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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 906

**[Doc. No. AMS–FV–15–0035; FV15–906–1 FIR]**

## Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that implemented a recommendation from the Texas Valley Citrus Committee (Committee) to decrease the assessment rate established for the 2015–16 and subsequent fiscal periods from $0.11 to $0.08 per 7/10-bushel carton or equivalent of oranges and grapefruit handled under the marketing order (order). The Committee locally administers the order and is comprised of producers and handlers of oranges and grapefruit operating within the area of production. The interim rule decreased the assessment rate to more closely align assessment income to the lower budgeted expenses.

**DATES:** Effective March 17, 2016.

**FOR FURTHER INFORMATION CONTACT:** Abigail Campos, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Abigail.Campos@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses*; or by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

Under the order, orange and grapefruit handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable oranges and grapefruit for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on August 1, and ends on July 31.

In an interim rule published in the **Federal Register** on November 16, 2015, and effective on November 17, 2015, (80 FR 70669, Doc. No. AMS–FV–15–0035; FV15–906–1 IR), § 906.235 was amended by decreasing the assessment rate established for Texas citrus for the 2015–2016 and subsequent fiscal periods from $0.11 to $0.08 per 7/10-bushel carton or equivalent handled. The decrease in the assessment rate more closely aligns assessment income to the lower budget.

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 170 producers of oranges and grapefruit in the production area and 13 handlers subject to regulation under the marketing order. The Small Business Administration defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistics Service, the weighted average grower price for Texas citrus during the 2013–14 season was around $13.89 per box and total shipments were near 7.4 million boxes. Using the weighted average price and shipment information, and assuming a normal distribution, the majority of growers would have annual receipts of less than $750,000. In addition, based on available information, the majority of handlers have annual receipts of less than $7,500,000 and could be considered small businesses under SBA's definition. Thus, the majority of Texas citrus producers and handlers may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2015–16 and subsequent fiscal periods from $0.11 to $0.08 per 7/10-bushel carton or equivalent of Texas citrus. The Committee unanimously recommended 2015–16 expenditures of $701,148 and an assessment rate of $0.08 per 7/10-bushel carton or equivalent handled. The assessment rate of $0.08 is $0.03 lower than the previous rate. The quantity of assessable oranges and grapefruit for the 2015–16 fiscal period is estimated at 8 million 7/10-bushel cartons or equivalent. Thus, the $0.08 rate should provide $640,000 in assessment income. Income derived from handler assessments along with interest income and funds from Committee's authorized reserve, will be adequate to cover budgeted expenses.

The Committee considered its expenses and recommended decreasing the assessment rate to more closely align assessment income to the lower budget.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers and decreasing the assessment rate reduces the burden on handlers.

In addition, the Committee's meeting was widely publicized throughout the Texas citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 24, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 ''Generic Fruit Crops.'' No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before January 15, 2016. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-15-0035-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (80 FR 70669, November 16, 2015) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 906**

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

## PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ Accordingly, the interim rule amending 7 CFR part 906, which was published at 80 FR 70669 on November 16, 2015, is adopted as a final rule, without change.

Dated: March 10, 2016.

**Elanor Starmer,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–05841 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 11

**[Docket No. FAA–2011–1136; Amdt. No. 11–59]**

**RIN 2120–AJ33**

## Air Carrier Contract Maintenance Requirements

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** On March 4, 2015, the FAA published a final rule entitled ''Air Carrier Contract Maintenance Requirements'' which will result in new information collection requirements. This technical amendment updates the FAA's list of OMB control numbers to display the control number associated with the approved information collection activities in the ''Air Carrier Contract Maintenance Requirements'' final rule.

**DATES:** Effective March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Wende T. DiMuro, AFS–330, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–1685; email *wende.t.dimuro@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

On March 4, 2015, the FAA published a final rule entitled ''Air Carrier Contract Maintenance Requirements'' (80 FR 11537). This final rule amends the maintenance regulations for domestic, flag, and supplemental operations, and for commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more (excluding any pilot seat). The new rules require affected air carriers and operators to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA, and include them in their maintenance manuals. This rule also requires the air carriers and operators to provide a list to the FAA of all persons with whom they contract their maintenance. These changes are needed because contract maintenance has increased to over 70 percent of all air carrier maintenance, and numerous investigations have shown deficiencies in maintenance performed by contract maintenance providers.

This final rule will result in new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted these information collection amendments to OMB for its review.

On February 25, 2016, OMB approved the information collection request. The OMB control number is 2120–0766.

### Technical Amendment

The FAA lists OMB control numbers assigned to its information collection activities in 14 CFR 11.201(b). Accordingly, this technical amendment updates 14 CFR 11.201(b) to display OMB control number 2120–0766 associated with the information collection activities in the final rule, Air Carrier Contract Maintenance Requirements. *See* 80 FR 11537.

Because this amendment is technical in nature and results in no substantive change, the FAA finds that the notice and public procedures under 5 U.S.C. 553(b) are unnecessary. For the same reason, the FAA finds good cause exists under 5 U.S.C. 553(d)(3) to make the amendment effective in less than 30 days.

### List of Subjects in 14 CFR Part 11

Administrative practice and procedure, Reporting and recordkeeping requirements.

### The Amendment

In consideration of the foregoing the Federal Aviation Administration amends 14 CFR Chapter I as follows:

## PART 11—GENERAL RULEMAKING PROCEDURES

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40109, 40113, 44110, 44502, 44701–44702, 44711, and 46102.

