have been effects that were not detectable, monitoring data collected before and after the treatment on the target species and other invertebrate species did not find a significant effect past the short-term response.

State Agencies

We received a number of comments from Texas State agencies, including the Texas Governor's Office, the Texas Parks and Wildlife Department, the Texas Comptroller's Office, the Texas Water Development Board, the Texas Commission on Environmental Quality, the Texas Land Commission, and the Texas Department of Agriculture.

(8) Comment: The Texas Parks and Wildlife Department, while indicating they strongly encourage the use of incentive-based conservation programs for private land stewardship in Texas, indicated they had no additional information beyond what we referenced in the proposed rule and agreed that the most significant threat to the species' continued survival is the potential failure of spring flow due to unmanaged groundwater pumping thresholds, which do not consider surface flow and wildlife needs, and prolonged drought.

Our Response: We concur with the comments and information provided.

(9) Comment: The Texas Governor's office was concerned that our proposal is largely based on conflicting reports, inconclusive data, hypothetical scenarios, various assumptions and vast speculation about species populations, water quantity and quality, the effect of existing regulatory mechanisms and other potential threats. Such information fails to provide any sound scientific foundation on which to justify the listing and critical habitat designation of these species.

Our Response: Under the standards of the Act, we are to base our determinations of species status on the best available scientific information. Often times, scientific data are limited, studies are conflicting, or results are seemingly inconclusive. Our review of the best available scientific information, including both published publications and unpublished scientific reports, supports our determinations that these species meet the definition of endangered species under the Act. As such we are finalizing critical habitat designations for these species as well.

(10) Comment: Several State and local agencies pointed out that the scientific information regarding the groundwater flow systems in this region are complex and in need of additional study. This uncertainty makes it difficult to predict the responses of spring flows to pumping or other stressors on the aquifer.

Our Response: We agree that more information on the hydrogeology of the areas around these spring systems would be very helpful in further refining the relationships between pumping, groundwater levels, and spring flows. This information will be particularly helpful as we work toward conservation of these species in the future. However, the uncertainty surrounding these relationships do not alter the facts that the habitats of the species are completely dependent upon spring flows and that spring flows are dependent upon groundwater levels. These groundwater levels, wherever the spring sources may be, are at risk of decline through pumping or other stressors such as prolonged drought due

to climate change. These facts put the species in danger of extinction. This reasoning is based on the best available information and supports our determinations.

(11) Comment: One State agency pointed out that the data and measurements of flow at Diamond Y Spring are lacking and that our speculation that the Diamond Y Spring could undergo a similar decline as the Leon Springs does not account for the different sources of groundwater supplying the two springs.

Our Response: We did not intend to imply that the Diamond Y Spring and Leon Spring are from the same groundwater source. We only intended to demonstrate that, should groundwater pumping occur in the source aquifer of Diamond Y Spring, the spring could be affected. Leon Springs is simply a nearby example of this cause and effect relationship. We have revised the final rule to clarify our intent.

(12) Comment: A State agency suggested that, although data are lacking and measurements poorly documented, discharge from Diamond Y Spring has been rather constant. Since 1993 they have not observed any discernible change in flow at Diamond Y Spring. Another commenter suggested that a highly probable cause of decreased extent of the shallow water pools at Diamond Y Spring is the proliferation of mesquite trees, bulrush, and other water-intensive invasive species that have invaded the area.

Our Response: We agree that data on discharge levels at Diamond Y Spring over time are lacking. Because the flow rates are so low, observing changes in flow rates without empirical data is very difficult; however, we would disagree with the conclusion that flow at Diamond Y Spring has undergone no discernible change since 1993. Our own field observations and those reported by other researchers have noted that the longitudinal extent of surface waters has receded. For example, surface flow previously regularly extended downstream of the State Highway 18 crossing, but in recent years has not regularly extended this far.

The increase in nearby vegetation could be another contributing factor to decreased surface water available at Diamond Y Spring. We are not aware of any study evaluating this source of surface water loss, so determining the extent of this relationship is difficult. Regardless of the reason, any further decline in the spring flows at Diamond Y Spring, which are highly susceptible to impact due to their very small flow rate, will heighten the risk of extinction of the endemic species due to habitat loss.

(13) Comment: One State agency commented that, while oil and gas exploration, extraction, transportation, and processing is active in the area, no pollutant or contaminant has ever been found to have harmed the aquatic invertebrates that dwell in the springs. Other public commenters added that no evidence supports a future catastrophic event severely impacting the Diamond Y Spring species. The mere speculation of possible future adverse effects cannot be used to support a listing determination.

Our Response: The comment is correct that we are not aware of any past contaminant spill that has impacted the species at Diamond Y Spring. However, the area is extremely active with oil and gas activities; some active wells are immediately adjacent to the springs, and some pipelines cross the habitat. This presence of pollutants in high quantities presents a constant risk of impact to the species either through groundwater or surface water impacts. While we are not aware of a formal analysis of the risks posed by the proximity of oil and gas operations, to assume that a large magnitude spill is possible, even with existing conservation measures in place, and that such a spill could have substantial negative impacts on the endemic species is reasonable. With only one known location of these species, any possible negative impact heightens their risk of extinction. Further, the threat from oil and gas activity is only one of several threats that together result in these species in danger of extinction.

(14) Comment: A State agency and others commented that the Service did not adequately consider the existing conservation measures and Federal and State regulations currently in place to prevent contamination from oil and gas activities at Diamond Y Spring.

Our Response: We understand that existing regulations oversee oil and gas activities in Texas. However, the risk of a contaminant event that would affect the species at Diamond Y Spring cannot be ruled out by the existing conservation efforts and regulations. Because of the extremely limited range of these species and their complete dependence on the aquatic environment, the potential impacts of contamination will remain an ongoing concern at Diamond Y Spring.

(15) Comment: The Texas Commission on Environmental Quality recently issued a statewide general permit (TPDES General Permit No. TXG8700000) for point source discharges of pesticide or herbicide made into or over surface water. This regulation ensures the protection of surface water quality in accordance with applicable State and Federal law.

Our Response: This general permit is helpful to regulate pesticide or herbicide use in Texas, and it could provide some limited benefits to these invertebrates and other aquatic species in these spring systems. However, pesticides and herbicides are not a primary concern to these species because of the limited agricultural activities that could affect their habitats. Therefore, while we acknowledge this statewide permit, we have not revised the final rules to include a discussion of this issue relative to the species in this final rule.

(16) Comment: Because the San Solomon Spring system is in a rural, lightly populated area, and exposure to pollutants has been found to be limited, no threat to the system's water quality is apparent.

Our Response: We agree; we did not find substantial concerns for water quality at the San Solomon Spring system.

(17) Comment: The two instances of nonnative snails in the San Solomon Spring system have not conclusively been found to have a negative impact on the species at issue, and the potential for the introduction of other nonnative species is extraordinarily low.

Our Response: We agree that evidence is not conclusive that the nonnative snails are negatively impacting the native species. However, to assume that at least some competition for space and resources exists between the native and nonnative species is reasonable. We disagree with the characterization of the potential for the introduction of other nonnative species as extraordinarily low. To the contrary, we think the potential is very real of new nonnative species being introduced at San Solomon Spring because of the high volume of public visitors at Balmorhea State Park. Although the State prohibits the release of plants or animals into the Park, people will release unwanted aquarium species into natural waters rather than disposing of them. The potential for the release of nonnative species is a constant risk at San Solomon Spring.

(18) Comment: Two State agencies and a number of others were concerned about the impacts of listing these species and designating critical habitat on private property rights, oil and gas development, and agricultural activities.

Our Response: Although the Act does not allow us to consider the economic impacts of our listing decisions, we did consider the potential economic impacts regarding the designation of critical

habitat. Critical habitat only directly affects actions funded, permitted, or carried out by a Federal agency, and Federal activities that could affect the habitat in these areas are very limited. As a result, we found only extremely small potential indirect effects from the proposed designation of critical habitat. For critical habitat, our economic analysis found the incremental administrative economic impacts related to consultations on the critical habitat of the six west Texas invertebrates are expected to amount to an estimated $41,000 over 20 years ($3,600 on an annualized basis), assuming a discount rate of seven percent.

In addition, at this time we do not anticipate noticeable impacts to private property rights, oil and gas development, or agricultural activities from either the listing or the designation of critical habitat for these species. Other listed species have been in these areas for more than 30 years with very few, if any, conflicts with economic development. However, if future conflicts arise, we will work closely with the potentially affected parties to find cooperative solutions for conservation of these species while striving to minimize potential effects on economic activities.

Summary of Changes from Proposed Rule

One important change we made in this final rule is the revision to the common names of the four species of snails to conform to scientifically accepted nomenclature (Turgeon *et al.* 1998, pp. 75–76). These changes were suggested by a peer reviewer of the proposed rule. Table 1 lists the names used in the proposed rules and the revised names used in the final rules. We have used the revised names of all the snails throughout these final rules. No changes were made to the scientific names.

TABLE 1—REVISED COMMON NAMES FOR THE SIX WEST TEXAS INVERTEBRATES

Scientific name	Common name used in proposed rules	Revised common name used in final rules
Pyrgulopsis texana	Phantom cave snail	Phantom springsnail.
Tryonia cheatumi	Phantom springsnail	Phantom tryonia.
Gammarus hyalleloides	Diminutive amphipod	No change.
Pseudotryonia adamantina	Diamond Y Spring snail	Diamond tryonia.
Tryonia circumstriata	Gonzales springsnail	Gonzales tryonia.
Gammarus pecos	Pecos amphipod	No change.

Other minor changes were made in the **SUPPLEMENTARY INFORMATION** section of these final rules to correct and update discussions of issues raised by peer and public commenters. No changes were made to the 50 CFR Part 17 section of the rules.

Background

We intend to discuss below only those topics directly relevant to the listing of the six west Texas aquatic invertebrates as endangered species. We have organized this Background section into three parts. The first part is a general description of the two primary spring systems where the six species occur. The second part is a general description of the life history and biology of the four snail species, followed by specific biological information on each of the four snail species. The third part is a general description of the life history and biology of the two amphipod species, followed by specific biological information on each of the two amphipod species.

Description of Chihuahuan Desert Springs Inhabited by Invertebrate Species

The six west Texas aquatic invertebrate species (Phantom springsnail, Phantom tryonia, diminutive amphipod, Diamond tryonia, Gonzales tryonia, and Pecos amphipod) occur within a relatively small area of the Chihuahuan Desert of the Pecos River drainage basin of west Texas. The habitats of these species are now isolated spring systems in expansive carbonate (limestone) deposits. The region includes a complex of aquifers (underground water systems) where the action of water on soluble rocks (like limestone and dolomite) has formed abundant ''karst'' features such as sinkholes, caverns, springs, and underground streams. These hydrogeological formations provide unique settings where a diverse assemblage of flora and fauna has evolved at the points where the aquifers discharge waters to the surface through spring openings. The isolated limestone and gypsum springs, seeps, and wetlands located in this part of west Texas provide the only known habitats for several endemic species of fish, plants, mollusks, and crustaceans, including the six endemic aquatic invertebrate species addressed in these final rules.

Both spring systems associated with San Solomon Spring and Diamond Y Spring represent discharge from groundwater flow systems that have little modern recharge and were formed in the Pleistocene when the climate was cooler and wetter than today (French 2013, p. 1). Both groundwater systems are not well understood, especially at the local scale, because they include both lateral and vertical flow between multiple aquifers (French 2013, p. 1).

In the Chihuahuan Desert, spring-adapted aquatic species are distributed in isolated, geographically separate populations. They likely evolved into distinct species from parent species that once enjoyed a wider distribution during wetter, cooler climates of the Pleistocene epoch (about 10,000 to 2.5 million years before present). As ancient lakes and streams dried during dry periods (since the Late Pleistocene, within about the last 100,000 years), aquatic species in this region became patchily distributed across the landscape as geographically isolated populations exhibiting a high degree of endemism (species found only in a particular region, area, or spring). Such speciation through divergence has been reported for these species (Gervasio *et al.* 2004, p. 521; Brown *et al.* 2008, pp. 486–487; Seidel *et al.* 2009, p. 2304).

San Solomon Spring System

In these final rules we reference the San Solomon Spring system to include four different existing spring outflows: San Solomon Spring, Giffin Spring, Phantom Lake Spring, and East Sandia Spring. The springs in this area are also commonly referred to by some authors as Toyah Basin springs or Balmorhea area springs. All of the springs historically drained into Toyah Creek,

an intermittent tributary of the Pecos River that is now dry except following large rainfall events. All four springs are located in proximity to one another; the farthest two (East Sandia Spring and Phantom Lake Spring) are about 13 kilometers (km) (8 miles (mi)) apart, and all but East Sandia Spring likely originate from the same groundwater source (see discussion below). Brune (1981, pp. 258–259, 382–386) provides a brief overview of each of these springs and documents their declining flows during the early and middle twentieth century.

The San Solomon Spring system is located in the Chihuahuan Desert of west Texas at the foothills of the Davis Mountains near Balmorhea, Texas. Phantom Lake Spring is in Jeff Davis County (on the county boundary with Reeves County), while the other major springs in this system are in Reeves County. In addition to being an important habitat for rare aquatic fauna, area springs have served for centuries as an important source of irrigation water for local farming communities. They are all located near the small town of Balmorhea (current population of less than 500 people) in west Texas. The area is very rural with no nearby metropolitan centers. Land ownership in the region is mainly private, except as described below around the spring openings, and land use is predominantly dry-land ranching with some irrigated farmland using either water issued from the springs or pumped groundwater.

The base flows from these springs are thought to ultimately originate from a regional groundwater flow system. Studies show that groundwater moves through geologic faults from the Salt Basin northwest of the Apache and Delaware Mountains, located 130 km (80 mi) or more to the west of the springs (Sharp 2001, pp. 42–45; Angle 2001, p. 247; Sharp *et al.* 2003, pp. 8–9; Chowdhury *et al.* 2004, pp. 341–342; Texas Water Development Board 2005, p. 106). The originating groundwater and spring outflow are moderately to highly mineralized and appear to be of ancient origin, with the water being estimated at 10,000 to 18,000 years old (Chowdhury *et al.* 2004, p. 340; Texas Water Development Board 2005, p. 89).

The Salt Basin Bolson aquifer is part of the larger West Texas Bolsons and is made up of connected sub-basins underlying Wild Horse, Michigan, Lobo, and Ryan Flats, in the middle and southern Salt Basin Valley in Texas (Angle, 2001, p. 242). (The term bolson is of Spanish origin and refers to a flat-floored desert valley that drains to a playa or flat.) These aquifers, which support the base flows (flows not influenced by seasonal rainfall events) of the San Solomon Spring system, receive little to no modern recharge from precipitation (Scanlon *et al.* 2001, p. 28; Beach *et al.* 2004, pp. 6–9, 8–9). Studies of the regional flow system indicate groundwater may move from south to north through the Salt Basin from Ryan to Lobo to Wild Horse Flats before being discharged through the Capitan Formation, into the Lower Cretaceous rocks (older than Pleistocene) via large geologic faults then exiting to the surface at the springs (LaFave and Sharp 1987, pp. 7–12; Angle 2001, p. 247; Sharp 2001, pp. 42–45; Chowdhury *et al.* 2004, pp. 341–342; Beach *et al.* 2004, Figure 4.1.13, p. 4–19, 4–53). Chemical analysis and hydrogeological studies support this hypothesis, and the water elevations throughout these parts of the Salt Basin Bolson aquifer are higher in elevation than the discharge points at the springs (Chowdhury *et al.* 2004, p. 342). Substantial uncertainty exists about the precise nature of this regional groundwater flow system and its contribution to the San Solomon Spring system.

In contrast to the base flows, the springs also respond with periodic short-term increases in flow rates following local, seasonal rainstorms producing runoff events through recharge areas from the Davis Mountains located to the southwest of the springs (White *et al.* 1941, pp. 112–119; LaFave and Sharp 1987, pp. 11–12; Chowdhury *et al.* 2004, p. 341). These stormwater recharge events provide very temporary increases in spring flows, sometimes resulting in flow spikes many times larger than the regular base flows. The increased flows are short-lived until the local stormwater recharge is drained away and spring flows return to base flows supported by the distant aquifers. Historically, many of the springs in this spring system were likely periodically interconnected following storm events with water flowing throughout the Toyah Creek watershed. In recent times, however, manmade structures altered the patterns of spring outflows and stormwater runoff, largely isolating the springs from one another except through irrigation canals.

San Solomon Spring is by far the largest single spring in the Toyah Basin (Brune 1981, p. 384). The artesian spring issues from the lower Cretaceous limestone at an elevation of about 1,008 meters (m) (3,306 feet (ft)). Brune (1981, p. 385) reported spring flows in the range of 1.3 to 0.8 cubic meters per second (cms) (46 to 28 cubic feet per second (cfs)) between 1900 and 1978 indicating an apparent declining trend. Texas Water Development Board (2005, p. 84) studies reported an average flow rate of about 0.85 cms (30 cfs) from data between 1965 to 2001 with a calculated slope showing a slight decline in discharge.

San Solomon Spring now provides the water for the large, unchlorinated, flow-through swimming pool at Balmorhea State Park and most of the irrigation water for downstream agricultural irrigation by the Reeves County Water Improvement District No. 1 (District). The swimming pool is concrete on the sides and natural substrates on the bottom and was originally constructed in 1936. Balmorhea State Park is owned and managed by Texas Parks and Wildlife Department and encompasses about 19 hectares (ha) (46 acres (ac)) located about 6 km (4 mi) west of Balmorhea in the historic community of Toyahvale. The Park provides recreational opportunities of camping, wildlife viewing, and swimming and scuba diving in the pool. The District holds the water rights for the spring, which is channeled through an extensive system of concrete-lined irrigation channels, and much of the water is stored in nearby Lake Balmorhea and delivered through canals for flood irrigation on farms down gradient (Simonds 1996, p. 2).

Balmorhea State Park's primary wildlife resource focus is on conservation of the endemic aquatic species that live in the outflow of San Solomon Spring (Texas Parks and Wildlife Department 1999, p. 1). Texas Parks and Wildlife Department maintains two constructed ciénegas that are flow-through, earth-lined pools in the park to simulate more natural aquatic habitat conditions for the conservation of the rare species, including the Phantom springsnail, Phantom tryonia, and diminutive amphipods. (Ciénega is a Spanish term that describes a spring outflow that is a permanently wet and marshy area.) San Solomon Spring is also inhabited by two federally listed fishes, Comanche Springs pupfish *(Cyprinodon elegans)* and Pecos gambusia *(Gambusia nobilis).* No nonnative fishes are known to occur in San Solomon Spring, but two nonnative aquatic snails, red-rim melania *(Melanoides tuberculata)* and quilted melania *(Tarebia granifera),* do occur in the spring outflows and are a cause for concern for the native aquatic invertebrate species.