■ 2. In § 11.201 amend the table in paragraph (b) by revising the entries for Part 121 and Part 135 to read as follows:

**§ 11.201 Office of Management and Budget (OMB) control numbers assigned under the Paperwork Reduction Act.**

* * * * *

(b) * * *

| 14 CFR part or section identified and described | Current OMB control No. |
|---|---|
| * * | * * * * * * * |
| Part 121 | 2120–0008, 2120–0028, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0631, 2120–0651, 2120–0653, 2120–0691, 2120–0702, 2120–0739, 2120–0760, 2120–0766. |
| * * | * * * * * * * |
| Part 135 | 2120–0003, 2120–0028, 2120–0039, 2120–0535, 2120–0571, 2120–0600, 2120–0606, 2120–0614, 2120–0616, 2120–0620, 2120–0631, 2120–0653, 2120–0766. |
| * * | * * * * * * * |

Issued in Washington, DC under the authority provided by 49 U.S.C. 106(f) and 44701(a) on March 8, 2016.

**Lirio Liu,**

*Director, Office of Rulemaking.*

[FR Doc. 2016–05862 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 25

**[Docket No. FAA–2015–8298; Special Conditions No. 25–611–SC]**

## Special Conditions: JAMCO America, Inc., Boeing Model 777–300ER, Dynamic Test Requirements for Single-Occupant Oblique (Side-Facing) Seats With Inflatable Restraints

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special condition; request for comments.

**SUMMARY:** These special conditions are issued for the Boeing Model 777–300ER airplane. This airplane, as modified by JAMCO America, Inc. (JAMCO), will have a novel or unusual design feature associated with side-facing, oblique seats equipped with inflatable restraints. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for occupants of seats installed at an angle of greater than 18 degrees, but substantially less than 90 degrees, to the centerline of the airplane, nor for airbag devices. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** This action is effective on March 16, 2016. We must receive your comments by May 2, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2015–8298 using any of the following methods:

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

*Privacy:* The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket Web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John Shelden, Airframe and Cabin Safety, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–2785; facsimile 425–227–1320.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected airplane.

The FAA therefore finds that good cause exists for making these special conditions effective upon publication in the **Federal Register**.

### Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

### Background

On April 15, 2015, through FAA project no. JAST1977–0, JAMCO applied for a supplemental type certificate to allow the installation of oblique passenger seats, installed at a 43-inch pitch and at an angle of 30 degrees to the vertical plane of the

airplane longitudinal centerline, and to include inflatable lap belts, in Boeing Model 777–300ER airplanes. The Boeing Model 777–300ER airplane is a wide-body, swept-wing, conventional-tail, twin-engine, turbofan-powered transport airplane, with seating capacity for 550 passengers.

JAMCO proposes the installation of oblique (side-facing) B/E Aerospace Super Diamond business-class seats. These seats will include airbag devices for occupant restraint and injury protection.

**Type Certification Basis**

Under the provisions of 14 CFR 21.101, JAMCO America, Inc., must show that the Model 777–300ER airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in type certificate no. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations listed in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations listed in type certificate no. T00001SE are as follows:

Sections 25.562 and 25.785; and special conditions no. 25–295–SC for single-occupant, side-facing seats.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777–300ER airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777–300ER airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

**Novel or Unusual Design Features**

The Boeing Model 777–300ER airplane, as modified by JAMCO will incorporate the following novel or unusual design features:

Installation of B/E Aerospace Super Diamond business-class seats manufactured by B/E Aerospace, to be installed at an angle of 30 degrees to the airplane centerline. These seats will include airbag devices for occupant restraint and injury protection. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for occupants of seats installed in the proposed configuration.

The seating configuration JAMCO proposes is novel and unusual due to the seat installation at 30 degrees to the airplane centerline, the airbag-system installation, and the seat/occupant interface with the surrounding furniture that introduces occupant alignment and loading concerns.

Ongoing research is progressing to establish acceptable occupant-injury limits. Until those limits become available, the FAA proposes a set of interim limits based on the current literature available, current National Highway Traffic Safety Administration (NHTSA) regulations, and preliminary test data from the research program.

The existing regulations do not provide adequate or appropriate safety standards for occupants of oblique-angled seats with airbag systems. To provide a level of safety that is equivalent to that afforded occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement part 25 and, more specifically, supplement §§ 25.562 and 25.785. The requirements contained in these special conditions consist of both test conditions and injury pass/fail criteria.

**Discussion**

Amendment 25–15 to part 25, dated October 24, 1967, introduced the subject of side-facing seats and a requirement that each occupant in a side-facing seat must be protected from head injury by a safety belt and a cushioned rest that will support the arms, shoulders, head, and spine.

Subsequently, Amendment 25–20, dated April 23, 1969, clarified the definition of side-facing seats to require that each occupant of a seat that is positioned at more than an 18-degree angle to the vertical plane containing the airplane centerline must be protected from head injury by a safety belt and an energy-absorbing rest that supports the arms, shoulders, head, and spine; or by a safety belt and shoulder harness that prevents the head from contacting injurious objects. The FAA concluded that a maximum 18-degree angle would provide an adequate level of safety based on tests that were performed at the time, and thus adopted that standard.

Amendment 25–64, dated June 16, 1988, revised the emergency-landing conditions that must be considered in the design of the airplane. It revised the static-load conditions in § 25.561 and added a new § 25.562, requiring dynamic testing for all seats approved for occupancy during takeoff and landing. The intent was to provide an improved level of safety for occupants on transport-category airplanes. Because most seating on transport-category airplanes is forward-facing, the pass/fail criteria developed in Amendment 25–64 focused primarily on forward-facing seats. Therefore, the testing specified in the rule did not provide a complete measure of occupant injury in seats that are not forward-facing; although § 25.785 does require occupants of all seats that are occupied during taxi, takeoff, and landing not suffer serious injury as a result of the inertia forces specified in §§ 25.561 and 25.562.

To address recent research findings and accommodate commercial demand, the FAA developed a methodology to address all fully side-facing seats (*i.e.,* seats oriented in the airplane with the occupant facing 90 degrees to the direction of airplane travel) and has documented those requirements in a set of proposed new special conditions. The FAA issued policy statement PS–ANM–25–03–R1 on November 12, 2012, titled, ''Technical Criteria for Approving Side-Facing Seats,'' which conveys the injury criteria to be used in the special conditions. Some of those criteria are applicable to oblique seats but others are not because the motion of an occupant in an oblique seat is different from the motion of an occupant in a fully side-facing seat during emergency landing conditions.

For shallower installation angles, the FAA has granted equivalent level of safety (ELOS) findings for oblique seat installations on the premise that an occupant's kinematics in an oblique seat during a forward impact would result in the body aligning with the impact direction. We predicted that the occupant response would be similar to an occupant of a forward-facing seat, and would produce a level of safety equivalent to that of a forward-facing seat. These ELOS findings were subject to many conditions that reflected the injury-evaluation criteria and mitigation strategies available at the time of

issuance of the ELOS. However, review of dynamic test results for many of these oblique seat installations raised concerns that the premise was not correct. Potential injury mechanisms exist that are unique to oblique seats and are not mitigated by the ELOS self-alignment approach even if the occupant appears to respond similarly to a forward-facing seat.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**Applicability**

As discussed above, these special conditions are applicable to the Boeing Model 777–300ER airplane. These special conditions can be applied to oblique seats installed at an angle greater than 18 degrees but less than 46 degrees to the vertical plane containing the airplane centerline.

Should JAMCO apply at a later date for a supplemental type certificate to modify any other model included on type certificate no. T00001SE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

**Conclusion**

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon publication in the **Federal Register**. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

**List of Subjects in 14 CFR Part 25**

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 777–300ER airplane as modified by JAMCO.

In addition to the requirements of § 25.562:

**1. Head-Injury Criteria**

Compliance with § 25.562(c)(5) is required, except that, if the anthropomorphic test device (ATD) has no apparent contact with the seat/structure but has contact with an airbag, a head-injury criterion (HIC) unlimited score in excess of 1000 is acceptable, provided the HIC15 score (calculated in accordance with 49 CFR 571.208) for that contact is less than 700.

**2. Body-to-Wall/Furnishing Contact**

If a seat is installed aft of structure (*e.g.,* an interior wall or furnishing) that does not provide a homogenous contact surface for the expected range of occupants and yaw angles, then additional analysis and/or test(s) may be required to demonstrate that the injury criteria are met for the area that an occupant could contact. For example, if different yaw angles could result in different airbag performance, then additional analysis or separate test(s) may be necessary to evaluate performance.

**3. Neck Injury Criteria**

The seating system must protect the occupant from experiencing serious neck injury. The assessment of neck injury must be conducted with the airbag device activated, unless there is reason to also consider that the neck-injury potential would be higher for impacts below the airbag-device deployment threshold.

a. The $N_{ij}$ (calculated in accordance with 49 CFR 571.208) must be below 1.0, where $N_{ij} = F_z/F_{zc} + M_y/M_{yc}$, and $N_{ij}$ critical values are:

i. $F_{zc}$ = 1530 lb for tension
ii. $F_{zc}$ = 1385 lb for compression
iii. $M_{yc}$ = 229 lb-ft in flexion
iv. $M_{yc}$ = 100 lb-ft in extension

b. In addition, peak upper-neck $F_z$ must be below 937 lb of tension and 899 lb of compression.

c. Rotation of the head about its vertical axis, relative to the torso, is limited to 105 degrees in either direction from forward-facing.

d. The neck must not impact any surface that would produce concentrated loading on the neck.

**4. Spine and Torso Injury Criteria**

a. The shoulders must remain aligned with the hips throughout the impact sequence, or support for the upper torso must be provided to prevent forward or lateral flailing beyond 45 degrees from the vertical during significant spinal loading. Alternatively, the lumbar spine tension ($F_z$) cannot exceed 1200 lb.

b. Significant concentrated loading on the occupant's spine, in the area between the pelvis and shoulders during impact, including rebound, is not acceptable. During this type of contact, the interval for any rearward (X-direction) acceleration exceeding 20g must be less than 3 milliseconds as measured by the thoracic instrumentation specified in 49 CFR part 572, subpart E, filtered in accordance with SAE International (SAE) J211–1.

c. Occupant must not interact with the armrest or other seat components in any manner significantly different than would be expected for a forward-facing seat installation.

5. Longitudinal test(s), conducted to measure the injury criteria above, must be performed with the FAA Hybrid III ATD, as described in SAE 1999–01–1609. The test(s) must be conducted with an undeformed floor, at the most-critical yaw case(s) for injury, and with all lateral structural supports (armrests/walls) installed.

**Note:** JAMCO must demonstrate that the installation of seats via plinths or pallets meets all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS–ANM–100–2000–00123, dated February 2, 2000, titled, ''Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets,'' is acceptable to the FAA.

**Inflatable Lap Belt Special Conditions**

If inflatable lap belts are installed on single-place side-facing seats, the lap belts must meet Special Conditions no. 25–187A–SC.

Issued in Renton, Washington, on March 10, 2016.

**Michael Kaszycki,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2016–05995 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF COMMERCE**

**Bureau of Industry and Security**

**15 CFR Parts 736, 740, and 746**

**[Docket No. 160303178–6178–01]**

**RIN 0694–AG86**

## Cuba: Revisions to License Exceptions and Licensing Policy

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule allows vessels departing the United States on temporary sojourn to Cuba with cargo for other destinations to travel to Cuba under a license exception rather than having to obtain a license for the cargo bound for those other destinations to transit Cuba. This rule also authorizes exports of certain items to persons authorized by the Department of the Treasury to establish and maintain a physical or business presence in Cuba. Finally, the rule would adopt a licensing policy of case-by-case review for exports and reexports of items that would enable or facilitate export of items produced by the private sector in Cuba, subject to certain limitations.