Giffin Spring is on private property less than 1.6 km (1.0 mi) west of Balmorhea State Park, across State Highway 17. The spring originates from

an elevation similar to San Solomon Spring. Brune (1981, p. 385) reported flow from Giffin Spring ranged from 0.07 to 0.17 cms (2.3 to 5.9 cfs) between 1919 and 1978, with a gradually declining trend. During calendar year 2011, Giffin Spring flow rates were recorded between 0.10 and 0.17 cms (3.4 and 5.9 cfs) (U.S. Geological Survey 2012, p. 1). Giffin Spring water flows are captured in irrigation earthen channels for agricultural use. Giffin Spring is also inhabited by the federally listed Comanche springs pupfish and Pecos gambusia, and the only nonnative aquatic species of concern there is the red-rim melania.

Phantom Lake Spring is at the base of the Davis Mountains about 6 km (4 mi) west of Balmorhea State Park at an elevation of 1,080 m (3,543 ft). The outflow originates from a large crevice on the side of a limestone outcrop cliff. The 7-ha (17-ac) site around the spring and cave opening is owned by the U.S. Bureau of Reclamation. Prior to 1940 the recorded flow of this spring was regularly exceeding 0.5 cms (18 cfs). Outflows after the 1940s were immediately captured in concrete-lined irrigation canals and provided water for local crops before connecting to the District's canal system in Balmorhea State Park. Flows declined steadily over the next 70 years until ceasing completely in about the year 2000 (Brune 1981, pp. 258–259; Allan 2000, p. 51; Hubbs 2001, p. 306). The aquatic habitat at the spring pool has been maintained by a pumping system since then. Phantom Lake Spring is also inhabited by the two federally listed fishes, Comanche Springs pupfish and Pecos gambusia, and the only nonnative aquatic species of concern there is the red-rim melania.

East Sandia Spring is the smallest spring in the system located in Reeves County in the community of Brogado approximately 3 km (2 mi) northeast of the town of Balmorhea and 7.7 km (4.8 mi) northeast of Balmorhea State Park. The spring is within a 97-ha (240-ac) preserve owned and managed by The Nature Conservancy—a private nonprofit conservation organization (Karges 2003, pp. 145–146). In contrast to the other springs in the San Solomon Spring system that are derived directly from a deep underground regional flow system, East Sandia Spring discharges from alluvial sand and gravel from a shallow groundwater source at an elevation of 977 m (3,224 ft) (Brune 1981, p. 385; Schuster 1997, p. 92). Water chemistry at East Sandia Spring indicates it is not directly hydrologically connected with the other springs in the San Solomon Spring system in the nearby area (Schuster 1997, pp. 92–93). Historically there was an additional, smaller nearby spring outlet called West Sandia Spring. Brune (1981, pp. 385–386) reported the combined flow of East and West Sandia Springs as declining, with measurements ranging from 0.09 to 0.02 cms (3.2 to 0.7 cfs) between 1932 and 1976. In 1976 outflow from East Sandia was 0.01 cms (0.5 cfs) of the total 0.02 cms (0.7 cfs) of the two springs. In 1995 and 1996 Schuster (1997, p. 94) reported combined flow rates from both springs, which ranged from 0.12 to 0.01 cms (4.07 cfs to 0.45 cfs), with an average of 0.05 cms (1.6 cfs). The outflow waters from the spring discharge to an irrigation canal within a few hundred meters from its source. East Sandia Spring is also inhabited by two federally listed fishes, Comanche Springs pupfish and Pecos gambusia, as well as the federally endangered Pecos assiminea *(Assiminea pecos)* snail and the federally threatened Pecos sunflower *(Helianthus paradoxus).* No nonnative aquatic species of concern are known from East Sandia Spring.

Historically there were other area springs along Toyah Creek that were part of the San Solomon Spring system. Saragosa and Toyah Springs occurred in the town of Balmorhea along Toyah Creek. Brune (1981, p. 386) reported historic base flows of about 0.2 cms (6 cfs) in the 1920s and 1940s, declining to about 0.06 cms (2 cfs) in the 1950s and 1960s, and no flow was recorded in 1978. Brune (1981, p. 385) reported that the flow from West Sandia Spring was about 0.01 cms (0.2 cfs) in 1976, after combined flows from East and West Sandia Springs had exceeded 0.07 cms (2.5 cfs) between the 1930s and early 1960s. The Texas Water Development Board (2005, p. 12) reported West Sandia and Saragosa Springs did not discharge sufficient flow for measurement. Karges (2003, p. 145) indicated West Sandia has only intermittent flow and harbors no aquatic fauna. Whether the six aquatic invertebrates discussed in this document occurred in these now dry spring sites is unconfirmed, but, given their current distribution in springs located upstream and downstream of these historic springs, we assume that they probably did. However, because these springs have been dry for many decades, they no longer provide habitat for the aquatic invertebrates.

Diamond Y Spring System

The Diamond Y Spring system is within the tributary drainage of Diamond Y Draw/Leon Creek that drains northeast to the Pecos River. Diamond Y Spring (previously called Willbank Spring) is located about 80 km (50 mi) due east of San Solomon Spring and about 12 km (8 mi) north of the City of Fort Stockton in Pecos County. The Diamond Y Spring system is composed of disjunct upper and lower watercourses, separated by about 1 km (0.6 mi) of dry stream channel.

The upper watercourse is about 1.5 km (0.9 mi) long and starts with the Diamond Y Spring head pool, which drains into a small spring outflow channel. The discharge from Diamond Y Spring is extremely small; between 2010 and 2013, the U.S. Geological Survey measured flows from Diamond Y Spring ranging from 0.0009 to 0.002 cms (0.03 to 0.09 cfs) (U.S. Geological Survey 2013, p. 1). The channel enters a broad valley and braids into numerous wetland areas and is augmented by numerous small seeps. The Diamond Y Spring outflow converges with the Leon Creek drainage and flows through a marsh-meadow, where it is then referred to as Diamond Y Draw; farther downstream the drainage is again named Leon Creek. All of the small springs and seeps and their outflow comprise the upper watercourse. These lateral water features, often not mapped, are spread across the flat, seasonally wetted area along Diamond Y Draw. Therefore, unlike other spring systems that have a relatively small footprint, aquatic habitat covers a relatively large area along the Diamond Y Draw.

The lower watercourse of Diamond Y Draw has a smaller head pool spring, referred to as Euphrasia Spring, with a small outflow stream as well as several isolated pools and associated seeps and wetland areas. The total length of the lower watercourse is about 1 km (0.6 mi) and has extended below the bridge at State Highway 18 during wetter seasons in the past. The upper watercourse is only hydrologically connected to the lower watercourse by surface flows during rare large rainstorm runoff events. The lower watercourse also contains small springs and seeps laterally separated from the main spring outflow channels.

All of the Diamond Y Spring area (both upper and lower watercourses and the area in between) occurs on the Diamond Y Spring Preserve, which is owned and managed by The Nature Conservancy. The Diamond Y Spring Preserve is 1,603 ha (3,962 ac) of contiguous land around Diamond Y Draw. The surrounding watershed and the land area over the contributing aquifers are all privately owned and managed as ranch land and have been extensively developed for oil and gas extraction. In addition, a natural gas

gathering and treating plant is located within 0.8 km (0.5 mi) upslope of the headpool in the upper watercourse of Diamond Y Spring (Hoover 2013, p. 2). Diamond Y Spring is also inhabited by two federally listed fishes, Leon Springs pupfish *(Cyprinodon bovinus)* and Pecos gambusia, as well as the federally endangered Pecos assiminea snail and the federally threatened Pecos sunflower. The only nonnative species of concern at Diamond Y Spring is the red-rim melania, which is only known to occur in the upper watercourse.

Substantial scientific uncertainty exists regarding the aquifer sources that provide the source water to the Diamond Y Springs. Preliminary studies by Boghici (1997, p. *v*) indicate that the spring flow at Diamond Y Spring originates chiefly from the Rustler aquifer waters underlying the Delaware Basin to the northwest of the spring outlets (Boghici and Van Broekhoven 2001, p. 219). The Rustler aquifer underlies an area of approximately 1,200 sq km (480 sq mi) encompassing most of Reeves County and parts of Culberson, Pecos, Loving, and Ward Counties (Boghici and Van Broekhoven 2001, p. 219). Much of the water contains high total dissolved solids (Boghici and Van Broekhoven 2001, p. 219) making it difficult for agricultural or municipal use; therefore, the aquifer has experienced only limited pumping in the past (Mace 2001, pp. 7–9). However, more recent studies by the U.S. Geological Survey suggest that the Rustler Aquifer only contributes some regional flow mixing with the larger Edwards–Trinity (Plateau) Aquifer in this area through geologic faulting and artesian pressure, as the Rustler Aquifer is deeper than the Edwards–Trinity Aquifer (Bumgarner 2012, p. 46; Ozuna 2013, p. 1). In contrast, the Texas Water Development Board indicates that the strata underlying the Edwards–Trinity (Plateau) Aquifer provide most of the spring flow at Diamond Y Spring and that the artesian pressure causing the groundwater to issue at Diamond Y Spring is likely from below the Rustler Aquifer (French 2013, pp. 2–3). The Middle Pecos Groundwater Conservation District suggested that Diamond Y Spring is a mixture of discharge from the Edwards–Trinity (Plateau) Aquifer and leakage from the other Permian-age formations, including the Rustler, Salado, Transill, and Yates formations and possibly even deeper strata below the Edwards–Trinity (Plateau) Aquifer (Gershon 2013, p. 6). Obviously, substantial uncertainty exists as to the exact nature of the groundwater sources for Diamond Y Spring.

Other springs in the area may have once provided habitat for the aquatic species but limited information is generally available on historic distribution of the invertebrates. Leon Springs, a large spring that historically occurred about 14 km (9 miles) upstream along Leon Creek, historically discharged about 0.7 cms (25 cfs) in 1920, 0.5 cms (18 cfs) in the 1930s, 0.4 cms (14 cfs) in the 1940s, and no discharge from 1958 to 1971 (Brune 1981, p. 359). Nearby groundwater pumping to irrigate farm lands began in 1946, which lowered the contributing aquifer by 40 m (130 feet) by the 1970s and resulted in the loss of the spring. The only circumstantial evidence that any of the three invertebrates that occur in nearby Diamond Y Spring may have occurred in Leon Springs is that the spring is within the same drainage and an endemic fish, Leon Springs pupfish, once occurred in both Diamond Y and Leon Springs.

Comanche Springs is another large historic spring located in the City of Fort Stockton. Prior to the 1950s, this spring discharged more than 1.2 cms (42 cfs) (Brune 1981, p. 358) and provided habitat for rare species of fishes and invertebrates. As a result of groundwater pumping for agriculture, the spring ceased flowing by 1962 (Brune 1981, p. 358), eliminating all aquatic-dependent plants and animals (Scudday 1977, pp. 515–518; Scudday 2003, pp. 135–136). Although we do not have data confirming that Comanche Springs was inhabited by all of the Diamond Y Spring species, we have evidence that at least the two snails (Diamond tryonia and Gonzales tryonia) occurred there at some time in the past (see *Taxonomy, Distribution, Abundance, and Habitat of Snails,* below).

Life History and Biology of Snails

The background information presented in this section applies to all four species of snails in these final rules: Phantom springsnail (*P. texana*), Phantom tryonia (*T. cheatumi*), Diamond tryonia (*P. adamantina*), and Gonzales tryonia (*T. circumstriata*). The Phantom springsnail is classified in the family Hydrobiidae (Hershler 2010, p. 247), and the other three snails are in the family Cochliopidae (Hershler *et al.* 2011, p. 1), formerly a subfamily of Hydrobiidae. All of the snails are strictly aquatic with respiration occurring through an internal gill. These type of snails (snails in the former family Hydrobiidae) typically reproduce several times during the spring to fall breeding season (Brown 1991, p. 292) and are sexually dimorphic (males and females are shaped differently), with females being characteristically larger and longer-lived than males. Snails in the genus *Pyrgulopsis* (Phantom springsnail) reproduce through laying a single small egg capsule deposited on a hard surface (Hershler 1998, p. 14). The other three snail species are ovoviviparous, meaning the larval stage is completed in the egg capsule, and upon hatching, the snails emerge into their adult form (Brusca and Brusca 1990, p. 759; Hershler and Sada 2002, p. 256). The lifespan of most aquatic snails is thought to be 9 to 15 months (Taylor 1985, p. 16; Pennak 1989, p. 552).

All of these snails are presumably fine-particle feeders on detritus (organic material from decomposing organisms) and periphyton (mixture of algae and other microbes attached to submerged surfaces) associated with the substrates (mud, rocks, and vegetation) (Allan 1995, p. 83; Hershler and Sada 2002, p. 256; Lysne *et al.* 2007, p. 649). Dundee and Dundee (1969, p. 207) found diatoms (a group of single-celled algae) to be the primary component in the digestive tract, indicating they are a primary food source.

These snails from west Texas occur in mainly flowing water habitats such as small springs, seeps, marshes, spring pools, and their outflows. Proximity to spring vents, where water emerges from the ground, plays a key role in the life history of springsnails. Many springsnail species exhibit decreased abundance farther away from spring vents, presumably due to their need for stable water chemistry (Hershler 1994, p. 68; Hershler 1998, p. 11; Hershler and Sada 2002, p. 256; Martinez and Thome 2006, p. 14). Several habitat parameters of springs, such as temperature, substrate type, dissolved carbon dioxide, dissolved oxygen, conductivity, and water depth have been shown to influence the distribution and abundance of other related species of springsnails (O'Brien and Blinn 1999, pp. 231–232; Mladenka and Minshall 2001, pp. 209–211; Malcom *et al.* 2005, p. 75; Martinez and Thome 2006, pp. 12–15; Lysne *et al.* 2007, p. 650). Dissolved salts such as calcium carbonate may also be important factors because they are essential for shell formation (Pennak 1989, p. 552). Hydrobiid snails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59).

Native fishes have been shown to prey upon these snails (Winemiller and Anderson 1997, pp. 209–210; Brown *et*

al. 2008, p. 489), but it is unknown to what degree predatory pressure may play a role in controlling population abundances or influencing habitat use. Currently no nonnative fishes occur in the springs where the species occur, so no unnatural predation pressure from fish is suspected.

Because of their small size and dependence on water, significant dispersal (in other words, movement between spring systems) does not likely occur, although on rare occasions aquatic snails have been transported by becoming attached to the feathers and feet of migratory birds (Roscoe 1955, p. 66; Dundee *et al.* 1967, pp. 89–90). In general, the species have little capacity to move beyond their isolated aquatic environments.

Taxonomy, Distribution, Abundance, and Habitat of Snails

Phantom Springsnail, *Pyrgulopsis texana* (Pilsbry 1935)

The Phantom springsnail was first described by Pilsbry (1935, pp. 91–92) as *Cochliopa texana.* It is a very small snail, measuring only 0.98 to 1.27 millimeters (mm) (0.04 to 0.05 inches (in)) long (Dundee and Dundee 1969, p. 207). Until 2010, the species was classified in the genus *Cochliopa* (Dundee and Dundee 1969, p. 209; Taylor 1987, p. 40). Hershler *et al.* (2010, pp. 247–250) reviewed the systematics of the species and transferred Phantom springsnail to the genus *Pyrgulopsis* after morphological and mitochondrial DNA analysis. Hershler *et al.* (2010, p. 251) also noted some minimal differences in shell size (individuals were smaller at East Sandia Spring) and mitochondrial DNA sequence variation among populations of Phantom springsnails in different springs. The low level of variation (small differences) among the populations did not support recognizing different conservation units for the species. Hershler *et al.* (2010, p. 251) expected this small difference among the populations because of their proximity (separated by 6 to 13 km (4 to 8 mi)) and the past connectedness of the aquatic habitats by Toyah Creek that would have allowed mixing of the populations before human alterations and declining flows. Based on these published studies we conclude that Phantom springsnail meets the definition of a species under the Act.

The Phantom springsnail occurs only in the four remaining desert spring outflow channels associated with the San Solomon Spring system (San Solomon, Phantom, Giffin, and East Sandia springs). Hershler *et al.* (2010, p. 250) did not include Giffin Spring in this species distribution, but unpublished data from Lang (2011, p. 5) confirms that the species is also found in Giffin Spring outflows as well as the other three springs in the San Solomon Spring system. The geographic extent of the historic range for the Phantom springsnail was likely not larger than the present range, but the species may have occurred in additional small springs contained within the current range of the San Solomon Spring system, such as Saragosa and Toyah Springs. It likely also had a larger distribution within Phantom Lake Spring and San Solomon Spring before the habitat there was modified and reduced in conversion of spring outflow channels into irrigation ditches.

Within its current, limited range, Phantom springsnails can exist in very high densities. Dundee and Dundee (1969, pp. 207) described the abundance of the Phantom springsnails at Phantom Lake Spring in 1968 as persisting ''in such tremendous numbers that the bottom and sides of the canal appear black from the cover of snails.'' Today the snails are limited to the small pool at the mouth of Phantom Cave and cannot be found in the irrigation canal downstream. At San Solomon Spring, Taylor (1987, p. 41) reported the Phantom springsnail was abundant and generally distributed in the canals from 1965 to 1981. Density data and simple population size estimates based on underwater observations indicate there may be over 3.8 million individuals of this species at San Solomon Spring (Bradstreet 2011, p. 55). Lang (2011) also reported very high densities (not total population estimates) of Phantom springsnails (with ± standard deviations): San Solomon Spring from 2009 sampling in the main canal, 71,740 per sq m (6,672 per sq ft; ±47,229 per sq m, ±4,393 per sq ft); Giffin Spring at road crossing in 2001, 4,518 per sq m (420 per sq ft; ±4,157 per sq m, ±387 per sq ft); East Sandia Spring in 2009, 41,215 per sq m (3,832 per sq ft; ±30,587 per sq m, ±2,845 per sq ft); and Phantom Lake Spring in 2009, 1,378 per sq m (128 per sq ft; ±626 per sq m, ±58 per sq ft). From these data, it is evident that when conditions are favorable, Phantom springsnails can reach tremendous population sizes in very small areas.

Phantom springsnails are found concentrated near the spring source (Hershler *et al.* 2010, p. 250) and can occur as far as a few hundred meters downstream of a large spring outlet like San Solomon Spring. Despite its common name, it has not been found within Phantom Cave proper, but only within the outflow of Phantom Lake Spring. Bradstreet (2011, p. 55) found the highest abundances of Phantom springsnails at San Solomon Spring outflows in the high-velocity areas in the irrigation canals and the lowest abundances in the San Solomon Ciénega. The species was not collected from the newest constructed ciénega in 2010. Habitat of the species is found on both soft and firm substrates on the margins of spring outflows (Taylor 1987, p. 41). They are also commonly found attached to plants, particularly in dense stands of submerged vegetation *(Chara* sp.). Field and laboratory experiments have suggested Phantom springsnails prefer substrates harder and larger in size (Bradstreet 2011, p. 91).

Phantom Tryonia, *Tryonia cheatumi* (Pilsbry 1935)

The Phantom tryonia was first described by Pilsbry (1935, p. 91) as *Potamopyrgus cheatumi.* The species was later included in the genus *Lyrodes* and eventually placed in the genus *Tryonia* (Taylor 1987, pp. 38–39). It is a small snail measuring only 2.9 to 3.6 mm (0.11 to 0.14 in) long (Taylor 1987, p. 39). Systematic studies of *Tryonia* snails in the Family Hydrobiidae using mitochondrial DNA sequences and morphological characters confirms the species is a ''true *Tryonia,*'' in other words, it is appropriately classified in the genus *Tryonia* (Hershler *et al.* 1999, p. 383; Hershler 2001, p. 6; Hershler *et al.* 2011, pp. 5–6). Based on these published studies, we conclude that Phantom tryonia meets the definition of a species under the Act.

The Phantom tryonia occurs only in the four remaining desert spring outflow channels associated with the San Solomon Spring system (San Solomon, Phantom, Giffin, and East Sandia springs) (Taylor 1987, p. 40; Allan 2011, p. 1; Lang 2011, entire). The historic range for the Phantom tryonia was likely not larger than present, but the species may have occurred in other springs within the San Solomon Spring system, such as Saragosa and Toyah Springs. It likely also had a wider distribution within Phantom Lake Spring and San Solomon Spring before the habitat there was modified and reduced.

Within its current, limited range, Phantom tryonia can have moderate densities of abundance, but have never been recorded as high as the Phantom springsnail. In the 1980s, Taylor (1987, p. 40) described Phantom tryonia as abundant in the outflow ditch several hundred meters downstream of Phantom Lake Spring. The snails are now limited to low densities in the small pool at the mouth of Phantom Cave and cannot be found in the

irrigation canal downstream as it does not have water (Allan 2009, p. 1). Density data and simple population size estimates based on underwater observations indicate that more than 460,000 individuals of this species may be at San Solomon Spring (Bradstreet 2011, p. 55). Lang (2011) reports the following densities (not population estimates) of Phantom tryonia (with ± standard deviations): San Solomon Spring from 2009 sampling in the main canal, 11,681 per sq m (1,086 per sq ft; ±11,925 per sq m, ±1,109 per sq ft); Giffin Spring at road crossing in 2001, 3,857 per sq m (358 per sq ft; ±6,110 per sq m, ±568 per sq ft); East Sandia Spring in 2009, 65,845 per sq m (6,123 per sq ft; ±60,962 per sq m, ±5,669 per sq ft); and Phantom Lake Spring in 2009, 31,462 per sq m (2,926 per sq ft; ±20,251 per sq m, ±1,883 per sq ft). Phantom tryonia can reach high population sizes in very small areas with favorable conditions.

Phantom tryonia are usually found concentrated near the spring source but once occurred as far as a few hundred meters downstream when Phantom Lake Spring was a large flowing spring (Dundee and Dundee 1969, p. 207; Taylor 1987, p. 40). The species is most abundant in the swimming pool at Balmorhea State Park, but has not been found in either of the constructed ciénegas at the Park in 2010 and 2011 (Allan 2011, p. 3; Bradstreet 2011, p. 55). The species is found on both soft and firm substrates on the margins of spring outflows (Taylor 1987, p. 41), and they are also commonly found attached to plants, particularly in dense stands of submerged vegetation (*Chara* sp.).

Diamond Tryonia, *Pseudotryonia adamantina* (Taylor 1987)

The Diamond tryonia was first described by Taylor (1987, p. 41) as *Tryonia adamantina.* It is a small snail measuring only 2.9 to 3.6 mm (0.11 to 0.14 in) long (Taylor 1987, p. 41). Systematic studies (Hershler *et al.* 1999, p. 377; Hershler 2001, pp. 7, 16) of these snails have been conducted using mitochondrial DNA sequences and morphological characters. These analyses resulted in the Diamond tryonia being reclassified into the new genus *Pseudotryonia* (Hershler 2001, p. 16). Based on these published studies, we conclude that Diamond tryonia meets the definition of a species under the Act.

Taylor (1985, p. 1; 1987, p. 38) was the earliest to document the distribution and abundance of aquatic snails in the Diamond Y Spring system, referencing surveys from 1968 to 1984. In 1968, the Diamond tryonia was considered abundant in the outflow of Diamond Y Spring in the upper watercourse for about 1.6 km (1 mi) downstream of the spring head pool, but by 1984 the species was present in only areas along stream margins (near the banks) (Taylor 1985, p. 1). Average density estimates in 1984 at 12 of 14 sampled sites in the upper watercourse ranged from 500 to 93,700 individuals per sq m (50 to 8,700 per sq ft), with very low densities in the upstream areas near the headspring (Taylor 1985, p. 25). However, the Diamond tryonia was largely absent from the headspring and main spring flow channel where it had been abundant in 1968 surveys (Taylor 1985, p. 13). Instead it was most common in small numbers along the outflow stream margins and lateral springs (Taylor 1985, pp. 13–15). Over time, the distribution of the Diamond tryonia in the upper watercourse has continued to recede so that it is no longer found in the outflow channel at all but may be restricted to small lateral spring seeps disconnected from the main spring flow channel (Landye 2000, p. 1; Echelle *et al.* 2001, pp. 24–25). Surveys by Lang (2011, pp. 7–8) in 2001 and 2003 found only 2 and 7 individuals, respectively, in the outflow channel of Diamond Y Spring. Additional surveys in 2009 and 2010 (Ladd 2010, p. 18; Lang 2011, p. 12) did not find Diamond tryonia in the upper watercourse. However, neither researcher surveyed extensively in the lateral spring seeps downstream from the main spring outflow.

The Diamond tryonia was not previously reported from the lower watercourse until first detected there in 2001 at the outflow of Euphrasia Spring (Lang 2011, p. 6). It was confirmed there again in 2009 (Lang 2011, p. 13) and currently occurs within at least the first 50 m (160 feet) in the outflow channel of Euphrasia Spring (Ladd 2010, p. 18). Ladd (2010, p. 37) roughly estimated the total number of Diamond tryonia in the lower watercourse to be about 35,000 individuals with the highest density reported as 2,500 individuals per sq m (230 per sq ft). Lang (2011, p. 13) estimated densities of Diamond tryonia in 2009 at 16,695 per sq m (1,552 per sq ft; ±18,212 per sq m, ±1,694 per sq ft) in Euphrasia Spring outflow, which suggests a much larger population than that estimated by Ladd (2010, p. 37).

In summary, the Diamond tryonia was historically common in the upper watercourse and absent from the lower watercourse. Currently it is very rare in the upper watercourse and limited to small side seeps (and may be extirpated), and it occurs in the lower watercourse in the outflow of Euphrasia Spring. The historic distribution of this species may have been larger than the present distribution. Other area springs nearby such as Leon and Comanche Springs may have harbored the species. There is one collection of very old, dead shells of the species that was made from Comanche Springs in 1998 (Worthington 1998, unpublished data) whose identification was recently confirmed as Diamond tryonia (Hershler 2011, pers. comm.). However, because these springs have been dry for more than four decades and shells can remain intact for thousands of years, it is impossible to know how old the shells might be. Therefore, we are unable to confirm if the recent historic distribution included Comanche Springs.

Habitat of the species is primarily soft substrates on the margins of small springs, seeps, and marshes in shallow flowing water associated with emergent bulrush *(Scirpus americanus)* and saltgrass *(Distichlis spicata)* (Taylor 1987, p. 38; Echelle *et al.* 2001, p. 5).

Gonzales Tryonia, *Tryonia circumstriata* (Leonard and Ho 1960)

The Gonzales tryonia was first described as a late Pleistocene fossil record, *Calipyrgula circumstriata,* from the Pecos River near Independence Creek in Terrell County, Texas (Leonard and Ho 1960, p. 126). The snail from Diamond Y Spring area was first described as *Tryonia stocktonensis* by Taylor (1987, p. 37). It is a small snail, measuring only 3.0 to 3.7 mm (0.11 to 0.14 in) long. Systematic studies later changed the name to *Tryonia circumstriata,* integrating it with the fossilized snails from the Pecos River (Hershler 2001, p. 7), and confirming the species as a ''true *Tryonia,*'' in other words, it is appropriately classified in the genus *Tryonia* (Hershler *et al.* 2011, pp. 5–6). Based on these published studies, we conclude that Gonzales tryonia meets the definition of a species under the Act.

Taylor (1985, pp. 18–19; 1987, p. 38) found Gonzales tryonia only in the first 27 m (90 ft) of the outflow from Euphrasia Spring. The species has been consistently found in this short stretch of spring outflow channel since then (Echelle *et al.* 2001, p. 20; Lang 2011, pp. 6, 13). Ladd (2010, pp. 23–24) reported that Gonzales tryonia no longer occurred in the lower watercourse and had been replaced by Diamond tryonia. However, reevaluation of voucher specimens collected by Lang (2011, p. 13) concurrently in 2009 with those by Ladd (2010, p. 14) confirmed the species is still present in the Euphrasia Spring

outflow channel of the lower watercourse.

Gonzales tryonia was first reported in the upper watercourse in 1991 during collections from one site in the Diamond Y Spring outflow and one small side seep near the spring head (Fullington and Goodloe 1991, p. 3). The species has since been collected from this area (Lang 2011, pp. 7–9), and Echelle *et al.* (2001, p. 20) found it to be the most abundant snail for the first 430 m (1,400 ft) downstream from the spring head. Ladd (2010, p. 18) also found Gonzales tryonia in the outflow of Diamond Y Spring, but only from 125 to 422 m (410 to 1,384 ft) downstream of the spring head (Ladd 2011, pers. comm.). The Gonzales tryonia appears to have replaced the Diamond tryonia in some of the habitat in the upper watercourse (Brown 2008, p. 489) since 1991.

Taylor (1985, p. 19) calculated densities for Gonzales tryonia in the outflow of Euphrasia Spring in the range of 50,480 to 85,360 individuals per sq m (4,690 to 7,930 individuals per sq ft) and estimated the population size in that 27-m (90-ft) stretch to be at least 162,000 individuals and estimated the total population of over one million individuals as a reasonable estimate. Lang (2011, p. 13) estimated the density of Gonzales tryonia in the Euphrasia Spring outflow to be 3,086 individuals per sq m (287 per sq ft; ±5,061 per sq m, ±471per sq ft). Ladd (2010, p. 37) estimated the population of Gonzales tryonia in the upper watercourse to be only about 11,000 individuals.

As with the Diamond tryonia, the historic distribution of the Gonzales tryonia may have been larger than the present distribution. Other area springs nearby such as Leon and Comanche Springs may have harbored the species. The identification of one collection of dead shells of the species that was made from Comanche Springs in 1998 (Worthington 1998, unpublished data) was recently confirmed as Gonzales tryonia (Hershler 2011, pers. comm.). However, because these springs have been dry for more than four decades and shells can remain intact for thousands of years, it is impossible to know how old the shells might be. Therefore, we are unable to confirm if the recent historic distribution included Comanche Springs.

Habitat of the species is primarily soft substrates on the margins of small springs, seeps, and marshes in shallow flowing water associated with emergent bulrush and saltgrass (Taylor 1987, p. 38; Echelle *et al.* 2001, p. 5).

Life History, Biology, and Habitat of Amphipods

The background information presented here applies to both species of amphipods in these final rules: Diminutive amphipod and Pecos amphipod. These amphipods, in the family Gammaridae, are small freshwater inland crustaceans sometimes referred to as freshwater shrimp. Gammarids commonly inhabit shallow, cool, well-oxygenated waters of streams, ponds, ditches, sloughs, and springs (Smith 2001, p. 574). These bottom-dwelling amphipods feed on algae, submergent vegetation, and decaying organic matter (Smith 2001, p. 572). Amphipod eggs are held within a marsupium (brood pouch) within the female's exoskeleton (Smith 2001, p. 573). Most amphipods complete their life cycle in 1 year and breed from February to October, depending on water temperature (Smith 2001, p. 572). Amphipods form breeding pairs that remain attached for 1 to 7 days at or near the substrate while continuing to feed and swim (Bousfield 1989, p. 1721). They can produce from 15 to 50 offspring, forming a ''brood.'' Most amphipods produce one brood, but some species produce a series of broods during the breeding season (Smith 2001, p. 573).

These two species, diminutive amphipod and Pecos amphipod, are part of a related group of amphipods, referred to as the *Gammarus pecos* species complex, that are restricted to desert spring systems from the Pecos River Basin in southeast New Mexico and west Texas (Cole 1985, p. 93; Lang *et al.* 2003, p. 47; Gervasio *et al.* 2004, p. 521). Similar to the snails, these freshwater amphipods are thought to have derived from a widespread ancestral marine amphipod that was isolated inland during the recession of the Late Cretaceous sea, about 66 million years ago (Holsinger 1967, pp. 125–133; Lang *et al.* 2003, p. 47). They likely evolved into distinct species during recent dry periods (since the Late Pleistocene, about 100,000 years ago) through allopatric speciation (that is, speciation by geographic separation) following separation and isolation in the remnant aquatic habitats associated with springs (Gervasio *et al.* 2004, p. 528).

Amphipods in the *Gammarus pecos* species complex occur only in desert spring outflow channels on substrates, often within interstitial spaces on and underneath rocks and within gravels (Lang *et al.* 2003, p. 49) and are most commonly found in microhabitats with flowing water. They are also commonly found in dense stands of submerged vegetation (Cole 1976, p. 80). Because of their affinity for constant water temperatures, they are most common in the immediate spring outflow channels, usually only a few hundred meters downstream of spring outlets.

Amphipods play important roles in the processing of nutrients in aquatic ecosystems and are also considered sensitive to changes in aquatic habitat conditions (for example, stream velocities, light intensity, zooplankton availability, and the presence of heavy metals) and are often considered ecological indicators of ecosystem health and integrity (Covich and Thorpe 1991, pp. 672–673, 679; Lang *et al.* 2003, p. 48). Water chemistry parameters, such as salinity, pH, and temperature, are also key components to amphipod habitats (Covich and Thorpe 1991, pp. 672–673).

Taxonomy, Distribution, and Abundance of Amphipods

Diminutive Amphipod, *Gammarus hyalleloides* Cole 1976

W.L. Minckley first collected the diminutive amphipod from Phantom Lake Spring in the San Solomon Spring system in 1967, and the species was first formally described by Cole (1976, pp. 80–85). The name comes from the species being considered the smallest of the known North American freshwater *Gammarus* amphipods. Adults generally range in length from 5 to 8 mm (0.20 to 0.24 in).

The literature has some disparity regarding the taxonomic boundaries for the amphipods from the San Solomon Spring system. In Cole's (1985, pp. 101–102) description of the *Gammarus pecos* species complex of amphipods based solely on morphological measurements, he considered the diminutive amphipod to be endemic only to Phantom Lake Spring, and amphipods from San Solomon and Diamond Y Springs were both considered to be the Pecos amphipod *(G. pecos).* This study did not include samples of amphipods from East Sandia or Giffin Springs. However, allozyme electrophoresis data on genetic variation strongly support that the populations from the San Solomon Spring system form a distinct group from the Pecos amphipod at Diamond Y Spring (Gervasio *et al.* 2004, pp. 523–530). Based on these data, we consider the Pecos amphipod to be limited to the Diamond Y Spring system.

The results of these genetic studies also suggested that the three *Gammarus* amphipod populations from San Solomon, Giffin, and East Sandia Springs are a taxonomically unresolved

group differentiated from the diminutive amphipod at Phantom Lake Spring (Gervasio *et al.* 2004, pp. 523–530). Further genetic analysis using mitochondrial DNA (mtDNA) by Seidel *et al.* (2009, p. 2309) also indicates that the diminutive amphipod may be limited to Phantom Lake Spring and the *Gammarus* species at the other three springs should be considered a new and undescribed species. However, the extent of genetic divergence measured between these populations is not definitive. For example, the 19-base pair divergence between the population at Phantom Lake Spring and the other San Solomon Spring system populations (Seidel *et al.* 2009, Figure 3, p. 2307) represents about 1.7 percent mtDNA sequence divergence (of the 1,100 base pairs of the mitochondrial DNA sequenced (using the cytochrome c oxidase I (COI) gene). This is a relatively low level of divergence to support species separation, as a recent review of a multitude of different animals (20,731 vertebrates and invertebrates) suggested that the mean mtDNA distances (using the COI gene) between subspecies is 3.78 percent (±0.16) divergence and between species is 11.06 percent (±0.53) divergence (Kartavtsev 2011, pp. 57–58).

Recent evaluations of species boundaries of amphipods from China suggest mtDNA genetic distances of at least 4 percent were appropriate to support species differentiation, and the species they described all exceeded 15 percent divergence (Hou and Li 2010, p. 220). In addition, no species descriptions using morphological or ecological analysis have been completed for these populations, which would be important information in any taxonomic revision (Hou and Li 2010, p. 216). Therefore, the data available does not currently support taxonomically separating the amphipod population at Phantom Lake Spring from the populations at San Solomon, Giffin, and East Sandia Springs into different listable entities under the Act. So, for the purposes of these final rules, based on the best available scientific information, we are including all four populations of *Gammarus* amphipods from the San Solomon Spring system as part of the *Gammarus hyalleloides* species (diminutive amphipod), and we consider diminutive amphipod to meet the definition of a species under the Act. We recognize that the taxonomy of these populations could change as additional information is collected and further analyses are published.

The diminutive amphipod occurs only in the four springs from the San Solomon Spring system (Gervasio *et al.* 2004, pp. 520–522). Available information does not indicate that the species' historic distribution was larger than the present distribution, but other area springs (such as Saragosa, Toyah, and West Sandia Springs) may have contained the species. However, because these springs have been dry for many decades, if the species historically occurred there, they are now extirpated. There is no opportunity to determine the full extent of the historic distribution of these amphipods because of the lack of historic surveys and collections.

Within its limited range, diminutive amphipod can be very abundant. For example, in May 2001, Lang *et al.* (2003, p. 51) estimated mean densities at San Solomon, Giffin, and East Sandia Springs of 6,833 amphipods per sq m (635 per sq ft; standard deviation ±5,416 per sq m, ±504 per sq ft); 1,167 amphipods per sq m (108 per sq ft; ±730 per sq m, ±68 per sq ft), and 4,625 amphipods per sq m (430 per sq ft; ±804 per sq m, ±75 per sq ft), respectively. In 2009 Lang (2011, p. 11) reported the density at Phantom Lake Spring as 165 amphipods per sq m (15 per sq ft; ±165 per sq m, ±15 per sq ft).

Pecos Amphipod, *Gammarus pecos* Cole and Bousfield 1970

The Pecos amphipod was first collected in 1964 from Diamond Y Spring and was described by Cole and Bousfield (1970, p. 89). Cole (1985, p. 101) analyzed morphological characteristics of the *Gammarus pecos* species complex and suggested the *Gammarus* amphipod from San Solomon Spring should also be included as Pecos amphipod. However, updated genetic analyses based on allozymes (Gervasio *et al.* 2004, p. 526) and mitochondrial DNA (Seidel *et al.* 2009, p. 2309) have shown that Pecos amphipods are limited in distribution to the Diamond Y Spring system. In addition, Gervasio *et al.* (2004, pp. 523, 526) evaluated amphipods from three different locations within the Diamond Y Spring system and found no significant differences in genetic variation, indicating they all represented a single species. Based on these published studies, we conclude that Pecos amphipod meets the definition of a species under the Act.