**DATES:** Effective March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Foreign Policy Division, Bureau of Industry and Security, Phone: (202) 482–4252.

**SUPPLEMENTARY INFORMATION:**

### Background

On December 17, 2014, the President announced a historic new approach in U.S. policy toward Cuba. This approach recognized that increased engagement and commerce benefits the American and Cuban people, and sought to make the lives of ordinary Cubans easier and more prosperous. On January 16, 2015, the Bureau of Industry and Security (BIS) amended the Export Administration Regulations (EAR) to create License Exception Support for the Cuban People (SCP), which authorizes the export and reexport, without a license, of certain items to, among other objectives, improve the living conditions of the Cuban people (*see* 80 FR 2286). The rule also made other changes to license exceptions and licensing policy. *Id.*

On July 22, 2015, BIS published a rule implementing the May 29, 2015, rescission of Cuba's designation as a state sponsor of terrorism (*see* 80 FR 43314). That rule expanded certain license exception availability for exports and reexports to Cuba, including making general aviation aircraft eligible for temporary sojourns to Cuba.

On September 21, 2015, BIS published a rule to enhance support for the Cuban people (*see* 80 FR 56898). This rule expanded the scope of transactions that are eligible for License Exception SCP and made certain vessels on temporary sojourn to Cuba eligible for a license exception.

On January 27, 2016, BIS published a rule that amended the licensing policy in § 746.2 of the EAR to add a general policy of approval for certain exports and reexports previously subject to case-by-case review and a policy of case-by-case review for exports and reexports of items not eligible for License Exception SCP to meet the needs of the Cuban people, including exports and reexports made to state-owned enterprises and agencies and organizations of the Cuban government that provide goods and services to the Cuban people, subject to certain restrictions (*see* 81 FR 4580).

Today, BIS is taking this action in coordination with the Department of the Treasury, Office of Foreign Assets Control (OFAC), which is amending the Cuban Assets Control Regulations (31 CFR part 515).

This rule revises License Exception Aircraft, Vessels and Spacecraft (AVS) in § 740.15 to authorize transit through Cuban territory of cargo, laden aboard a vessel on temporary sojourn to Cuba, that is destined for other countries rather than require a license for that cargo to transit Cuban territory provided that such cargo departs with the vessel at the end of its temporary sojourn, does not enter the Cuban economy and is not transferred to another vessel while in Cuba. This change allows for efficient use of vessels that carry cargo from the United States to Cuba and to other countries and allows exporter carriers to select efficient routes. This rule also adds a note reminding readers to consult Coast Guard regulations on unauthorized entry into Cuban territorial waters.

This rule revises License Exception SCP to authorize export or reexport of EAR99 items and items controlled on the Commerce Control List only for anti-terrorism reasons for use by persons authorized to establish and maintain a physical or business presence in Cuba by the Department of the Treasury, Office of Foreign Assets Control pursuant to 31 CFR 515.573 or pursuant to a specific license issued by OFAC. Prior to this rule, License Exception SCP enumerated the activities for which OFAC had authorized such physical or business presence by general license. Simultaneously with the publication of this rule, OFAC is publishing an amendment to 31 CFR 515.573 to authorize additional persons subject to U.S. jurisdiction to establish a business and physical presence in Cuba. BIS's intent is to authorize by license exception the export and reexport of items needed to establish and maintain a physical or business presence in Cuba, to all persons authorized by OFAC to have such a presence. The simplest way to do this is to reference the applicable section in OFAC's Cuban Assets Control Regulations (''CACR''), *i.e.,* 31 CFR 515.573 and specific licenses issued by OFAC rather than to revise the EAR to repeat any changes made to that CACR section.

This rule also revises EAR licensing policy regarding Cuba to adopt a policy of case-by-case review of license applications to export or reexport items that will enable or facilitate exports from Cuba of items produced by Cuba's private sector. BIS is adopting this policy to reinforce the Cuba case-by-case licensing policy adopted prior to this rule, which focuses on exports and reexports that would be used in ways that meet the needs of the Cuban people. Enabling or facilitating exports of items produced by the Cuban private sector, under certain circumstances will also help meet the needs of the Cuban people and is consistent with the Administration's policy of supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future. However, BIS will conduct the case-by-case review consistent with the policy standard set forth in § 746.2(b)(3)(i) of the EAR, which provides that ''BIS generally will deny applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, including those engaged in tourism and those engaged in the extraction or production of minerals or other raw materials. Applications for export or reexport of items destined to the Cuban military, police, intelligence or security services also generally will be denied.''

This rule revises Note 1 to § 746.2(b)(3)(i) of the EAR, which describes a condition that will generally be included on licenses to prohibit reexport of the items authorized by the license or use of those items to enable or facilitate exports from Cuba. The revision makes clear that the condition applies to reexports from Cuba or uses that enable or facilitate exports from Cuba that primarily generate revenue for the state. BIS is making this change because enabling or facilitating exports of items produced by the Cuban private sector under certain circumstances will

help meet the needs of the Cuban people and is consistent with the Administration's policy of supporting the ability of the Cuban people to gain greater control over their own lives and determine their country's future.

**Specific Changes Made by This Rule**

This rule revises § 736.2(b)(8) of the EAR, which prohibits shipments from transiting certain destinations, to explicitly state that the prohibition does not apply if a license or license exception authorizes the in-transit shipment.

This rule revises § 740.15(d)(6) of the EAR to authorize temporary sojourn to Cuba of a vessel carrying cargo destined to other countries provided that such cargo departs with the vessel at the end of its temporary sojourn to Cuba, does not enter the Cuban economy and is not transferred to another vessel while in Cuba.

This rule revises § 740.21(e) to remove the individual references to categories of persons authorized by OFAC to establish and maintain a physical or business presence in Cuba pursuant to 31 CFR 515.573, and to authorize exports and reexports to all such persons and to persons whose physical or business presence is authorized by a specific license issued by OFAC.