The Pecos amphipod is generally found in all the flowing water habitats associated with the outflows of springs and seeps in the Diamond Y Spring system (Echelle *et al.* 2001, p. 20; Lang *et al.* 2003, p. 51; Allan 2011, p. 2; Lang 2011, entire). Available information does not allow us to determine if the species' historic distribution was larger than the present distribution. Other area springs, such as Comanche and Leon Springs, may have contained the same or similar species of amphipod, but because these springs have been dry for many decades (Brune 1981, pp. 256–263, 382–386), there is no opportunity to determine the potential historic occurrence of amphipods. Pecos amphipods are often locally abundant, with reported mean densities ranging from 2,208 individuals per sq m (205 per sq ft; ±1,585 per sq m, ±147 per sq ft) to 8,042 individuals per sq m (748 per sq ft; ±7,229 per sq m, ±672 per sq ft) (Lang *et al.* 2003, p. 51).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, the Service determines whether a species is endangered or threatened because of 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.

Based on the similarity in geographic ranges and threats to habitats, we have divided this analysis into two sections, one covering the three species from the San Solomon Spring system and then a second analysis covering the three species from the Diamond Y Spring system. After each analysis we provide our determinations for each species.

San Solomon Spring Species—Phantom springsnail, Phantom tryonia, and Diminutive Amphipod

The following analysis applies to the three species that occur in the San Solomon Spring system in Reeves and Jeff Davis Counties, Texas: Phantom springsnail, Phantom tryonia, and diminutive amphipod.

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range (San Solomon Spring Species)

The three species in the San Solomon Spring system are threatened by the past and future destruction of their habitat and reduction in their range. The discussion below evaluates the stressors

of: (1) Spring flow declines; (2) water quality changes and contamination; and (3) modification of spring channels.

Spring Flow Declines

The primary threat to the continued existence of the San Solomon Spring species is the degradation and potential future loss of aquatic habitat (flowing water from the spring outlets) due to the decline of groundwater levels in the aquifers that support spring surface flows. Habitat for these species is exclusively aquatic and completely dependent on spring flows emerging to the surface from underground aquifer sources. Spring flows throughout the San Solomon Spring system have and continue to decline in flow rate, and as spring flow declines, available aquatic habitat is reduced and altered. If one spring ceases to flow continually, all habitats for the Phantom springsnail, Phantom tryonia, and diminutive amphipod are lost, and the populations will be extirpated. If all of the springs lose consistent surface flows, all natural habitats for these aquatic invertebrates will be gone, and the species will become extinct.

The springs do not have to cease flowing completely to have an adverse effect on invertebrate populations. The small size of the spring outflows at Phantom, Giffin, and East Sandia Springs makes them particularly susceptible to changes in water chemistry, increased water temperatures during the summer and freezing in the winter. Because these springs are small, any reductions in the flow rates from the springs can reduce the quantity and quality of available habitat for the species, which decreases the number of individuals available and increases the risk of extinction. Water temperatures and chemical factors in springs, such as dissolved oxygen and pH, do not typically fluctuate to a large degree (Hubbs 2001, p. 324), and invertebrates are narrowly adapted to spring conditions and are sensitive to changes in water quality (Hershler 1998, p. 11; Sada 2008, p. 69). Spring flow declines can lead to the degradation and loss of aquatic invertebrate habitat and present a substantial threat to these species.

The precise reason for the declining spring flows remains uncertain, but it is presumed to be related to a combination of groundwater pumping, mainly for agricultural irrigation, and a lack of natural recharge to the supporting aquifers due to limited rainfall and geologic circumstances that prevent recharge. In addition, future changes in the regional climate are expected to exacerbate declining flows. The San Solomon Spring system historically may have had a combined discharge of about 2.8 cms (100 cfs) or 89 million cubic meters per year (cmy) (72,000 acre-feet per year (afy)) (Beach *et al.* 2004, p. 4–53), while today the total discharge is roughly one-third that amount. Some smaller springs, such as Saragosa, Toyah, and West Sandia Springs have already ceased flowing and likely resulted in the extirpation of local populations of these species (assuming they were present there historically). The most dramatic recent decline in flow rates have been observed at Phantom Lake Spring, which is the highest elevation spring in the system and, not unexpectedly, was the first large spring to cease flowing.

Phantom Lake Spring was historically a large desert ciénega with a pond of water more than several acres in size (Hubbs 2001, p. 307). The spring outflow is at about 1,080 m (3,543 ft) in elevation and previously provided habitat for the endemic native aquatic fauna. The outflow from Phantom Lake Spring was originally isolated from the other surface springs in the system, as the spring discharge quickly recharged back underground (Brune 1981, p. 258). Human modifications to the spring outflow captured and channeled the spring water into a canal system for use by local landowners and irrigation by the local water users (Simonds 1996, p. 3). The outflow canal joins the main San Solomon canal within Balmorhea State Park. Despite the significant habitat alterations, the native aquatic fauna (including these three invertebrates) have persisted, though in much reduced numbers of total individuals, in the small pool of water at the mouth of the spring.

Flows from Phantom Lake Spring have been steadily declining since measurements were first taken in the 1930s (Brune 1981, p. 259). Discharge data have been recorded from the spring at least six to eight times per year since the 1940s by the U.S. Geological Survey, and the record shows a steady decline of base flows from greater than 0.3 cms (10 cfs) in the 1940s to 0 cms (0 cfs) in 1999 (Service 2009b, p. 23). The data also show that the spring can have short-term flow peaks resulting from local rainfall events in the Davis Mountains (Sharp *et al.* 1999, p. 4; Chowdhury *et al.* 2004, p. 341). These flow peaks are from fast recharge of the local aquifer system and discharge through the springs. The flow peaks do not come from direct surface water runoff because the outflow spring is within an extremely small surface drainage basin that is not connected to surface drainage basins from the Davis Mountains upslope. However, after each flow increase, the base flow has returned to the same declining trend within a few months.

Exploration of Phantom Cave by cave divers has led to additional information about the nature of the spring and its supporting aquifer. More than 2,440 m (8,000 ft) of the underwater cave have been mapped. Beyond the entrance, the cave is a substantial conduit that transports a large volume of water, in the 0.6 to 0.7 cms (20 to 25 cfs) range, generally from the northwest to the southeast (Tucker 2009, p. 8), consistent with regional flow pattern hypothesis (Chowdhury *et al.* 2004, p. 319). The amount of water measured is in the range of the rate of flow at San Solomon Spring and, along with water chemistry data (Chowdhury *et al.* 2004, p. 340), confirms that the groundwater flowing by Phantom Lake Spring likely discharges at San Solomon Spring. Tucker (2009, p. 8) recorded a 1-m (3-ft) decline in the water surface elevation within the cave between 1996 and 2009 indicating a decline in the amount of groundwater flowing through Phantom Cave.

Phantom Lake Spring ceased flowing in about 1999 (Allan 2000, p. 51; Service 2009b, p. 23). All that remained of the spring outflow habitat was a small pool of water with about 37 sq m (400 sq ft) of wetted surface area. Hubbs (2001, pp. 323–324) documented changes in water quality (increased temperature, decreased dissolved oxygen, and decreased coefficient of variation for pH, turbidity, ammonia, and salinity) and fish community structure at Phantom Lake Spring following cessation of natural flows. In May 2001, the U.S. Bureau of Reclamation, in cooperation with the Service, installed an emergency pump system to bring water from within the cave to the springhead in order to prevent complete drying of the pool and loss of the federally listed endangered fishes and candidate invertebrates that occur there. Habitat for the San Solomon Spring system invertebrates continues to be maintained at Phantom Lake Spring, and in 2011 the small pool was enlarged, nearly doubling the amount of aquatic habitat available for the species (Service 2012, entire).

The three San Solomon Spring species have maintained minimal populations at Phantom Lake Spring despite the habitat being drastically modified from its original state and being maintained by a pump system since 2000. However, because the habitat is sustained with a pump system, the risk of extirpation of these populations continues to be extremely high from the potential for a pump

failure or some unforeseen event. For example, the pump system failed several times during 2008, resulting in stagnant pools and near drying conditions, placing severe stress on the invertebrate populations (Allan 2008, pp. 1–2). Substantial efforts were implemented in 2011 to improve the reliability of the pump system and the quality of the habitat (Service 2012, pp. 5–9). However, because the habitat is completely maintained by artificial means, the potential loss of the invertebrate population will continue to be an imminent threat of high magnitude to the populations at Phantom Lake Spring.

Although long-term data for San Solomon Spring flows are limited, they appear to have declined somewhat over the history of record, though not as severely as Phantom Lake Spring (Schuster 1997, pp. 86–90; Sharp *et al.* 1999, p. 4). Some recent declines in overall flow have likely occurred due to drought conditions and declining aquifer levels (Sharp *et al.* 2003, p. 7). San Solomon Spring discharges are usually in the 0.6 to 0.8 cms (25 to 30 cfs) range (Ashworth *et al.* 1997, p. 3; Schuster 1997, p. 86) and are consistent with the theory that the water bypassing Phantom Lake Spring discharges at San Solomon Spring.

In Giffin Spring, Brune (1981, pp. 384–385) documented a gradual decline in flow between the 1930s and 1970s, but the discharge has remained relatively constant since that time, with outflow of about 0.08 to 0.1 cms (3 to 4 cfs) (Ashworth *et al.* 1997, p. 3; U.S. Geological Survey 2012, p. 2). Although the flow rates from Giffin Spring appear to be steady in recent years, its small size makes the threat of spring flow loss imminent and of high magnitude because even a small decline in flow rate may have substantial impacts on the habitat provided by the spring flow. Also, it would only take a small decline in spring flow rates to result in desiccation of the spring.

Brune (1981, p. 385) noted that flows from Sandia Springs (combining East and West Sandia Springs) were declining up until 1976. East Sandia may be very susceptible to overpumping of the local aquifer in the nearby area that supports the small spring. Measured discharges in 1995 and 1996 ranged from 0.013 to 0.12 cms (0.45 to 4.07 cfs) (Schuster 1997, p. 94). Like the former springs of West Sandia and Saragosa, which also originated in shallow aquifers and previously ceased flowing (Ashworth *et al.* 1997, p. 3), East Sandia Spring's very small volume of water makes it particularly at risk of failure from any local changes in groundwater conditions.

The exact causes for the decline in flow from the San Solomon Spring system are unknown. Some of the possible reasons, which are likely acting together, include groundwater pumping of the Salt Basin Bolson aquifer areas west of the springs, long-term climatic changes, or changes in the geologic structure (through opening of fractures or conduits through dissolution, tectonic activity, or changing sediment storage in conduits) that may affect regional flow of groundwater (Sharp *et al.* 1999, p. 4; Sharp *et al.* 2003, p. 7). Studies indicate that the base flows originate from ancient waters to the west (Chadhury *et al.* 2004, p. 340) and that many of the aquifers in west Texas receive little to no recharge from precipitation (Scanlon *et al.* 2001, p. 28) and are influenced by regional groundwater flow patterns (Sharp 2001, p. 41).

Ashworth *et al.* (1997, entire) conducted a brief study to examine the cause of declining spring flows in the San Solomon Spring system. They concluded that declines in spring flows in the 1990s were more likely the result of diminished recharge due to the extended dry period rather than from groundwater pumping (Ashworth *et al.* 1997, p. 5). Although possibly a factor, drought is unlikely the only reason for the declines because the drought of record in the 1950s had no measurable effect on the overall flow trend at Phantom Lake Spring (Allan 2000, p. 51; Sharp 2001, p. 49) and because the contributing aquifer receives virtually no recharge from most precipitation events (Beach *et al.* 2004, pp. 6–9, 8–9). Also, Ashworth *et al.* (1997, entire) did not consider the effects of the regional flow system in relation to the declining spring flows. Further, an assessment of the springs near Balmorhea by Sharp (2001, p. 49) concluded that irrigation pumping since 1945 has caused many springs in the area to cease flowing, lowering water-table elevations and creating a cone of depression in the area (that is, a lowering of the groundwater elevation around pumping areas).

The Texas Water Development Board (2005, entire) completed a comprehensive study to ascertain the potential causes of spring flow declines in the San Solomon Spring system, including a detailed analysis of historic regional groundwater pumping trends. The study was unable to quantify direct correlations between changes in groundwater pumping in the surrounding counties and spring flow decline over time at Phantom Lake Spring (Texas Water Development Board 2005, p. 93). However, they suggested that because of the large distance between the source groundwater and the springs and the long travel time for the water to reach the spring outlets, any impacts of pumping are likely to be reflected much later in time (Texas Water Development Board 2005, p. 92). The authors did conclude that groundwater pumping will impact groundwater levels and spring flow rates if it is occurring anywhere along the flow path system (Texas Water Development Board 2005, p. 92).

Groundwater pumping for irrigated agriculture has had a measurable effect on groundwater levels in the areas that likely support the spring flows at the San Solomon Spring system. For example, between the 1950s and 2000 the Salt Basin Bolson aquifer in Lobo Flat fell in surface elevation in the range of 15 to 30 m (50 to near 100 ft), and in Wild Horse Flat from 6 to 30 m (20 to 50 ft) (Angle 2001, p. 248; Beach *et al.* 2004, p. 4–9). Beach *et al.* (2004, p. 4–10) found significant pumping, especially in the Wild Horse Flat area, locally influences flow patterns in the aquifer system. The relationship of regional flow exists because Wild Horse Flat is located in the lowest part of the hydraulically connected Salt Basin Bolson aquifer, and next highest is Lobo, followed by Ryan Flat, which is at the highest elevations (Beach *et al.* 2004, p. 9–32). This means that water withdrawn from any southern part of the basin (Ryan and Lobo Flats) may affect the volume of water discharging out of Wild Horse Flat toward the springs. Because these bolson aquifers have little to no direct recharge from precipitation (Beach *et al.* 2004, pp. 6–9, 8–9), these groundwater declines can be expected to permanently reduce the amount of water available for discharge in the springs in the San Solomon Spring system. This is evidenced by the marked decline of groundwater flow out of the Wild Horse Flat toward the southeast (the direction of the springs) (Beach *et al.* 2004, p. 9–27). Based on this information, it appears reasonable that past and future groundwater withdrawals in the Salt Basin Bolson aquifers are likely one of the causes of decreased spring flows in the San Solomon Spring system.

Groundwater pumping withdrawals in Culberson, Jeff Davis, and Presidio Counties in the Salt Basin Bolson aquifer are expected to continue in the future mainly to support irrigated agriculture (Region F Water Planning Group 2010, pp. 2–16–2–19) and is expected to result in continued lowering of the groundwater levels in the Salt

Basin Bolson aquifer. The latest plans from Groundwater Management Area 4 (the planning group covering the relevant portion of the Salt Basin Bolson aquifer) expect over 69 million cubic m (56,000 af) of groundwater pumping per year for the next 50 years, resulting in an average drawdown of 22 to 24 m (72 to 78 feet) in the West Texas Bolsons (Salt Basin) aquifer by 2060 (Adams 2010, p. 2; Oliver 2010, p. 7). No studies have evaluated the effects of this level of anticipated drawdown on spring flows. The aquifer in the Wild Horse Flat area (a likely spring source for the San Solomon Spring system) can range from 60 to 300 m (200 to 1,000 ft) thick. So although it is impossible to determine precisely, we anticipate the planned level of groundwater drawdown will likely result in continued future declines in spring flow rates in the San Solomon Spring system. This decline in spring flows will further limit habitat available to the invertebrate species and increase their risk of extinction.

Another reason that spring flows may be declining is from an increase in the frequency and duration of local and regional drought associated with climatic changes. 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).

Although the bulk of spring flows appear to originate from ancient water sources with limited recent recharge, any decreases in regional precipitation patterns due to prolonged drought will further stress groundwater availability and increase the risk of diminishment or drying of the springs. Drought affects both surface and groundwater resources and can lead to diminished water quality (Woodhouse and Overpeck 1998, p. 2693) in addition to reducing groundwater quantities. Lack of rainfall may also indirectly affect aquifer levels by resulting in an increase in groundwater pumping to offset water shortages from low precipitation (Mace and Wade 2008, p. 665).

Recent drought conditions may be indicative of more common future conditions. The current, multiyear drought in the western United States, including the Southwest, is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1642). In 2011, Texas experienced the worst annual drought since recordkeeping began in 1895 (NOAA 2012, p. 4), and only one other year since 1550 (the year 1789) was as dry as 2011 based on tree-ring climate reconstruction (NOAA 2011, pp. 20–22). In addition, numerous climate change models predict an overall decrease in annual precipitation in the southwestern United States and northern Mexico.

Future global climate change may result in increased magnitude of droughts and further contribute to impacts on the aquatic habitat from reduction of spring flows. There is high confidence that many semi-arid areas like the western United States will suffer a decrease in water resources due to ongoing climate change (IPCC 2007b, p. 7; Karl *et al.* 2009, pp. 129–131), as a result of less annual mean precipitation. Milly *et al.* (2005, p. 347) also project a 10 to 30 percent decrease in precipitation in mid-latitude western North America by the year 2050 based on an ensemble of 12 climate models. Even under lower greenhouse gas emission scenarios, recent projections forecast a 10 percent decline in precipitation in western Texas by 2080 to 2099 (Karl *et al.* 2009, pp. 129–130). Assessments of climate change in west Texas suggest that the area is likely to become warmer and at least slightly drier (Texas Water Development Board 2008, pp. 22–25).

The potential effects of future climate change could reduce overall water availability in this region of western Texas and compound the stressors associated with declining flows from the San Solomon Spring system. As a result of the effects of increased drought, spring flows could decline indirectly as a result of increased pumping of groundwater to accommodate human needs for additional water supplies (Mace and Wade 2008, p. 664; Texas Water Development Board 2012c, p. 231).

In conclusion, the Phantom springsnail, Phantom tryonia, and diminutive amphipod all face significant threats from the current and future loss of habitat associated with declining spring flows. Some springs in the San Solomon Spring system have already gone dry, and aquatic habitat at Phantom Lake Spring has not yet been lost only because of the maintenance of a pumping system. While the sources of the stress of declining spring flows are not known for certain, the best available scientific information indicates that it is the result of a combination of factors including past and current groundwater pumping, the complex hydrogeologic conditions that produce these springs (ancient waters from a regional flow system), and climatic changes (decreased precipitation and recharge). The threat of habitat loss from declining spring flows affects all four of the remaining populations, as all are at risk of future loss from declining spring flows. All indications are that the source of this threat will persist into the future and will result in continued degradation of the species' habitats, putting the Phantom springsnail, Phantom tryonia, and diminutive amphipod at a high risk of extinction.

Water Quality Changes and Contamination

Another potential factor that could impact habitat of the San Solomon Spring species is the potential degradation of water quality from point and nonpoint pollutant sources. This pollution can occur either directly into surface water or indirectly through contamination of groundwater that discharges into spring run habitats used by the species. The main source for contamination in these springs comes from herbicide and pesticide use in nearby agricultural areas. There are no oil and gas operations in the area around the San Solomon Spring system.