This rule revises § 746.2(b)(3)(i), to add a paragraph (b)(3)(i)(D), which sets a policy of case-by-case review of items that will enable or facilitate export from Cuba of items produced by the Cuban private sector. It also revises Note 1 to clarify that the license condition described therein is intended to preclude use of items authorized by licenses bearing that condition from being reexported from Cuba or being used to enable or facilitate exports from Cuba that primarily generate revenue for the state.

BIS is making these changes to facilitate further support of and engagement with the Cuban people.

**Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, 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 rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget (OMB).

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number. This rule involves a collection of information approved under OMB control number 0694–0088—Simplified Network Application Processing+ System (SNAP+) and the Multipurpose Export License Application, which carries an annual estimated burden of 31,833 hours. BIS believes that this rule will have no material impact on that burden. To the extent that it has any impact, BIS believes that the benefits of this rule justify any additional burden it creates. This rule does not impose any new license requirements, it creates less restrictive licensing policies (*i.e.,* the policies under which the decision to approve or deny a license application is made) for exports and reexports to Cuba. These less restrictive policies might increase the number of license applications submitted to BIS because applicants might be more optimistic about obtaining approval. However, the benefit to license applicants in the form of greater likelihood of approval justifies any additional burden. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget, by email at *jseehra@omb.eop.gov* or by fax to (202) 395–7285 and to William Arvin at *william.arvin@bis.doc.gov.*

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking and the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). This rule is part of a foreign policy initiative to change the nature of the relationship between Cuba and the United States announced by the President on December 17, 2014. Delay in implementing this rule to obtain public comment would undermine the foreign policy objectives that the rule is intended to implement. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

**List of Subjects**

*15 CFR Part 736*

Exports.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 746*

Exports, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 15 CFR Chapter VII, Subchapter C is amended as follows:

## PART 736—[AMENDED]

■ 1. The authority citation for part 736 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 2151 note; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015); Notice of November 12, 2015, 80 FR 70667 (November 13, 2015).

■ 2. Section 736.2 is amended by revising paragraph (b)(8)(i) to read as follows:

**§ 736.2 General prohibitions and determination of applicability.**

* * * * *

(b) * * *

(8) * * *

(i) *Unlading and shipping in transit.* You may not export or reexport an item through, or transit through a country listed in paragraph (b)(8)(ii) of this section, unless a license exception or license authorizes such an export or reexport directly to or transit through such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

* * * * *

## PART 740—[AMENDED]

■ 3. The authority citation for part 740 continues to as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 4. Section 740.15 is amended by revising paragraph (d)(6) to read as follows:

**§ 740.15 Aircraft, vessels and spacecraft (AVS).**

* * * * *

(d) * * *

(6) *Cuba*—(i) *Eligible vessels and purposes.* Only the types of vessels listed in this paragraph (d)(6)(i) departing for Cuba for the purposes listed in this paragraph (d)(6)(i) may depart for Cuba pursuant to this paragraph (d). Vessels used to transport both passengers and items to Cuba may transport automobiles only if the export or reexport of the automobiles to Cuba has been authorized by a separate license issued by BIS (*i.e.,* not authorized by license exception).

(A) Cargo vessels for hire for use in the transportation of items;

(B) Passenger vessels for hire for use in the transportation of passengers and/or items; and

(C) Recreational vessels that are used in connection with travel authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC).

Note to paragraph (d)(6)(i)(C): Readers should also consult U.S. Coast Guard regulations at 33 CFR part 107 Subpart B—Unauthorized Entry into Cuban Territorial Waters.

(ii) *Intransit cargo.* Cargo laden on board a vessel may transit Cuba provided:

(A) The vessel is exported or reexported on temporary sojourn to Cuba pursuant to this paragraph (d) or a license from BIS; and

(B) The cargo departs with the vessel at the end of its temporary sojourn to Cuba, does not enter the Cuban economy and is not transferred to another vessel while in Cuba.

Note to paragraph (d). A vessel exported or reexported to a country pursuant to this paragraph (d) may not remain in that country for more than 14 consecutive days before it departs for a country to which it may be exported without a license or the United States.

* * * * *

■ 5. Section 740.21 is amended by:

■ a. Revising paragraph (e)(1);

■ b. Removing paragraph (e)(2);

■ c. Redesignating paragraph (e)(3) as (e)(2); and

■ d. Revising the note to paragraph (e).

The revisions read as follows:

**§ 740.21 Support for the Cuban People (SCP).**

* * * * *

(e) * * *

(1) The export or reexport to Cuba of items for use by persons authorized by the Department of the Treasury, Office of Foreign Assets Control (OFAC) to establish and maintain a physical or business presence in Cuba pursuant to 31 CFR 515.573 or pursuant to a specific license issued by OFAC. The items authorized pursuant to this paragraph (e)(1) are limited to those designated as EAR99 (*i.e.,* items subject to the EAR but not specified in any ECCN) or controlled on the CCL only for anti-terrorism reasons.

* * * * *

Note to paragraph (e). Any resulting payments associated with establishing or maintaining a physical or business presence in Cuba, such as lease payments, are permitted only to the extent authorized by 31 CFR 515.573 or a specific license issued by OFAC.

* * * * *

## PART 746—[AMENDED]

■ 6. The authority citation for part 746 continues to read as follows:

**Authority:** 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2015, 80 FR 26815 (May 8, 2015); Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

■ 7. Section 746.2 is amended by:

■ a. Removing the word ''and'' from the end of paragraph (b)(3)(i)(B);

■ b. Removing the period from the end of paragraph (b)(3)(i)(C) and adding ''; and'' in its place;

■ c. Adding paragraph (b)(3)(i)(D); and

■ d. Revising Note 1 to paragraph (b)(3)(i).