These aquatic invertebrates are sensitive to water contamination. Hydrobiid snails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are considered very sensitive to habitat degradation (Covich and Thorpe 1991, pp. 676–677).

The exposure of the spring habitats to pollutants is limited because most of the nearby agricultural activity mainly occurs in downstream areas where herbicide or pesticide use would not likely come into contact with the species or their habitat in upstream spring outlets. To ensure these pollutants do not affect these spring outflow habitats, their use has been limited in an informal protected area in the outflows of San Solomon and Giffin Springs (Service 2004, pp. 20–21). This area was developed in cooperation with the U.S. Environmental Protection Agency and the Texas Department of Agriculture and has little to no agricultural activities. While more agricultural activities occur far upstream in the aquifer source area, available

information does not lead to concern about contaminants from those sources.

In addition, the Texas Parks and Wildlife Department completed a Habitat Conservation Plan and received an incidental take permit (Service 2009a, entire) in 2009 under section 10(a)(1)(B) (U.S.C. 1539(a)(1)(B)) of the Act for management activities at Balmorhea State Park (Texas Parks and Wildlife Department 1999, entire). The three aquatic invertebrate candidate species from the San Solomon Spring system were all included as covered species in the permit (Service 2009a, pp. 20–22). This permit authorizes ''take'' of the invertebrates (which were candidates at the time of issuance) in the State Park for ongoing management activities while minimizing impacts to the aquatic species. The activities included in the Habitat Conservation Plan are a part of Texas Parks and Wildlife Department's operation and maintenance of the State Park, including the drawdowns associated with cleaning the swimming pool and vegetation management within the refuge canal and ciénega. The Habitat Conservation Plan also calls for restrictions and guidelines for chemical use in and near aquatic habitats to avoid and minimize impacts to the three aquatic invertebrate species (Service 2009a, pp. 9, 29–32).

Because the use of potential pollutants is very limited within the range of the San Solomon Spring species, at this time we do not find that the Phantom springsnail, Phantom tryonia, and diminutive amphipod are at a heightened risk of extinction from water quality changes or contamination.

Modification of Spring Channels

The natural ciénega habitats of the San Solomon Spring system have been heavily altered over time primarily to accommodate agricultural irrigation. Most significant was the draining of wetland areas and the modification of spring outlets to develop the water resources for human use. San Solomon and Phantom Lake Springs have been altered the most severely through capture and diversion of the spring outlets into concrete irrigation canals. Giffin Spring appears to have been dredged in the past, and the outflow is now immediately captured in high-banked, earthen-lined canals. The outflow of East Sandia Spring does not appear to have been altered in an appreciable way, but it may have been minimally channelized to connect the spring flow to the irrigation canals.

The Reeves County Water Improvement District No. 1 maintains an extensive system of about 100 km (60 mi) of irrigation canals that now provide only minimal aquatic habitat for the invertebrate species near the spring sources. Most of the canals are concrete-lined with high water velocities and little natural substrate available. Many of the canals are also regularly dewatered as part of the normal water management operations. Before the canals were constructed, the suitable habitat areas around the spring openings, particularly at San Solomon Spring, were much larger in size. The conversion of the natural aquatic mosaic of habitats into linear irrigation canals represents a past impact resulting in significant habitat loss and an increase in the overall risk of extinction by lowering the amount of habitat available to the species and, therefore, lowering the overall number of individuals in the populations affected. These reductions in population size result in an increase in the risk of extirpation of local populations and, ultimately, the extinction of the species as a whole. Because the physical conditions of the spring channels have changed dramatically in the past, the species are now at a greater risk of extinction because of the alterations to the ecosystem and the overall lower number of individuals likely making up the populations.

A number of efforts have been undertaken at Balmorhea State Park to conserve and maintain aquatic habitats at some of the spring sites to conserve habitat for the native aquatic species. First, a refuge canal encircling the historic motel was built in 1974 to create habitat for the endangered fishes, Comanche Springs pupfish and Pecos gambusia (Garrett 2003, p. 153). Although the canal was concrete-lined, it had moderate water velocities, and natural substrates covered the wide concrete bottom and provided usable habitat for the aquatic invertebrates. Second, the 1-ha (2.5-ac) San Solomon Ciénega was built in 1996 to create an additional flow-through pond of water for habitat of the native aquatic species (Garrett 2003, pp. 153–154). Finally, during 2009 and 2010, a portion of the deteriorating 1974 refuge canal was removed and relocated away from the motel. The wetted area was expanded to create a new, larger ciénega habitat. This was intended to provide additional natural habitat for the federally listed endangered fishes and candidate invertebrates (Service 2009c, p. 3; Lockwood 2010, p. 3). All of these efforts have been generally successful in providing additional habitat areas for the aquatic invertebrates.

Conservation efforts have attempted to maintain suitable spring habitat conditions at Phantom Lake Spring. Here a pupfish refuge canal was built in 1993 (Young *et al.* 1993, pp. 1–3) to increase the available aquatic habitat that had been destroyed by the irrigation canal. Winemiller and Anderson (1997, pp. 204–213) showed that the refuge canal was used by endangered fish species when water was available. Stomach analysis of the endangered pupfish from Phantom Lake Spring showed that the Phantom springsnail and diminutive amphipod were a part of the fish's diet (Winemiller and Anderson 1997, pp. 209–210), indicating that the invertebrates also used the refuge canal. The refuge canal was constructed for a design flow down to about 0.01 cms (0.5 cfs), which at the time of construction was the lowest flow ever recorded out of Phantom Lake Spring. The subsequent loss of spring flow eliminated the usefulness of the refuge canal because the canal went dry beginning in about 2000.

All the water for the remaining spring head pool at Phantom Lake Spring is being provided by a pump system to bring water from about 23 m (75 ft) within the cave out to the surface. The small outflow pool was enlarged in 2011 (U.S. Bureau of Reclamation 2011, p. 1; Service 2012, entire) to encompass about 75 sq m (800 sq ft) of wetted area. In 2011, the pool was relatively stable, and all three of the San Solomon Spring invertebrates were present (Allan 2011, p. 3; Service 2012, p. 9).

In summary, the modifications to the natural spring channels at San Solomon, Phantom Lake, and Giffin Springs represent activities that occurred in the past and resulted in a deterioration of the available habitat for the Phantom springsnail, Phantom tryonia, and diminutive amphipod. Actions by conservation agencies over the past few decades have mitigated the impacts of those actions by restoring some natural functions to the outflow channels. While additional impacts from modifications are not likely to occur in the future because of land ownership by conservation entities at three of the four spring sites, the past modifications have contributed to the vulnerability of these species by reducing the overall quantity of available habitat and, therefore, reducing the number of individuals of each species that can inhabit the spring outflows. The lower the overall number of individuals of each species and the lower the amount of available habitat, the greater the risk of extinction. Therefore, the modification of spring channels contributes to increased risk of extinction in the future as a consequence of the negative impacts of the past actions.

Other Conservation Efforts

All four of these springs in the San Solomon Spring system are inhabited by two fishes federally listed as endangered—Comanche Springs pupfish (Service 1981, pp. 1–2) and Pecos gambusia (Service 1983, p. 4). Critical habitat has not been designated for either species. In addition, East Sandia Spring is also inhabited by the federally threatened Pecos sunflower (Service 2005, p. 4) and the federally endangered Pecos assiminea snail (Service 2010, p. 5). Both the Pecos sunflower and the Pecos assiminea snail also have critical habitat designated at East Sandia Spring (73 FR 17762, April 1, 2008; 76 FR 33036, June 7, 2011, respectively).

The Phantom springsnail, Phantom tryonia, and diminutive amphipod have been afforded some protection indirectly in the past due to the presence of these other listed species in the same locations. Management and protection of the spring habitats by the Texas Parks and Wildlife Department at San Solomon Spring, U.S. Bureau of Reclamation at Phantom Lake Spring, and The Nature Conservancy at East Sandia Spring have benefited the aquatic invertebrates. However, the primary threat from the loss of habitat due to declining spring flows related to groundwater changes have not been abated by the Federal listing of the fish or other species. Therefore, the conservation efforts provided by the concomitant occurrence of species already listed under the Act have not prevented the past and ongoing habitat loss, nor is it expected to prevent future habitat loss.

Summary of Factor A

Based on our evaluation of the best available information, we conclude that habitat loss and modification of the Phantom springsnail, Phantom tryonia, and diminutive amphipod is a threat that has significant effects on the populations of these species. Some of these impacts occurred in the past from the loss of natural spring flows at several springs likely within the historic range. The impacts are occurring now and are likely to continue in the future throughout the current range as groundwater levels decline and increase the possibility of the loss of additional springs. As additional springs are lost, the number of populations will decline and further increase the risk of extinction of these species. The sources of this threat are not confirmed but are presumed to include a combination of factors associated with groundwater pumping, hydrogeologic structure of the supporting groundwater, and climatic changes. The risk of extinction is also heightened by the past alteration of spring channels reducing the available habitat and the number of individuals in each population.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes (San Solomon Spring Species)

Very few people are interested in, or study, springsnails and amphipods, and those who do are sensitive to their rarity and endemism. Consequently, collection for scientific or educational purposes is very limited. We know of no commercial or recreational uses of these invertebrates. For these reasons we conclude that overutilization for commercial, recreational, scientific, or educational purposes is currently not a threat to the Phantom Lake snail, Phantom tryonia, and diminutive amphipod, and we have no indication that these factors will affect these species in the future.

C. Disease or Predation (San Solomon Spring Species)

The San Solomon Spring species are not known to be affected by any disease. These invertebrates are likely natural prey species for fishes and crayfishes that occur in their habitats. Native snails and amphipods have been found as small proportions of the diets of native fishes at San Solomon and Phantom Lake Springs (Winemiller and Anderson 1997, p. 201; Hargrave 2010, p. 10), and various species of crayfishes are known predators of snails (Hershler 1998, p. 14; Dillon 2000, pp. 293–294). Bradstreet (2011, p. 98) assumed that snails at San Solomon Spring were prey for both fishes and crayfishes and suspected that the native snails may be more susceptible than the nonnative snails because of their small body size and thinner shells. In addition, Ladd and Rogowski (2012, p. 289) suggested that the nonnative red-rim melania *(Melanoides tuberculata)* may prey upon native snail eggs of a different species. However, our knowledge of such predation is very limited, and the extent to which the predation might affect native springsnails is unknown. For more discussion about red-rim melania, see ''Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.'' We are not aware of any other information indicating that the San Solomon Spring species are affected by disease or predation factors. For these reasons we conclude that disease or predation are not threats that have a significant effect on the Phantom Lake snail, Phantom tryonia, and diminutive amphipod. We have no indication that this threat will have an increased effect on these species in the future.

D. The Inadequacy of Existing Regulatory Mechanisms (San Solomon Spring Species)

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under Factors A and E. Section 4(b)(1)(A) of the Endangered Species 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. . . .'' We interpret this language to require the Service to consider relevant Federal, State, and Tribal laws or regulations that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. An example would be the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are nondiscretionary and enforceable, and are considered a regulatory mechanism under this analysis. Other examples include State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the three San Solomon Spring species.

Texas laws provide no specific protection for these invertebrate species, as they are not listed as threatened or endangered by the Texas Parks and Wildlife Department. However, even if they were listed by the State, those regulations (Title 31 Part 2 of Texas Administrative Code) would only prohibit the taking, possession, transportation, or sale of any animal species without the issuance of a permit. The State makes no provision for the protection of the habitat of listed species, which is the main threat to these aquatic invertebrates.

Some protection for the habitat of this species is provided with the land ownership of the springs by Federal (Phantom Lake Spring owned by the

U.S. Bureau of Reclamation) and State (San Solomon Spring owned by Texas Parks and Wildlife Department) agencies, and by The Nature Conservancy (East Sandia Spring). However, this land ownership provides some protection to the spring outflow channels only and provides no protection for maintaining groundwater levels to ensure continuous spring flows.

In the following discussion, we evaluate the existing local regulations related to groundwater management within areas that might provide indirect benefits to the species' habitats through management of groundwater levels.

Local Groundwater Regulations

One regulatory mechanism that provides some protection to the spring flows for these species comes from local groundwater conservation districts. Groundwater in Texas is generally governed by the rule of capture unless there is a groundwater district in place. The rule of capture allows a landowner to produce as much groundwater as he or she chooses, as long as the water is not wasted (Mace 2001, p. 11). However, local groundwater conservation districts have been established throughout much of Texas and are now the preferred method for groundwater management in the State (Texas Water Development Board 2012, pp. 23–258). Groundwater districts ''may regulate the location and production of wells, with certain voluntary and mandatory exemptions'' (Texas Water Development Board 2012, p. 27).

In the area west of the springs, currently four local groundwater districts could possibly manage groundwater to protect spring flows in the San Solomon Spring system (Texas Water Development Board 2011, p. 1). The Culberson County Groundwater Conservation District covers the southwestern portion of Culberson County and was confirmed (established by the Texas legislature and approved by local voters) in 1998. The Jeff Davis County Underground Water Conservation District covers all of Jeff Davis County and was confirmed in 1993. The Presidio County Underground Water Conservation District covers all of Presidio County and was confirmed in 1999. The Hudspeth County Underground Water District No. 1 covers the northwest portion of Hudspeth County and was confirmed in 1957. This area of Hudspeth County manages the Bone Spring-Victoria Peak aquifer (Hudspeth County Underground Water District No. 1 2007, p. 1), which is not known to contribute water to the regional flow that supplies the San Solomon Spring system (Ashworth 2001, pp. 143–144). Therefore, we will not further consider that groundwater district.

In 2010 the Groundwater Management Area 4 established ''desired future conditions'' for the aquifers occurring within the five-county area of west Texas (Adams 2010, entire; Texas Water Development Board 2012a, entire). These projected conditions are important because they guide the plans for water use of groundwater within groundwater conservation districts in order to attain the desired future condition of each aquifer they manage (Texas Water Development Board 2012c, p. 23). In the following discussion we review the plans and desired future conditions for the groundwater conservation districts in Culberson, Jeff Davis, and Presidio Counties relative to the potential regulation of groundwater for maintaining spring flows and abating future declines in the San Solomon Spring system.

The Culberson County Groundwater Conservation District seeks to implement water management strategies to ''prevent the extreme decline of water levels for the benefit of all water right owners, the economy, our citizens, and the environment of the territory inside the district'' (Culberson County Groundwater Conservation District 2007, p. 1). The missions of Jeff Davis County Underground Water District and Presidio County Underground Water Conservation District are to ''strive to develop, promote, and implement water conservation and management strategies to protect water resources for the benefit of the citizens, economy, and environment of the District'' (Jeff Davis County Underground Water Conservation District 2008, p. 1; Presidio County Underground Water Conservation District 2009, p. 1). However, all three management plans specifically exclude addressing natural resources issues as a goal because, ''The District has no documented occurrences of endangered or threatened species dependent upon groundwater resources'' (Culberson County Groundwater Conservation District 2007, p. 10; Jeff Davis County Underground Water Conservation District 2008, p. 19; Presidio County Underground Water Conservation District 2009, p. 14). This lack of acknowledgement of the relationship of the groundwater resources under the Districts' management to the conservation of the spring flow habitat at the San Solomon Spring system, which occur outside the geographic boundaries of the groundwater districts, prevents any direct benefits of their management plans for the three aquatic invertebrates.

We also considered the desired future condition of the relevant aquifer that supports San Solomon Spring system flows. The Culberson County Groundwater Conservation District manages the groundwater where the bulk of groundwater pumping occurs in the Salt Basin Bolson aquifer (part of the West Texas Bolson, the presumed source of the water for the San Solomon Spring system) (Oliver 2010, p. 7). The desired future condition for aquifers within the Culberson County Groundwater Conservation District area includes a 24-m (78-ft) drawdown for the West Texas Bolsons (Salt Basin Bolson aquifer in Wild Horse Flat) over the next 50 years to accommodate an average annual groundwater pumping of 46 million cm (38,000 af) (Adams 2010, p. 2; Oliver 2010, p. 7). The desired future condition for the West Texas Bolsons for Jeff Davis County Underground Water Conservation District includes a 72-ft (22-m) drawdown over the next 50 years to accommodate an average annual groundwater pumping of 10 million cm (8,075 af) (Adams 2010, p. 2; Oliver 2010, p. 7). The desired future condition for the West Texas Bolsons for Presidio County Underground Water District also includes a 72-ft (22-m) drawdown over the next 50 years to accommodate an average annual groundwater pumping of 12 million cm (9,793 af) (Adams 2010, p. 2; Oliver 2010, p. 7). These drawdowns are based on analysis using groundwater availability models developed by the Texas Water Development Board (Beach *et al.* 2004, pp. 10-6–10-8; Oliver 2010, entire). We expect that these groundwater districts will use their district rules to regulate water withdrawals in such a way as to implement these desired future conditions.

The Salt Basin Bolson aquifer in the Wild Horse Flat area (the likely spring source) can range from 60 to 300 m (200 to 1,000 ft) thick. We are not aware of any information or studies that have accessed the impacts on spring flows associated with the drawdown from the desired future condition. However, the drawdown levels could be substantial compared to the available groundwater, which receives little natural recharge beyond regional flow. So although it is impossible to determine precisely, we anticipate the planned level of groundwater drawdown will likely result in continued future declines in spring flow rates in the San Solomon Spring system. Therefore, we expect that continued drawdown of the aquifers as identified in the desired

future conditions will contribute to ongoing and future spring flow declines. Based on these desired future conditions from the groundwater conservation districts, we conclude that the regulatory mechanisms available to the groundwater districts directing future groundwater withdrawal rates from the aquifers that support spring flows in the San Solomon Spring system are inadequate to protect against ongoing and future modification of habitat for the Phantom springsnail, Phantom tryonia, and diminutive amphipod.

Summary of Factor D

Some regulatory mechanisms are in place, such as the existence of groundwater conservation districts, which address the primary threat to the Phantom springsnail, Phantom tryonia, or diminutive amphipod of habitat loss due to spring flow decline. However, we find that these mechanisms are not serving to alleviate or limit the threats to the species because it is uncertain whether the planned groundwater declines will allow for the maintenance of the spring flows that provide habitat for the species. We assume that, absent more detailed studies, the large levels of anticipated declines are likely to result in continuing declines of spring flows in the San Solomon Spring system. We, therefore, conclude that these existing regulatory mechanisms are inadequate to sufficiently reduce the identified threats associated with groundwater decline and spring flow losses that provide habitat for the Phantom springsnail, Phantom tryonia, and diminutive amphipod now and in the future.

E. Other Natural or Manmade Factors Affecting Their Continued Existence (San Solomon Spring Species)

We considered three other factors that may be affecting the continued existence of the San Solomon Spring species: Nonnative snails, other nonnative species, and the small, reduced ranges of the three San Solomon Spring species.