The addition and revision read as follows:

**§ 746.2 Cuba.**

* * * * *

(b) * * *

(3) * * *

(i) * * *

(D) Items that will enable or facilitate export from Cuba of items produced by the private sector.

Note 1 to paragraph (b)(3)(i): Licenses issued pursuant to the policy set forth in this paragraph generally will have a condition prohibiting both reexports from Cuba to any other destination and uses that enable or facilitate the export of goods or services from Cuba, that primarily generate revenue for the state.

* * * * *

Dated: March 14, 2016.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2016–06019 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF JUSTICE

## Parole Commission

## 28 CFR Part 2

**[Docket No. USPC–2016–01]**

## Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Parole Commission is adopting a final rule to amend the voting requirements for decisions to terminate a D.C. Code parolee's supervision before the expiration of the sentence. The new rule permits one commissioner to make the decision to terminate parole. The rule currently requires two commissioners to agree to terminate parole early. The Commission

is also revising reporting requirements for supervision officers who supervise D.C. Code offenders on parole and supervised release by removing the requirement for reports to be submitted after the completion of 12 months of continuous supervision.

**DATES:** Effective March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Helen H. Krapels, General Counsel, Office of the General Counsel, U.S. Parole Commission, 90 K Street NE., Washington, DC 20530, telephone (202) 346–7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

**SUPPLEMENTARY INFORMATION:** Since August 5, 1998, as a result of the National Capital Revitalization and Self-Government Improvement Act of 1997, D.C. Code section 24–131(a) (hereinafter ''the Revitalization Act''), the U.S. Parole Commission has had exclusive jurisdiction over District of Columbia Code felony offenders. Before this transfer of jurisdiction, the D.C. Board of Parole had the authority to release a D.C. Code parolee from supervision upon the vote of a majority of the D.C. Board of Parole. For a D.C. Code parolee released from supervision, all conditions of parole would be waived except the condition that the parolee not violate the law or engage in any conduct which might bring discredit to the parole system. The parolee was not, however, released from the custody of the Attorney General or the jurisdiction of the D.C. Board of Parole before the expiration of the sentence, which meant that the D.C. Board of Parole maintained jurisdiction to issue a warrant to return the parolee to custody if, before the expiration of the maximum period of supervision, the parolee committed a new crime or engaged in conduct which might bring discredit to the parole system.

Following the transfer of authority over D.C. Code parolees to the U.S. Parole Commission, the D.C. Council enacted the Equitable Street Time Amendment Act of 2008 (effective May 20, 2009) (hereinafter ''the Equitable Street Time Amendment Act''). Section 3(a) of the Equitable Street Time Amendment Act permits the U.S. Parole Commission to terminate legal custody over D.C. Code parolees in a fashion that is similar to the U.S. Parole Commission's authority to terminate parole for U.S. Code parolees. The Commission promulgated regulations to terminate parole before the expiration of the sentence pursuant to the authority granted under the Revitalization Act. These regulations were similar to the regulations for early termination of parole for U.S. Code sentenced parolees, but required that two commissioners agree on the decision to terminate supervision early.

With the revision published today, the Commission is establishing an appropriate voting quorum for decisionmaking. The result is consistent with the Commission's goal of achieving greater uniformity in its procedures for all cases under its jurisdiction. One commissioner may make the decision to terminate parole for D.C. Code parolees, as is the procedure for terminating parole for U.S. Code sentenced parolees and terminating supervised release for D.C. Code sentenced offenders on supervised release. Because the revision of the rule will affect only the internal voting procedures of the Commission, and will not implicate the merits of any parolee's case for termination of parole, notice and public comment are not required. 18 U.S.C. 553(b)(A).

The Commission is also eliminating the requirement that supervision officers provide initial supervision reports for D.C. Code offenders under its jurisdiction 90 days after the parolee has been released from prison and a supervision report after the completion of 12 months of continuous community supervision, and replacing it with the requirement that the supervision officer provide an initial supervision report after the completion of 24 months of continuous supervision. This revision will make the timeframes for submitting the initial supervision report consistent with U.S. Code sentenced parolees. Notice and public comment are not required because the revision of the rule will only affect procedures for submitting reports to the Commission. 18 U.S.C. 553(b)(A).

**Executive Order 13132**

These regulations will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, these rules do not have sufficient federalism implications requiring a Federalism Assessment.

**Regulatory Flexibility Act**

The rules will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

**Unfunded Mandates Reform Act of 1995**

The rules will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

**Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E—Congressional Review Act)**

These rules are not ''major rules'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E—Congressional Review Act, now codified at 5 U.S.C. 804(2). The rules will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, these are rules of agency practice or procedure that do not substantially affect the rights or obligations of non-agency parties, and do not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and parole.

**The Final Rule**

Accordingly, the U.S. Parole Commission adopts the following amendment to 28 CFR part 2:

## PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR part 2 continues to read as follows:

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.74 by revising paragraph (c) to read as follows:

**§ 2.74 Decision of the Commission.**

* * * * *

(c) The Commission shall resolve relevant issues of fact in accordance with § 2.19(c). Decisions granting or denying parole shall be based on the concurrence of two Commissioners, except that three Commissioners votes shall be required if the decision differs from the decision recommended by the examiner panel by more than six months. All other decisions, including decisions on revocation and reparole

made pursuant to § 2.105(c), and decisions terminating a parolee early from supervision, shall be based on the vote of one Commissioner, except as otherwise provided in this subpart.

■ 3. Revise § 2.94 to read as follows:

**§ 2.94 Supervision reports to Commission.**

A supervision report shall be submitted by the responsible supervision officer to the Commission for each parolee after the completion of 24 months of continuous supervision and annually thereafter. The supervision officer shall submit such additional reports and information concerning both the parolee, and the enforcement of the conditions of the parolee's supervision, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

■ 4. Revise § 2.207 to read as follows:

**§ 2.207 Supervision reports to Commission.**

A supervision report shall be submitted by the responsible supervision officer to the Commission for each releasee after the completion of 24 months of continuous supervision and annually thereafter. The supervision officer shall submit such additional reports and information concerning both the releasee, and the enforcement of the conditions of the supervised release, as the Commission may direct. All reports shall be submitted according to the format established by the Commission.