Nonnative Snails

Another factor that may be impacting the San Solomon Spring species is the presence of two nonnative snails that occur in a portion of their range. The red-rim melania and quilted melania both occur at San Solomon Spring, and the red-rim melania also occurs at Phantom Lake and Giffin Springs (Allan 2011, p. 1; Bradstreet 2011, pp. 4–5; Lang 2011, pp. 4–5, 11). Both species are native to Africa and Asia and have been imported into the United States as aquarium species. They are now established in various locations across the southern and western portions of the United States (Bradstreet 2011, pp. 4–5; U.S. Geological Survey 2009, p. 2; Benson 2012, p. 2).

The red-rim melania was first reported from Phantom Lake Spring during the 1990s (Fullington 1993, p. 2; McDermott 2000, pp. 14–15) and was first reported from Giffin Spring in 2001 (Lang 2011, pp. 4–5). The species has been at San Solomon Spring for some time longer (Texas Parks and Wildlife Department 1999, p. 14), but it is not found in East Sandia Spring (Lang 2011, p. 10; Allan 2011, p. 1). Bradstreet reported the red-rim melania in all of the habitats throughout San Solomon Spring at moderate densities compared to other snails, with a total population estimate of about 390,000 snails (±350,000) (Bradstreet 2011, pp. 45–55). Lang (2011, pp. 4–5) also found moderate densities of red-rim melania at Giffin Spring in both the headspring area and downstream spring run area.

The quilted melania was first reported as being at San Solomon Spring in 1999 (Texas Parks and Wildlife Department 1999, p. 14) from observations in 1995 (Bowles 2012, pers. comm.). It was later collected in 2001 (Lang 2011, p. 4), but not identified until Bradstreet (2011, p. 4) confirmed its presence there. The species is not found in any other springs in the San Solomon Spring system, but occurs in all habitats throughout San Solomon Spring at moderate densities compared to other snails, with a total population estimate of about 840,000 snails (±1,070,000) (Bradstreet 2011, pp. 45–55).

The mechanism and extent of potential effects of the two nonnative snails on the native invertebrates have not been studied directly. However, because both nonnative snails occur in relatively high abundances, to presume that they are likely competing for space and food resources in the limited habitats in which they occur is reasonable. Rader *et al.* (2003, pp. 651–655) reviewed the biology and possible impacts of red-rim melania and suggested that the species had already displaced some native springsnails in spring systems of the Bonneville Basin of Utah. Appleton *et al.* (2009, entire) reviewed the biology and possible impacts of the quilted melania and found potentially significant impacts likely to occur to the native benthic invertebrate community in aquatic systems in South Africa. Currently, East Sandia Spring has remained free of nonnative snails, but their invasion there is a continuing concern (Bradstreet 2011, p. 95). We conclude that these two snails may be having some negative effects on the Phantom springsnail, Phantom tryonia, and diminutive amphipod based on a potential for competition for spaces and food resources.

Other Nonnative Species

A potential future threat to these species comes from the possible introduction of additional nonnative species into their habitat. In general, introduced species are a serious threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). The threat is particularly elevated at San Solomon Spring where the public access to the habitat is prolific by the thousands of visitors to the Balmorhea State Park who swim in the spring outflow pool. Unfortunately, people will sometimes release nonnative species into natural waters, intentionally or unintentionally, without understanding the potential impacts to native species. In spite of regulations that do not permit it, visitors to the Park may release nonnative species into the outflow waters of San Solomon Spring. This is presumably how the two nonnative snails became established there. Nonnative fishes are sometimes seen and removed from the water by Park personnel (Texas Parks and Wildlife Department 1999, pp. 46–47). The Park makes some effort to minimize the risk of nonnative species introductions by prohibiting fishing (so no live bait is released) and by taking measures to educate visitors about the prohibition of releasing species into the water (Texas Parks and Wildlife Department 1999, p. 48). In spite of these efforts, the risk, which cannot be fully determined, remains that novel and destructive nonnative species could be introduced in the future. This risk is much lower at the other three springs in the San Solomon Spring system because of the lack of public access to these sites.

We conclude that the future introduction of any nonnative species represents an ongoing concern to the aquatic invertebrates, however, the immediacy of this happening is relatively low because it is only a future possibility. In addition, the severity of the impact is also relatively low because it is most likely to occur only at San Solomon Spring and the actual effects of any nonnative species on the Phantom springsnail, Phantom tryonia, and diminutive amphipod are unknown at this time.

Small, Reduced Range

One important factor that contributes to the high risk of extinction for these species is their naturally small range

that has been reduced from past destruction of their habitat. While the overall extent of the geographic range of the species has not changed, the number and distribution of local populations within their range has likely been reduced when other small springs within the San Solomon Spring system (such as Saragosa, Toyah, and West Sandia Springs) ceased to flow (Brune 1981, p. 386; Karges 2003, p. 145). These species are now currently limited to four small spring outflow areas, with the populations at Phantom Lake Spring in imminent threat of loss.

The geographically small range with only four populations of these invertebrate species increases the risk of extinction from any effects associated with other threats or stochastic 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 populations (Shepard 1993, pp. 354–357; McKinney 1997, p. 497; Minckley and Unmack 2000, pp. 52–53). In addition, the species are restricted to aquatic habitats in small spring systems and have minimal mobility and no other habitats available for colonization, so it is unlikely their range will ever expand beyond the current extent. This situation makes the magnitude of impact of any possible threat very high. In other words, the resulting effects of any of the threat factors under consideration here, even if they are relatively small on a temporal or geographic scale, could result in complete extinction of the species. While the small, reduced range does not represent an independent threat to these species, it does substantially increase the risk of extinction from the effects of other threats, including those addressed in this analysis and those that could occur in the future from unknown sources.

Summary of Factor E

The potential impacts of these nonnative snails and any future introductions of other nonnative species on the Phantom springsnail, Phantom tryonia, and diminutive amphipod are largely unknown with the currently available information. But the nonnative snails are presumed to have some negative consequences to the native snails through competition for space and resources. The effects on the diminutive amphipod are even less clear, but competition could still be occurring. These nonnative snails have likely been co-occurring for at least 20 years at three of the four known locations for these species, and currently nothing will prevent the invasion of the species into East Sandia Spring. Considering the best available information, we conclude that the presence of these two nonnative snails and the potential future introductions of nonnative species currently represent a low-intensity threat to the Phantom springsnail, Phantom tryonia, and diminutive amphipod. In addition, the small, reduced ranges of these species limit the number of available populations and increase the risk of extinction from other threats. In combination with the past and future threats from habitat modification and loss, these factors contribute to the increased risk of extinction to the three native species.

Determination—San Solomon Spring Species

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Phantom springsnail, Phantom tryonia, and diminutive amphipod. We find the species are in danger of extinction due to the current and ongoing modification and destruction of their habitat and range (Factor A) from the ongoing and future decline in spring flows, and historic modification of spring channels. The most significant factor threatening these species is a result of historic and future declines in regional groundwater levels that have caused some springs to cease flowing and threaten the remaining springs with the same fate. We did not find any threats with significant effects to the species under Factors B or C. We found that existing regulatory mechanisms are inadequate to provide protection to the species habitat from existing and future threats through groundwater management by groundwater conservation districts (Factor D). Finally, two nonnative snails occur in portions of the species' range that could be another factor negatively affecting the species (Factor E). The severity of the impact from these nonnative snails or other future introductions of nonnative species is not known, but such introductions may contribute to the risk of extinction from the threats to habitat through reducing the abundance of the three aquatic invertebrates through competition for space and resources. The small, reduced ranges (Factor E) of these species, when coupled with the presence of additional threats, also put them at a heightened risk of extinction.

The elevated risk of extinction of the Phantom springsnail, Phantom tryonia, and diminutive amphipod is a result of the cumulative nature of the stressors on the species and their habitats. For example, the past reduction in available habitat through modification of spring channels resulted in a lower number of individuals contributing to the sizes of the populations. In addition, the loss of other small springs that may have been inhabited by the species reduced the number of populations that would contribute to the species' overall viability. In this diminished state, the species are also facing future risks from the impacts of continuing declining spring flows, exacerbated by potential extended future droughts resulting from global climate change, and potential effects from nonnative species. All of these factors contribute together to heighten the risk of extinction and lead to our finding that the Phantom springsnail, Phantom tryonia, and diminutive amphipod are in danger of extinction throughout all of their ranges and warrant listing as endangered species.

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 information available regarding the past, present, and future threats to the species, and have determined that the Phantom springsnail, Phantom tryonia, and diminutive amphipod all meet the definition of endangered species under the Act. They do not meet the definition of threatened species, because significant threats are occurring now and in the foreseeable future, at a high magnitude, and across the species' entire range. This makes them in danger of extinction now, so we have determined that they meet the definition of endangered species rather than threatened species. Therefore, on the basis of the best available scientific and commercial information, we are listing the Phantom springsnail, Phantom tryonia, and diminutive amphipod as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The species being listed in these rules are highly restricted within their range, and the threats occur throughout their range. Therefore, we assessed the status of the species throughout their entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular

significant portion of that range. Accordingly, our assessment and determination applies to the species throughout their entire range.

Diamond Y Spring Species—Diamond tryonia, Gonzales tryonia, and Pecos amphipod

The following five-factor analysis applies to the three species that occur in the Diamond Y Spring system in Pecos County, Texas: Diamond tryonia, Gonzales tryonia, and Pecos amphipod.

A. The Present or Threatened Destruction, Modification, or Curtailment of Their Habitat or Range (Diamond Y Spring Species)

Spring Flow Decline

The primary threat to the continued existence of the Diamond Y Spring species is the degradation and potential future loss of aquatic habitat (flowing water from the spring outlets) due to the decline of groundwater levels in the aquifers that support spring surface flows. Habitat for these species is exclusively aquatic and completely dependent upon spring outflows. Spring flows in the Diamond Y Spring system appear to have declined in flow rate over time, and as spring flows decline, available aquatic habitat is reduced and altered. When a spring ceases to flow continually, all habitats for these species are lost, and the populations will be extirpated. When all of the springs lose consistent surface flows, all natural habitats for these aquatic invertebrates will be gone, and the species will become extinct. We know springs in this area can fail due to groundwater pumping, because larger nearby springs, such as Comanche and Leon Springs have already ceased flowing and likely resulted in the extirpation of local populations of these species (assuming they were present historically). While these springs likely originate from a different aquifer source than Diamond Y Spring, the situation demonstrates the potential for spring losses in this area.

The springs do not have to cease flowing completely to have an adverse effect on invertebrate populations. The small size of the spring outflows in the Diamond Y Spring system makes them particularly susceptible to changes in water chemistry, increased water temperatures, and freezing. Because these springs are small, any reductions in the flow rates from the springs can reduce the available habitat for the species, decreasing the number of individuals and increasing the risk of extinction. Water temperatures and chemical factors such as dissolved oxygen in springs do not typically fluctuate (Hubbs 2001, p. 324); invertebrates are narrowly adapted to spring conditions and are sensitive to changes in water quality (Hershler 1998, p. 11). Spring flow declines can lead to the degradation and loss of aquatic invertebrate habitat and present a substantial threat to the species.

No one has made regular recordings of spring flow discharge at Diamond Y Spring to quantify any trends in spring flow. The total flow rates are very low, as Veni (1991, p. 86) estimated total discharge from the upper watercourse at 0.05 to .08 cms (2 to 3 cfs) and from the lower watercourse at 0.04 to 0.05 cms (1 to 2 cfs). The nature of the system with many diffuse and unconfined small springs and seeps makes the estimates of water quantity discharging from the spring system difficult to attain. Recent measurements of outflows from the Diamond Y Spring headspring between 2010 and 2013 have showed a discharge range from 0.0009 to 0.003 cms (0.03 to 0.09 cfs) (U.S. Geological Survey 2013, p. 1). Many authors (Veni 1991, p. 86; Echelle *et al.* 2001, p. 28; Karges 2003, pp. 144–145) have described the reductions in available surface waters observed compared to older descriptions of the area (Kennedy 1977, p. 93; Hubbs *et al.* 1978, p. 489; Taylor 1985, pp. 4, 15, 21). The amount of aquatic habitat may vary to some degree based on annual and seasonal conditions, but the overall declining trend in the reduction in the amount of surface water over the last several decades is apparent.

A clear example of the loss in aquatic habitat comes from Kennedy's (1977, p. 93) description of one of his study sites in 1974. Station 2 was called a ''very large pool'' near Leon Creek of about 1,500 to 2,500 sq m (16,000 to 27,000 sq ft) with shallow depths of 0.5 to 0.6 m (1.6 to 2.0 ft), with a small 2-m (6.6-ft) deep depression in the center. Today very little open water is found in this area, only marshy soils with occasional trickles of surface flow. This slow loss of aquatic habitat has occurred throughout the system over time and represents a substantial threat to the continued existence of the Diamond tryonia, Gonzales tryonia, and the Pecos amphipod.

The precise reason for the declining spring flows remains uncertain but is presumed to be related to a combination of groundwater pumping, mainly for agricultural irrigation, and a lack of natural recharge to the supporting aquifers. In addition, future changes in the regional climate are expected to exacerbate declining flows. Local conditions related to vegetation growth and limited local precipitation may also be contributing factors.

Substantial scientific uncertainty exists regarding the aquifer sources that provide the source water to the Diamond Y Springs. Initial studies of the Diamond Y Spring system suggested that the Edwards-Trinity Aquifer was the primary source of flows (Veni 1991, p. 86). However, later studies supported that the Rustler Aquifer is instead more likely the chief source of water (Boghici 1997, p. 107). However, more recent studies by the U.S. Geological Survey suggest that the Rustler Aquifer only contributes some regional flow mixing with the larger Edwards-Trinity (Plateau) Aquifer in this area through geologic faulting and artesian pressure, as the Rustler Aquifer is deeper than the Edwards-Trinity Aquifer (Bumgarner 2012, p. 46; Ozuna 2013, p. 1). In contrast, the Texas Water Development Board indicates that the strata underlying the Edwards-Trinity (Plateau) Aquifer provide most of the spring flow at Diamond Y Spring and that the artesian pressure causing the groundwater to issue at Diamond Y Spring is likely from below the Rustler Aquifer (French 2013, pp. 2–3). The Middle Pecos Groundwater Conservation District suggested that Diamond Y Spring is a mixture of discharge from the Edwards-Trinity (Plateau) Aquifer and leakage from the other Permian-age formations, including the Rustler and possibly other formations below the Edwards-Trinity (Plateau) Aquifer (Gershon 2013, p. 6). Obviously, we have substantial uncertainty as to the exact nature of the groundwater sources for Diamond Y Spring, but based on the best available information, we presume the springflows originate from some combination of the Rustler and Edwards-Trinity (Plateau) Aquifers.

The Rustler Aquifer is one of the less-studied aquifers in Texas and encompasses most of Reeves County and parts of Culberson, Pecos, Loving, and Ward Counties in the Delaware Basin of west Texas (Boghici and Van Broekhoven 2001, pp. 209–210). The Rustler strata are thought to be between 75 to 200 m (250 to 670 ft) thick (Boghici and Van Broekhoven 2001, p. 207). Very little recharge to the aquifer likely comes from precipitation in the Rustler Hills in Culberson County, but most of it may be contributed by cross-formational flows from old water from deeper aquifer formations (Boghici and Van Broekhoven 2001, pp. 218–219). Groundwater planning for the Rustler aquifer anticipates no annual recharge (Middle Pecos Groundwater Conservation District 2010b, p. 18).

Historic pumping from the Rustler aquifer in Pecos County may have contributed to declining spring flows, as withdrawals of up to 9 million cm (7,500 af) in 1958 were recorded, with estimates from 1970 to 1997 suggesting groundwater use averaged between 430,000 cm (350 af) to 2 million cm (1,550 af) per year (Boghici and Van Broekhoven 2001, p. 218). As a result, declines in water levels in Pecos County wells in the Rustler aquifer from the mid-1960s through the late 1970s of up to 30 m (100 ft) have been recorded (Boghici and Van Broekhoven 2001, p. 213). We assume that groundwater pumping has had some impacts on spring flows of the Diamond Y Spring system in the past; however, they have not yet been substantial enough to cause the main springs to cease flowing.

The Edwards-Trinity (Plateau) Aquifer underlies about 109,000 square km (42,000 square miles) of west-central Texas, extending from Travis to Brewster Counties (Baker and Ardis 1996, pp. B2–B3). The aquifer underlies much of the region around Diamond Y Spring in Pecos County and about 50 percent of the aquifer ranges from 71 to 110 m (234 to 362 ft) thick (Bumgarner *et al.* 2012, p. 47). The 2009 estimate of the annual amount of groundwater used in Pecos County for irrigation was 143 million cm (115,650 af), and the majority of the water comes from the Edwards-Trinity (Plateau) Aquifer (Middle Pecos Groundwater Conservation District 2010b, pp. 18, Appendix D).

Future groundwater withdrawals may further impact spring flow rates if they occur in areas of the Rustler or Edwards-Trinity (Plateau) Aquifers that affect the spring source areas. Groundwater pumping withdrawals in Pecos County are expected to continue in the future mainly to support irrigated agriculture (Region F Water Planning Group 2011, pp. 2–16—2–19) and will result in continued lowering of the groundwater levels in the aquifers. The latest plans from Groundwater Management Area 3 (the planning group covering the relevant portion of the Rustler Aquifer) allows for a groundwater withdrawal in the Rustler Aquifer not to exceed 90 m (300 ft) in the year 2060 (Middle Pecos Groundwater Conservation District 2010b, pp. 15–16). This level of drawdown will accommodate 12.9 million cm (10,508 af) of annual withdrawals by pumping (Middle Pecos Groundwater Conservation District 2010b, p. 15). This level of pumping would be 30 times more than the long-term average and could result in an extensive reduction in the available groundwater in the aquifer based on the total thickness of the Rustler strata. The latest plans from Groundwater Management Area 7 (the planning group covering the relevant portion of the Edwards-Trinity (Plateau) Aquifer) allows for a groundwater withdrawal in the Edwards-Trinity (Plateau) Aquifer not to exceed 3.6 m (12 ft) in the year 2060 (Middle Pecos Groundwater Conservation District 2010b, p. 10). This level of drawdown will accommodate 294 million cm (238,000 af) of annual withdrawals by pumping, including withdrawals from both the Edwards-Trinity (Plateau) and Pecos Valley Aquifers (Middle Pecos Groundwater Conservation District 2010b, p. 11). This level of pumping would be about twice more than the long-term average withdrawals. Therefore, based on these expected increasing levels of groundwater drawdown, we anticipate continued declines in spring flow rates in the Diamond Y Spring system.

In addition to pumping within the groundwater district, surrounding counties that do not have a groundwater district conduct groundwater withdrawals from the Edwards-Trinity (Plateau) Aquifer). This unregulated pumping could also contribute to aquifer level declines and impact spring flow rates.

The exact relationship between aquifer levels and spring flow rates has not been quantified and represents an area of substantial uncertainty. However, we think that the anticipated increase in groundwater withdrawals, if occurring in an area contributing water to the Diamond Y Spring system, would have a negative impact on habitat availability for these species and significantly increase their risk of extinction.

Another factor possibly contributing to declining spring flows is climatic changes that may increase the frequency and duration of local and regional drought. 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).

Although the bulk of spring flows probably originates from water sources with limited recent recharge, any decreases in regional precipitation patterns due to prolonged drought will further stress groundwater availability and increase the risk of diminishment or drying of the springs. Drought affects both surface and groundwater resources and can lead to diminished water quality (Woodhouse and Overpeck 1998, p. 2693; MacRae *et al.* 2001, pp. 4, 10) in addition to reducing groundwater quantities. Lack of rainfall may also indirectly affect aquifer levels by resulting in an increase in groundwater pumping to offset water shortages from low precipitation (Mace and Wade 2008, p. 665).

Recent drought conditions may be indicative of more common future conditions. The current, multiyear drought in the western United States, including the Southwest, is the most severe drought recorded since 1900 (Overpeck and Udall 2010, p. 1642). In 2011, Texas experienced the worst annual drought since recordkeeping began in 1895 (NOAA 2012, p. 4), and only 1 other year since 1550 (the year 1789) was as dry as 2011 based on tree-ring climate reconstruction (NOAA 2011, pp. 20–22). In addition, numerous climate change models predict an overall decrease in annual precipitation in the southwestern United States and northern Mexico.

Future global climate change may result in increased severity of droughts and further contribute to impacts on the aquatic habitat from reduction of spring flows. Many semiarid areas like the western United States are likely to suffer a decrease in water resources due to ongoing climate change (IPCC 2007b, p. 7; Karl *et al.* 2009, pp. 129–131), as a result of less annual mean precipitation. Milly *et al.* (2005, p. 347) also project a 10 to 30 percent decrease in precipitation in mid-latitude western North America by the year 2050 based on an ensemble of 12 climate models. Even under lower greenhouse gas emission scenarios, recent projections forecast a 10 percent decline in precipitation in western Texas by 2080 to 2099 (Karl *et al.* 2009, pp. 129–130). Assessments of climate change in west Texas suggest that the area is likely to become warmer and at least slightly drier (Texas Water Development Board 2008, pp. 22–25).

The potential effects of future climate change could reduce overall water availability in this region of western Texas and compound the stressors associated with declining flows from the Diamond Y Spring system. As a result of the effects of increased drought, spring flows could decline indirectly as a result of increased pumping of groundwater to accommodate human needs for additional water supplies (Mace and Wade 2008, p. 664; Texas

Water Development Board 2012c, p. 231).

In conclusion, the Diamond tryonia, Gonzales tryonia, and Pecos amphipod are vulnerable to the effects of habitat loss because of the past and expected future declining spring flows. Some nearby springs have already gone dry. While the sources of the stress of declining spring flows are not known for certain, the best available scientific information would indicate that it is the result of a combination of factors including past and current groundwater pumping and climatic changes (decreased precipitation and recharge). The threat of habitat loss from declining spring flows affects the entire range of the three species, as all are at risk of future loss due to declining spring flows. All indications are that the source of this threat will persist into the future and will result in continued degradation of the species' habitats, placing the species at a high risk of extinction.

Water Quality Changes and Contamination

Another potential factor that could impact habitat of the Diamond Y Spring species is the potential degradation of water quality from point pollutant sources. This pollution can occur either directly into surface water or indirectly through contamination of groundwater that discharges into spring run habitats used by the species. The primary threat for contamination in these springs comes from activities related to oil and gas exploration, extraction, transportation, and processing.

Oil and gas activities are a source of significant threat to the Diamond Y Spring species because of the potential groundwater or surface water contamination from pollutants (Veni 1991, p. 83; Fullington 1991, p. 6). The Diamond Y Spring system is within an active oil and gas extraction field that has been operational for many decades. In 1990, within the Diamond Y Preserve were 45 active and plugged wells, and an estimated 800 to 1,000 wells perforated the aquifers within the springs' drainage basins (Veni 1991, p. 83). At this time many active wells are still located within about 100 m (about 300 ft) of surface waters. In addition, a natural gas processing plant, known as the Gomez Plant, is located within 0.8 km (0.5 mi) upslope of Diamond Y Spring. Oil and gas pipelines cross the habitat, and many oil extraction wells are located near the occupied habitat. Oil and gas drilling also occurs throughout the area of supporting groundwater providing another potential source of contamination through the groundwater supply. The Gomez Plant, which collects and processes natural gas, is located about 350 m (1,100 feet) up gradient from the head pool of Diamond Y Spring (Hoover 2013, p. 1). Taylor (1985, p. 15) suggested that an unidentified groundwater pollutant may have been responsible for reductions in abundance of Diamond tryonia in the headspring and outflow of Diamond Y Spring, although no follow-up studies were ever done to investigate the presumption. The potential for an event catastrophic to the Diamond Y Spring species from a contaminant spill or leak is possible at any time (Veni 1991, p. 83).

As an example of the possibility for spills, in 1992 approximately 10,600 barrels of crude oil were released from a 15-cm (6-in) pipeline that traverses Leon Creek above its confluence with Diamond Y Draw. The oil was from a pipeline, which ruptured at a point several hundred feet away from the Leon Creek channel. The spill site itself is about 1.6 km (1 mi) overland from Diamond Y Spring. The pipeline was operated at the time of the spill by the Texas-New Mexico Pipeline Company, but ownership has since been transferred to several other companies. The Texas Railroad Commission has been responsible for overseeing cleanup of the spill site. Remediation of the site initially involved aboveground land farming of contaminated soil and rock strata to allow microbial degradation. In later years, remediation efforts focused on vacuuming oil residues from the surface of groundwater exposed by trenches dug at the spill site. No impacts on the rare fauna of Diamond Y Springs have been observed, but no specific monitoring of the effects of the spill was undertaken (Industrial Economics, Inc. 2005, pp. 4–12).

If a contaminant were to leak into the habitat of the species from any of the various sources, the effects of the contamination could result in death to exposed individuals, reductions in food availability, or other ecological impacts (such as long-term alteration to water or soil chemistry and the microorganisms that serve as the base of food web in the aquatic ecosystem). The effects of a surface spill or leak might be contained to a local area and only affect a portion of the populations; however, an event that contaminated the groundwater could impact both the upper and lower watercourses and eliminate the entire range of all three species. No regular monitoring of the water quality for these species or their habitats currently occurs, so it is unlikely that the effects would be detected quickly to allow for a timely response.

These invertebrates are sensitive to water contamination. Springsnails as a group are considered sensitive to water quality changes, and each species is usually found within relatively narrow habitat parameters (Sada 2008, p. 59). Taylor (1985, p. 15) suggested that an unidentified groundwater pollutant may have been responsible for reductions in abundance of Diamond tryonia in the headspring and outflow of Diamond Y Spring, although no follow-up studies were ever conducted to investigate the presumption. Additionally, amphipods generally do not tolerate habitat desiccation (drying), standing water, sedimentation, or other adverse environmental conditions; they are considered very sensitive to habitat degradation (Covich and Thorpe 1991, pp. 676–677).

Several conservation measures have been implemented in the past to reduce the potential for a contamination event. In the 1970s the U.S. Department of Agriculture, Natural Resources Conservation Service (then the Soil Conservation Service) built a small berm encompassing the south side of Diamond Y Spring to prevent a surface spill from the Gomez Plant from reaching the spring head. After The Nature Conservancy purchased the Diamond Y Springs Preserve in 1990, oil and gas companies undertook a number of conservation measures to minimize the potential for contamination of the aquatic habitats. These measures included decommissioning buried corrodible metal pipelines and replacing them with synthetic surface lines, installing emergency shut-off valves, building berms around oil pad sites, and removing abandoned oil pad sites and their access roads that had been impeding surface water flow (Karges 2003, p. 144).

Presently, we have no evidence of habitat destruction or modification due to groundwater or surface water contamination from leaks or spills, and no major spills affecting the habitat have been reported in the past (Veni 1991, p. 83). However, the potential for future adverse effects from a catastrophic event is an ongoing threat of high severity of potential impact but not immediate.

Modification of Spring Channels

The spring outflow channels in the Diamond Y Spring system have remained mostly intact. The main subtle changes in the past were a result of some cattle grazing before The Nature Conservancy discontinued livestock use in 2000, and roads and well pads that were constructed in the spring outflow areas. Most of these structures were removed by the oil and gas industry

following The Nature Conservancy assuming ownership in 1990. Several caliche (hard calcium carbonate material) roads still cross the spring outflows with small culverts used to pass the restricted flows.

A recent concern has been raised regarding the encroachment of bulrush into the spring channels. Bulrush is an emergent plant that grows in dense stands along the margins of spring channels. (An emergent plant is one rooted in shallow water and having most of its vegetative growth above the water.) When flow levels decline, reducing water depths and velocities, bulrush can become very dense and dominate the wetted channel. In 1998, bulrush made up 39 percent (± 33 percent) of the plant species in the wetted marsh areas of the Diamond Y Draw (Van Auken *et al.* 2007, p. 54). Observations by Itzkowitz (2008, p. 5; 2010, pp. 13–14) found that bulrush were increasing in density at several locations within the upper and lower watercourses in Diamond Y Draw resulting in the loss of open water habitats. Itzkowitz (2010, pp. 13–14) also noted a positive response by bulrush following a controlled fire for grassland management.

In addition to water level declines, the bulrush encroachment may have been aided by a small flume that was installed in 2000 about 100 m (300 ft) downstream of the springhead pool at Diamond Y Spring (Service 1999, p. 2). The purpose of the flume was to facilitate spring flow monitoring, but the instrumentation was not maintained. The flume remains in place and is now being used for flow measurements by the U.S. Geological Survey. The installation of the flume may have slightly impounded the water upstream creating shallow, slow overflow areas along the bank promoting bulrush growth. This potential effect of the action was not foreseen (Service 1999, p. 3). Whether or not the flume was the cause, the area upstream of it is now overgrown with bulrush, and the two snails have not been found in this section for some time.

Dense bulrush stands may alter habitat for the invertebrates in several ways. Bulrush grows to a height of about 0.7 m (2 ft) tall in very dense stands. Dense bulrush thickets will result in increased shading of the water surface, which is likely to reduce the algae and other food sources for the invertebrates. In addition, the stems will slow the water velocity, and the root masses will collect sediments and alter the substrates in the stream. These small changes in habitat conditions may result in proportionally large areas of the spring outflow channels being unsuitable for use by the invertebrates, particularly the springsnails. Supporting this idea is the reported distributions of the snails found in highest abundance in areas with more open flowing water not dominated by bulrush (Allan 2011, p. 2). The impacts of dense bulrush stands as a result of declining spring flow rates may be negatively affecting the distribution and abundance of the invertebrates within the Diamond Y Spring system.

Another recent impact to spring channels comes from disturbance by feral hogs *(Sus scrofa).* These species have been released or escaped from domestic livestock and have become free-ranging over time (Mapston 2005, p. 6). They have been in Texas for about 300 years and occur throughout the State. The area around Diamond Y Spring has not previously been reported as within their distribution (Mapston 2005, p. 5), but they have now been confirmed there (Allan 2011, p. 2). The feral hogs prefer wet and marshy areas and damage spring channels by creating wallows, muddy depressions they use to keep cool and coat themselves with mud (Mapston 2005, p. 15). In 2011, wallows were observed in spring channels formerly inhabited by the invertebrates in both the upper and lower watercourses at the Diamond Y Preserve (Allan 2011, p. 2). The alterations in the spring channels caused by the wallows make the affected area uninhabitable by the invertebrates. The effects of feral hog wallows are limited to small areas but act as another stressor on the very limited habitat of these three Diamond Y Spring species.

Some protection for the spring channel habitats for the Diamond Y Spring species is provided with the ownership and management of the Diamond Y Spring Preserve by The Nature Conservancy (Karges 2003, pp. 143–144). Their land stewardship efforts ensure that intentional or direct impacts to the spring channel habitats will not occur. However, land ownership by The Nature Conservancy provides limited ability to prevent changes such as increases in bulrush or to control feral hogs. Moreover, the Nature Conservancy can provide little protection from the main threats to this species—the loss of necessary groundwater levels to ensure adequate spring flows or contamination of groundwater from oil and gas activities (Taylor 1985, p. 21; Karges 2003, pp. 144–145).

In summary, the modifications to the natural spring channels at the Diamond Y Spring system represent activities that are occurring now and will likely continue in the future through the continued encroachment of bulrush as spring flows continue to decline and through the effects of feral hog wallows. Conservation actions over the past two decades have removed and minimized some past impacts to spring channels by removing livestock and rehabilitating former oil pads and access roads. While additional direct modifications are not likely to occur in the future because of land ownership by The Nature Conservancy, future modifications from bulrush encroachment and feral hog wallows contribute to the suite of threats to the species' habitat by reducing the overall quantity of available habitat and, therefore, reducing the number of individuals of each species that can inhabit the springs. The lower the overall number of individuals of each species and the less available habitat, the greater the risk of extinction. Therefore, the modification of spring channels contributes to increased risk of extinction in the future as a consequence of ongoing and future impacts.

Other Conservation Efforts

The Diamond Y Spring system is inhabited by two fishes federally listed as endangered—Leon Springs pupfish (Service 1985, pp. 3) and Pecos gambusia (Service 1983, p. 4). In addition, the area is also inhabited by the federally threatened Pecos sunflower (Service 2005, p. 4) and the federally endangered Pecos assiminea snail (Service 2010, p. 5). Critical habitat has not been designated for Pecos gambusia. The outflow areas from Diamond Y Spring have been designated as critical habitat for Leon Springs pupfish, Pecos sunflower, and Pecos assiminea snail (45 FR 54678, August 15, 1980; 73 FR 17762, April 1, 2008; 76 FR 33036, June 7, 2011, respectively).

The three Diamond Y Spring species have been afforded some protection indirectly in the past due to the presence of these other listed species in the same locations. Management and protection of the spring habitats by the Texas Parks and Wildlife Department, The Nature Conservancy, and the Service has benefited the aquatic invertebrates (Karges 2007, pp. 19–20). However, the primary threat from the loss of habitat due to declining spring flows related to groundwater changes have not been abated by the Federal listing of the fish or other species. Therefore, the conservation efforts provided by the concomitant occurrence of species already listed under the Act have not prevented past and current

habitat loss, nor are they expected to do so in the future.

Summary of Factor A

Based on our evaluation of the best available information, we conclude that habitat loss and modification for the Diamond tryonia, Gonzales tryonia, and Pecos amphipod is a threat that has significant effects on individuals and populations of these species. These impacts in the past have come from the loss of natural spring flows at several springs likely within the historic range, and the future threat of the loss of additional springs as groundwater levels are likely to decline in the future. As springs decline throughout the small range of these species, the number of individuals and populations will decline and continue to increase the risk of extinction of these species. The sources of this threat are not confirmed but are presumed to include a combination of factors associated with groundwater pumping and climatic changes. The potential for a spill of contaminants from oil and gas operations presents a constant future threat to the quality of the aquatic habitat. Finally, the risk of extinction is heightened by the ongoing and future modification of spring channels, which reduces the number of individuals in each population, from the encroachment of bulrush and the presence of feral hogs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes (Diamond Y Spring Species)

Very few people are interested in or study springsnails and amphipods, and those who do are sensitive to their rarity and endemism. Consequently, collection for scientific or educational purposes is very limited. We know of no commercial or recreational uses of these invertebrates. For these reasons we conclude that overutilization for commercial, recreational, scientific, or educational purposes are not a threat to the Diamond tryonia, Gonzales tryonia, and Pecos amphipod, and we have no indication that these factors will affect these species in the future.

C. Disease or Predation (Diamond Y Spring Species)

The Diamond Y Spring species are not known to be affected by any disease. These invertebrates are likely natural prey species for fishes that occur in their habitats. We know of no nonnative predatory fishes within their spring habitats, but there are crayfish, which are known predators of snails (Hershler 1998, p. 14; Dillon 2000, pp. 293–294). Ladd and Rogowski (2012, p. 289) suggested that the nonnative red-rim melania may prey upon different species of native snail eggs. However, the evidence of such predation is very limited, and the extent to which the predation might affect native snails is unknown. For more discussion about red-rim melania, see ''Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence (Diamond Y Spring Species).'' We are not aware of any other information indicating that the Diamond Y Spring species are affected by disease or predation. For these reasons we conclude that neither disease nor predation are threats to the Diamond tryonia, Gonzales tryonia, and Pecos amphipod, and we have no indication that these factors will affect these species in the future.

D. The Inadequacy of Existing Regulatory Mechanisms (Diamond Y Spring Species)

Under this factor, we examine whether existing regulatory mechanisms are inadequate to address the threats to the species discussed under the other four factors. Section 4(b)(1)(A) of the Endangered Species 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 . . . .'' We interpret this language to require the Service to consider relevant Federal, State, and Tribal laws and regulations that may minimize any of the threats we describe in threat analyses under the other four factors, or otherwise enhance conservation of the species. An example would be the terms and conditions attached to a grazing permit that describe how a permittee will manage livestock on a BLM allotment. They are nondiscretionary and enforceable, and are considered a regulatory mechanism under this analysis. Other examples include State governmental actions enforced under a State statute or constitution, or Federal action under statute.

Having evaluated the significance of the threat as mitigated by any such conservation efforts, we analyze under Factor D the extent to which existing regulatory mechanisms are inadequate to address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. In this section, we review existing State and Federal regulatory mechanisms to determine whether they effectively reduce or remove threats to the three San Solomon Spring species.

Texas laws provide no specific protection for these invertebrate species, as they are not listed as threatened or endangered by the Texas Parks and Wildlife Department. However, even if they were listed by the State, those regulations (Title 31 Part 2 of Texas Administrative Code) would only prohibit the taking, possession, transportation, or sale of any animal species without the issuance of a permit. The State makes no provision for the protection of the habitat of listed species, which is the main threat to these aquatic invertebrates.

Some protection for the habitat of this species is provided with the land ownership of the springs by The Nature Conservancy. However, this land ownership provides some protection to the spring outflow channels only and provides no protection for maintaining groundwater levels to ensure continuous spring flows.

In the following discussion we evaluate the local regulations related to groundwater management within areas that might provide indirect benefits to the species' habitats through management of groundwater withdrawals, and Texas regulations for oil and gas activities.

Local Groundwater Regulations

One regulatory mechanism that could provide some protection to the spring flows for these species comes from local groundwater conservation districts. Groundwater in Texas is generally governed by the rule of capture unless a groundwater district is in place. The rule of capture allows a landowner to produce as much groundwater as he or she chooses, as long as the water is not wasted (Mace 2001, p. 11). However, local groundwater conservation districts have been established throughout much of Texas and are now the preferred method for groundwater management in the State (Texas Water Development Board 2012, pp. 23–258). Groundwater districts ''may regulate the location and production of wells, with certain voluntary and mandatory exemptions'' (Texas Water Development Board 2012, p. 27).

Currently one local groundwater district in the area could likely manage groundwater to protect spring flows in the Diamond Y Spring system (Texas Water Development Board 2011, p. 1). The Middle Pecos Groundwater Conservation District covers all of Pecos County and was confirmed as a district in 2002. The Middle Pecos County Groundwater Conservation District seeks to implement water management strategies to ''help maintain a sustainable, adequate, reliable, cost effective and high quality source of groundwater to promote the vitality,

economy and environment of the District'' (Middle Pecos Groundwater Conservation District 2010b, p. 1). However, the management plan does not provide specific objectives to maintain spring flow at Diamond Y Spring. This lack of acknowledgement of the relationship between the groundwater resources under the Districts' management to the conservation of the spring flow habitat at the Diamond Y Spring system limits any direct benefits of the management plan for the three aquatic invertebrates.