Dated: March 4, 2016.

**J. Patricia Wilson Smoot,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 2016–05639 Filed 3–15–16; 8:45 am]

**BILLING CODE 4410–31–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1988

**[Docket Number: OSHA–2015–0021]**

**RIN 1218–AC88**

## Procedures for Handling Retaliation Complaints Under Section 31307 of the Moving Ahead for Progress in the 21st Century Act (MAP–21)

**AGENCY:** Occupational Safety and Health Administration, Labor.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This document provides the interim final text of regulations governing the employee protection (retaliation or whistleblower) provisions of section 31307 of the Moving Ahead for Progress in the 21st Century Act (MAP–21 or the Act). This rule establishes procedures and time frames for the handling of retaliation complaints under MAP–21, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor) and judicial review of the Secretary's final decision. It also sets forth the Secretary's interpretations of the MAP–21 whistleblower provision on certain matters.

**DATES:** This interim final rule is effective on March 16, 2016. Comments and additional materials must be submitted (post-marked, sent or received) by May 16, 2016.

**ADDRESSES:** You may submit your comments by using one of the following methods:

*Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

*Fax:* If your submissions, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Mail, hand delivery, express mail, messenger or courier service:* You may submit your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2015–0021, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., E.T.

*Instructions:* All submissions must include the agency name and the OSHA docket number for this rulemaking (Docket No. OSHA– 2015–0021). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birth dates.

*Docket:* To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index, however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:** Mr. Anh-Viet Ly, Program Analyst, Directorate of Whistleblower Protection Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–4618, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2199. This is not a toll-free number. Email: *OSHA.DWPP@dol.gov.* This **Federal Register** publication is available in alternative formats. The alternative formats available are: large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Moving Ahead for Progress in the 21st Century Act (MAP–21 or Act), Public Law 112–141, 126 Stat. 405, was enacted on July 6, 2012 and, among other things, funded surface transportation programs at over $105 billion for fiscal years 2013 and 2014. Section 31307 of the Act, codified at 49 U.S.C. 30171 and referred to throughout these interim final rules as MAP–21, prohibits motor vehicle manufacturers, parts suppliers, and dealerships from discharging or otherwise retaliating against an employee because the employee provided, caused to be provided or is about to provide information to the employer or the Secretary of Transportation relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of Chapter 301 of title 49 of the U.S. Code (Chapter 301); filed, caused to be filed or is about to file a proceeding relating to any such defect or violation; testified, assisted or participated (or is about to testify, assist or participate) in such a proceeding; or objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of Chapter 301, or any order, rule, regulation, standard or ban under such provision. Chapter 301 is the codification of the National Traffic and Motor Vehicle Safety Act of 1966,

as amended, which grants the National Highway Traffic Safety Administration (NHTSA) authority to issue vehicle safety standards and to require manufacturers to recall vehicles that have a safety-related defect or do not meet federal safety standards. These interim final rules establish procedures for the handling of whistleblower complaints under the Act.

**II. Summary of Statutory Procedures**

Under MAP–21, a person who believes that he has been discharged or otherwise retaliated against in violation of the Act (complainant) may file a complaint with the Secretary of Labor (Secretary) within 180 days of the alleged retaliation. Upon receipt of the complaint, the Secretary must provide written notice to the person or persons named in the complaint alleged to have violated the Act (respondent) of the filing of the complaint, the allegations contained in the complaint, the substance of the evidence supporting the complaint, and the rights afforded the respondent throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the respondent an opportunity to submit a response, meet with the investigator to present statements from witnesses, and conduct an investigation.

The Act provides that the Secretary may conduct an investigation only if the complainant has made a prima facie showing that the protected activity was a contributing factor in the adverse action alleged in the complaint and the respondent has not demonstrated, through clear and convincing evidence, that it would have taken the same adverse action in the absence of that activity. (See § 1988.104 for a summary of the investigation process.) OSHA interprets the prima facie case requirement as allowing the complainant to meet this burden through the complaint as supplemented by interviews of the complainant.

After investigating a complaint, the Secretary will issue written findings. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that retaliation has occurred, the Secretary must notify the complainant and respondent of those findings, along with a preliminary order that requires the respondent to, where appropriate: Take affirmative action to abate the violation; reinstate the complainant to his or her former position together with the compensation of that position (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and provide compensatory damages to the complainant, as well as all costs and expenses (including attorney fees and expert witness fees) reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

The complainant and the respondent then have 30 days after the date of receipt of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing before an Administrative Law Judge (ALJ). The filing of objections under the Act will stay any remedy in the preliminary order except for preliminary reinstatement. If a hearing before an ALJ is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, the Act requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the conclusion of any hearing in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, the complainant, and the respondent may enter into a settlement agreement that terminates the proceeding. Where the Secretary has determined that a violation has occurred, the Secretary, where appropriate, will assess against the respondent a sum equal to the total amount of all costs and expenses, including attorney and expert witness fees, reasonably incurred by the complainant for, or in connection with, the bringing of the complaint upon which the Secretary issued the order. The Secretary also may award a prevailing employer reasonable attorney fees, not exceeding $1,000, if the Secretary finds that the complaint is frivolous or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit where the complainant resided on the date of the violation.

The Act permits the employee to seek de novo review of the complaint by a United States district court in the event that the Secretary has not issued a final decision within 210 days after the filing of the complaint. The provision provides that the court will have jurisdiction over the action without regard to the amount in controversy and that the case will be tried before a jury at the request of either party.