In 2010 the Groundwater Management Area 3 established ''desired future conditions'' for the aquifers occurring within a six-county area of west Texas (Texas Water Development Board 2012b, entire). These projected conditions are important because they guide the plans for water use of groundwater within groundwater conservation districts in order to attain the desired future condition of each aquifer they manage (Texas Water Development Board 2012c, p. 23). The latest plans from Groundwater Management Area 3—the planning group covering the relevant portion of the Edwards-Trinity (Plateau) and Rustler Aquifers that may be related to the source aquifers of Diamond Y Spring—identify the desired future condition of aquifer drawdown compared to 2010 levels in the next 50 years (2060) for each aquifer and county. The desired future condition for the Rustler Aquifer was not to exceed a 90-m (300-ft) drawdown (Middle Pecos Groundwater Conservation District 2010a, p. 24). The Rustler strata are thought to be between only about 75 and 200 m (250 and 670 ft) thick. This level of drawdown will accommodate 12.9 million cm (10,508 af) of annual withdrawals by pumping (Middle Pecos Groundwater Conservation District 2010b, p. 15; Williams 2010, pp. 3–5). For the Edwards-Trinity (Plateau) Aquifer, the desired future condition is for an average drawdown in 50 years of about 9 m (28 ft) (Middle Pecos Groundwater Conservation District 2010a, p. 20). We expect that the groundwater district will use their district rules to regulate water withdrawals in such a way as to implement these desired future conditions.

Researchers have large uncertainty related to determining source aquifers of Diamond Y Spring; therefore, determining what effects management of these aquifers will have on spring flows is difficult. Without better understanding of the interrelationships of the aquifers and the spring flows, we cannot confidently predict whether or not the existing groundwater management for the desired future conditions will provide the necessary flows to maintain the species' habitat. In addition, the Edwards-Trinity (Plateau) Aquifer is larger in geographic extent than the Rustler Aquifer and extends beyond the boundaries of the Middle Pecos Groundwater Conservation District into counties without a groundwater district. Unmanaged groundwater withdrawals in those areas, outside of the management of a groundwater conservation district, could also affect spring flows at Diamond Y Spring. For these reasons, we find that the regulatory mechanisms directing future groundwater withdrawal rates from the nearby aquifers that may support spring flows in the Diamond Y Spring system are inadequate to protect against ongoing and future modification of habitat for the Diamond tryonia, Gonzales tryonia, and Pecos amphipod.

Texas Regulations for Oil and Gas Activities

The Railroad Commission of Texas has regulations that oversee many activities by the oil and gas industries to minimize the opportunity for the release of contaminants into the surface water or groundwater in Texas (Texas Administrative Code, Title 16. Economic Regulation, Part 1). While the regulations in place may be effective at reducing the risk of contaminant releases, they cannot remove the threat of a catastrophic event that could lead to the extinction of the aquatic invertebrates. With only one known location of these species, any possible negative impact heightens their risk of extinction. Therefore, because of the inherent risk associated with oil and gas activities in proximity to the habitats of the three Diamond Y Spring species, and the severe consequences to the species of any contamination, Texas regulations for oil and gas activities cannot remove or alleviate the threats associated with water contamination from an oil or gas spill.

Summary of Factor D

Some regulatory mechanisms are in place, such as the existence of groundwater conservation districts that address the primary threat to the Diamond tryonia, Gonzales tryonia, or Pecos amphipod of habitat loss due to spring flow decline. However, we find that these mechanisms are not serving to alleviate or limit the threats to the species for three reasons. First, the lack of conclusive science on the groundwater systems and sources of spring flow for Diamond Y means that we cannot be sure which aquifers are the most important to protect. Until we can reliably determine the sources of spring flows, we cannot know if existing regulations are adequate to ensure long-term spring flows. Second, and similarly, due to the lack of understanding about the relationships between aquifer levels and spring flows, we cannot know if the current or future desired future conditions adopted by the groundwater management areas are sufficient to provide for the species' habitats. To our knowledge, none of the desired future conditions, which include large reductions in aquifer levels in 50 years, have been used to predict future spring flows at Diamond Y Spring. Finally, other sources of groundwater declines outside of the control of the current groundwater conservation districts could lead to further loss of spring flows. These sources include groundwater pumping not regulated by a local groundwater conservation district or climatic changes that alter recharge or underground flow paths between aquifers. Therefore, although important regulatory mechanisms are in place, such as the existence of groundwater conservation districts striving to meet desired future conditions for aquifers, we find that the mechanisms may not be able to sufficiently reduce the identified threats related to future habitat loss.

Although regulatory mechanisms overseeing oil and gas operations are in place, even a small risk of a contaminant spill presents a high risk of resulting extinction of these species because of their extremely limited range. We, therefore, conclude that these existing regulatory mechanisms are inadequate to sufficiently reduce the identified threats to the Phantom springsnail, Phantom tryonia, and diminutive amphipod now and in the future.

E. Other Natural or Manmade Factors Affecting Their Continued Existence (Diamond Y Spring Species)

We considered four other factors that may be affecting the continued existence of the Diamond Y Spring species: nonnative fish management, a nonnative snail, other nonnative species, and the small, reduced ranges of the three Diamond Y Spring species.

Nonnative Fish Management

Another source of potential impacts to these species comes from the indirect effect of management to control nonnative fishes in Diamond Y Spring. One of the major threats to the endangered Leon Springs pupfish, which is also endemic to the Diamond

Y Spring system, is hybridization with the introduced, nonnative sheepshead minnow *(Cyprinodon variegatus).* On two separate occasions efforts to eradicate the sheepshead minnow have incorporated the use of fish toxicants in the upper watercourse to kill and remove all the fish and restock with pure Leon Springs pupfish. The first time was in the 1970s when the chemical rotenone was used (Hubbs *et al.* 1978, pp. 489–490) with no documented conservation efforts or monitoring for the invertebrate community.

A second restoration effort was made in 1998 when the fish toxicant Antimycin A was used (Echelle *et al.* 2001, pp. 9–10) in the upper watercourse. In that effort, actions were taken to preserve some invertebrates (holding them in tanks) during the treatment, and an intense monitoring effort was conducted to measure the distribution and abundance of the invertebrates immediately before and for 1 year after the chemical treatment (Echelle *et al.* 2001, p. 14). The results suggested that the Antimycin A had an immediate and dramatic negative effect on Pecos amphipods; however, their abundance returned to pretreatment levels within 7 months (Echelle *et al.* 2001, p. 23). Gonzales tryonia also showed a decline in abundance that persisted during the 1 year of monitoring following the treatment at both treated and untreated sites (Echelle *et al.* 2001, pp. 23, 51).

No information is available on the impacts of the initial rotenone treatment, but we suspect that, like the later Antimycin A treatment, at least short-term effects resulted on the individuals of the Diamond Y Spring species. Both of these chemicals kill fish and other gill-breathing animals (like the three invertebrates) by inhibiting their use of oxygen at the cellular level (U.S. Army Corps of Engineers 2009, p. 2). Both chemicals are active for only a short time, degrade quickly in the environment, and are not toxic beyond the initial application. The long-term effects of these impacts are uncertain, but the available information indicates that the Gonzales tryonia may have responded negatively over at least 1 year. This action was limited to the upper watercourse populations, and the effects were likely short term in nature.

The use of fish toxicants represents past stressors that are no longer directly affecting the species but may have some lasting consequences to the distribution and abundance of the snails. Currently the Gonzales tryonia occurs in this area of the upper watercourse in a very narrow stretch of the outflow channel from Diamond Y Spring, and the Diamond tryonia may no longer occur in this stretch. Whether or not the application of the fish toxicants influenced these changes in distribution and the current status of the Gonzales tryonia is unknown. However, these actions could have contributed to the current absence of the Diamond tryonia from this reach and the restricted distribution of the Gonzales tryonia that now occurs in this reach. These actions only occurred in the past, and we do not anticipate them occurring again in the future. If the sheepshead minnow were to invade this habitat again, we do not expect that chemical treatment would be used due to a heightened concern about conservation of the invertebrates. Therefore, we consider this threat relatively insignificant because it was not severe in its impact on the species, and it is not likely to occur again in the future.

Nonnative Snail

Another factor that may be impacting the Diamond Y Spring species is the presence of the nonnative red-rim melania, an invertebrate species native to Africa and Asia that has been imported as an aquarium species and is now established in various locations across the southern and western portions of the United States (Benson 2012, p. 2).

The red-rim melania became established in Diamond Y Spring in the mid-1990s (Echelle *et al.* 2001, p. 15; McDermott 2000, p. 15). The exotic snail is now the most abundant snail in the Diamond Y Spring system (Ladd 2010, p. 18). It occurs only in the first 270 m (890 ft) of the upper watercourse of the Diamond Y Spring system, and it has not been detected in the lower watercourse (Echelle *et al.* 2001, p. 26; Ladd 2010, p. 22).

The mechanism and extent of potential effects of this nonnative snail on the native invertebrates have not been studied directly. However, because the snail occurs in relatively high abundances, to presume that it is likely competing for space and food resources in the limited habitats within which they occur is reasonable. Rader *et al.* (2003, pp. 651–655) reviewed the biology and possible impacts of red-rim melania and suggested that the species had already displaced some native springsnails in spring systems of the Bonneville Basin of Utah. In the upper watercourse where the red-rim melania occurs, only the Gonzales tryonia occurs there now in very low abundance in the area of overlap, and the Diamond tryonia does not occur in this reach any longer (Ladd 2010, p. 19).

The potential impacts of the red-rim melania on the three aquatic invertebrate species in the Diamond Y Spring system are largely unknown with the currently available information, but the nonnative snail is presumed to have some negative consequences to the native snails through competition for space and resources. The effects on the Pecos amphipod is even less clear, but competition could still be occurring. The red-rim melania has been present in the upper watercourse since the mid-1990s, and nothing currently would prevent the invasion of the species into Euphrasia Spring in the lower watercourse by an incidental human introduction or downstream transport during a flood. Considering the best available information, we conclude that the presence of this nonnative snail represents a moderate threat to the Diamond tryonia, Gonzales tryonia, and Pecos amphipod.

Other Nonnative Species

A potential future threat to these species comes from the possible introduction of additional nonnative species into their habitat. In general, introduced species are a serious threat to native aquatic species (Williams *et al.* 1989, p. 18; Lodge *et al.* 2000, p. 7). The threat is moderated by the limited public access to the habitat on The Nature Conservancy's preserve. Unfortunately, the limited access did not prevent the introduction of the nonnative sheepshead minnow on two separate occasions (Echelle *et al.* 2001, p. 4). In addition, invertebrates could be inadvertently moved by biologists conducting studies in multiple spring sites (Echelle *et al.* 2001, p. 26).

While the introduction of any future nonnative species could represent a threat to the aquatic invertebrates, the likelihood of this happening is relatively low because it is only a future possibility. In addition the extent of the impacts of any future nonnative species on the Diamond tryonia, Gonzales tryonia, and Pecos amphipod are unknown at this time.

Small, Reduced Range

One important factor that contributes to the high risk of extinction for these species is their naturally small range that has likely been reduced from past destruction of their habitat. The overall geographic range of the species may have been reduced from the loss of Comanche Springs (where the snails once occurred and likely the Pecos amphipod did as well) and from Leon Springs (if they historically occurred there). And within the Diamond Y Spring system, their distribution has

been reduced as flows from small springs and seeps have declined and reduced the amount of wetted areas in the spring outflow. These species are now currently limited to two small spring outflow areas.

The geographically small range and only two proximate populations of these invertebrate species increases the risk of extinction from any effects associated with other threats or stochastic 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 populations (Shepard 1993, pp. 354–357; McKinney 1997, p. 497; Minckley and Unmack 2000, pp. 52–53). In addition, the species are restricted to aquatic habitats in small spring systems and have minimal mobility and no other habitats available for colonization, so it is unlikely their range will ever expand beyond the current extent. This situation makes the severity of impact of any possible separate threat very high. In other words, the resulting effects of any of the threat factors under consideration here, even if they are relatively small on a temporal or geographic scale, could result in complete extinction of the species. While the small, reduced range does not represent an independent threat to these species, it does substantially increase the risk of extinction from the effects of other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Summary of Factor E

We considered four additional stressors as other natural or manmade factors that may be affecting these species. The effects from management actions to control nonnative fish species are considered low because they occurred in the past, with limited impact, and we do not expect them to occur in the future. The potential impacts of the nonnative snail red-rim melania and any future introductions of other nonnative species on the Phantom springsnail, Phantom tryonia, and diminutive amphipod are largely unknown with the current available information. But the nonnative snail is presumed to have some negative consequences to the native snails through competition for space and resources. The effects on the Pecos amphipod are even less clear, but competition could still be occurring. These nonnative snails have likely been co-occurring for up to 20 years at one of the two known locations for these species, and nothing is currently preventing the invasion of the species into Euphrasia Spring by an incidental human introduction or downstream transport during a flood. Considering the best available information, we conclude that the presence of the nonnative snail and the potential future introductions of nonnative species is a threat with a low-magnitude impact on the populations of the Diamond tryonia, Gonzales tryonia, and Pecos amphipod. In addition, the effects of the small, reduced ranges of these species limits the number of available populations and increases the risk of extinction from other threats. In combination with the past and future threats from habitat modification and loss, these factors contribute to the increased risk of extinction to the three native species.

Determination—Diamond Y Spring Species

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Diamond tryonia, Gonzales tryonia, and Pecos amphipod. We find the species are in danger of extinction due to the current and ongoing modification and destruction of their habitat and range (Factor A) from the ongoing and future decline in spring flows, ongoing and future modification of spring channels, and threats of future water contamination from oil and gas activities. The most significant factor threatening these species is a result of historic and future declines in regional groundwater levels that have caused the spring system to have reduced surface aquatic habitat and threaten the remaining habitat with the same fate. We did not find any significant threats to the species under Factors B or C. We found that existing regulatory mechanisms that could provide protection to the species through groundwater management by groundwater conservation districts and Texas regulations of the oil and gas activities (Factor D) are inadequate to protect the species from existing and future threats. Finally, the past management actions for nonnative fishes, the persistence of the nonnative red-rim melania, and the future introductions of other nonnative species are other factors that have or could negatively affect the species (Factor E). The severity of the impact from the red-rim melania is not known, but it and future introductions may contribute to the risk of extinction from the threats to habitat by reducing the abundance of the three aquatic invertebrates through competition for space and resources. The small, reduced ranges (Factor E) of these species, when coupled with the presence of additional threats, also put them at a heightened risk of extinction.

The elevated risk of extinction of the Diamond tryonia, Gonzales tryonia, and Pecos amphipod is a result of the cumulative nature of the stressors on the species and their habitats. For example, the past reduction in available habitat from declining surface water in the Diamond Y Spring system results in lower numbers of individuals contributing to the sizes of the populations. In addition, the loss of other spring systems that may have been inhabited by these species reduced the number of populations that would contribute to the species' overall viability. In this diminished state, the species are also facing future risks from the impacts of continuing declining spring flows, exacerbated by potential extended future droughts resulting from global climate change, and potential effects from nonnative species. All of these factors contribute together to heighten the risk of extinction and lead to our finding that the Diamond tryonia, Gonzales tryonia, and Pecos amphipod are in danger of extinction throughout all of their ranges and warrant listing as endangered species.

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 information available regarding the past, present, and future threats to the species, and have determined that the Diamond tryonia, Gonzales tryonia, and Pecos amphipod all meet the definition of endangered under the Act. They do not meet the definition of threatened species, because significant threats are occurring now and in the foreseeable future, at a high magnitude, and across the species' entire range. This situation makes them in danger of extinction now, so we have determined that they meet the definition of endangered species rather than threatened species. Therefore, on the basis of the best available scientific and commercial information, we are listing the Diamond tryonia, Gonzales tryonia, and Pecos amphipod as endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it is threatened or endangered throughout all or a significant portion of its range. The species we are listing in this rule are highly restricted in their

range, and the threats occur throughout their ranges. Therefore, we assessed the status of these species throughout their entire ranges. The threats to the survival of these species occur throughout the species' ranges and are not restricted to any particular significant portion of their ranges. Accordingly, our assessments and determinations apply to these species throughout their entire ranges.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species 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 (comprising species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our Web site (*http://www.fws.gov/endangered*), or from our Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because the species' range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If these species are listed, 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 Texas would be eligible for Federal funds to implement management actions that promote the protection and recovery of these species. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened 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 formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape altering activities on Federal lands administered by the U.S. Bureau of Reclamation; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; construction and management of gas pipeline and power line rights-of-way by the Federal Energy Regulatory Commission; and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must 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.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is 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) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act;

(2) Introduction into the habitat of the six west Texas aquatic invertebrate species of nonnative species that compete with or prey upon any of the six west Texas aquatic invertebrate species;

(3) The unauthorized release of biological control agents that attack any life stage of these species;

(4) Unauthorized modification of the springs or spring outflows inhabited by the six west Texas aquatic invertebrates; and

(5) Unauthorized discharge of chemicals or fill material into any waters in which these species are known to occur.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Austin Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

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 endangered or threatened 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).

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029 and upon request from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Southwest Region of the Service.

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; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), add entries for ''Springsnail, Phantom'', ''Tryonia, Diamond'', ''Tryonia, Gonzales'', and ''Tryonia, Phantom'' under ''Snails'' and ''Amphipod, diminutive'' and ''Amphipod, Pecos'' under ''Crustatceans'' to the List of Endangered and Threatened Wildlife in alphabetical order 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						
*	*	*	*	*	*		*
Snails							
*	*	*	*	*	*		*
Springsnail, Phantom.	Pyrgulopsis texana ..	U.S.A. (TX)	NA	E	812	17.95(f)	NA
*	*	*	*	*	*		*
Tryonia, Diamond.	Pseudotryonia adamantina.	U.S.A. (TX)	NA	E	812	17.95(f)	NA
Tryonia, Gonzales.	Tryonia circumstriata	U.S.A. (TX)	NA	E	812	17.95(f)	NA
Tryonia, Phantom.	Tryonia cheatumi	U.S.A. (TX)	NA	E	812	17.95(f)	NA
*	*	*	*	*	*		*
Crustaceans							
Amphipod, diminutive.	Gammarus hyalleloides.	U.S.A. (TX)	NA	E	812	17.95(h)	NA
*	*	*	*	*	*		*
Amphipod, Pecos.	Gammarus pecos	U.S.A. (TX)	NA	E	812	17.95(h)	NA
*	*	*	*	*	*		*

* * * * *

Dated: June 25, 2013.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–16222 Filed 7–8–13; 8:45 am]

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To amend the Internal Revenue Code of 1986 to include vaccines against seasonal influenza within the definition of taxable vaccines. (June 25, 2013; 127 Stat. 476)

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