**III. Summary and Discussion of Regulatory Provisions**

The regulatory provisions in this part have been written and organized to be consistent with other whistleblower regulations promulgated by OSHA to the extent possible within the bounds of the statutory language of the Act. Responsibility for receiving and investigating complaints under the Act has been delegated to the Assistant Secretary for Occupational Safety and Health (Assistant Secretary) by Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by ALJs are decided by the ARB. Secretary of Labor's Order No. 2–2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).

*Subpart A—Complaints, Investigations, Findings and Preliminary Orders*

Section 1988.100 Purpose and Scope

This section describes the purpose of the regulations implementing the whistleblower provisions of MAP–21 and provides an overview of the procedures covered by these regulations.

Section 1988.101 Definitions

This section includes the general definitions of certain terms used in section 31307 of MAP–21, 49 U.S.C. 30171, which are applicable to the Act's whistleblower provision. The term ''dealership'' appears only in section 30171 and does not appear in any other provision of Chapter 301, which consistently uses the term ''dealer'' to mean ''a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.'' *See* 49 U.S.C. 30102(a)(1). Accordingly, the Secretary concludes that the term ''dealership'' in section 30171 refers to any ''dealer'' as that term is defined in section 30102(a)(1). The term defect ''includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.'' *See id.* at (a)(2). The term manufacturer means ''a person (A) manufacturing or assembling motor vehicles or motor vehicle equipment; or (B) importing motor vehicles or motor vehicle equipment for resale.'' *See id.* at (a)(5). The term motor vehicle means ''a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.''

*See id.* at (a)(6). The term motor vehicle equipment means ''(A) any system, part, or component of a motor vehicle as originally manufactured; (B) any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or (C) any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that (i) is not a system, part, or component of a motor vehicle; and (ii) is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death.'' *See id.* at (a)(7).

Section 1988.102 Obligations and Prohibited Acts

This section describes the activities that are protected under the Act and the conduct that is prohibited in response to any protected activities. The Act protects individuals who provide information to the employer or to the Secretary of Transportation relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of Chapter 301. The Act also protects individuals who file, testify, assist, or participate in proceedings concerning motor vehicle defects, noncompliance, or violations or alleged violations of any notification or reporting requirement of Chapter 301. Finally, the Act protects individuals who objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of Chapter 301 or any order, rule, regulation, standard, or ban under that Chapter. More information regarding Chapter 301 and NHTSA's regulations can be found at *www.nhtsa.gov.*

Under the Act, an employee who provides information, files a proceeding, or objects to or refuses to participate in any activity is protected so long as the employee's belief of a defect, noncompliance or violation is subjectively and objectively reasonable. *See, e.g., Benjamin* v. *CitationShares Management. L.L.C.,* ARB No. 12–029, 2013 WL 6385831, at *4 (ARB Nov. 5, 2013) (noting that, as a matter of law, an employee is protected under the aviation whistleblower protections of 49 U.S.C. 42121 when he provides or attempts to provide information regarding conduct he reasonably believes violates FAA regulations) (citations omitted); *Sylvester* v. *Parexel Int'l LLC,* ARB No. 07–123, 2011 WL 2165854, at *11–12 (ARB May 25, 2011) (discussing the reasonable belief standard under analogous language in the Sarbanes-Oxley Act whistleblower provision, 18 U.S.C. 1514A). The requirement that the complainant have a subjective, good faith belief is satisfied so long as the complainant actually believed that the conduct objected to violated the relevant law or regulation. *See Sylvester,* 2011 WL 2165854, at *11–12. The objective ''reasonableness'' of a complainant's belief is typically determined ''based on the knowledge available to a reasonable person in the same factual circumstances with the same training and experience as the aggrieved employee.'' *Id.* at *12 (internal quotation marks and citation omitted). However, the complainant need not show that the conduct constituted an actual violation of law. Pursuant to this standard, an employee's whistleblower activity is protected where it is based on a reasonable, but mistaken, belief that a violation of the relevant law has occurred. *Id.* at *13.

Section 1988.103 Filing of Retaliation Complaint

This section explains the requirements for filing a retaliation complaint under MAP–21. To be timely, a complaint must be filed within 180 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), an alleged violation occurs when the retaliatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision to take an adverse action. *Equal Emp't Opportunity Comm'n* v. *United Parcel Serv., Inc.,* 249 F.3d 557, 561–62 (6th Cir. 2001). The time for filing a complaint under MAP–21 may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint to be tolled if a complainant mistakenly files a complaint with an agency other than OSHA within 180 days after an alleged adverse action.

Complaints filed under MAP–21 need not be in any particular form. They may be either oral or in writing. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language. With the consent of the employee, complaints may be filed by any person on the employee's behalf.

OSHA notes that a complaint of retaliation filed with OSHA under MAP–21 is not a formal document and need not conform to the pleading standards for complaints filed in federal district court articulated in *Bell Atlantic Corp.* v. *Twombly,* 550 U.S. 544 (2007) and *Ashcroft* v. *Iqbal,* 556 U.S. 662 (2009). *See Sylvester,* 2011 WL 2165854, at *9–10 (holding that whistleblower complaints filed with OSHA under analogous provisions in the Sarbanes-Oxley Act need not conform to federal court pleading standards). Rather, the complaint filed with OSHA under this section simply alerts OSHA to the existence of the alleged retaliation and the complainant's desire that OSHA investigate the complaint.

Section 1988.104 Investigation

This section describes the procedures that apply to the investigation of MAP–21 complaints. Paragraph (a) of this section outlines the procedures for notifying the parties and the NHTSA of the complaint and notifying the respondent of its rights under these regulations. Paragraph (b) describes the procedures for the respondent to submit its response to the complaint. Paragraph (c) specifies that OSHA will request that the parties provide each other with copies of their submissions to OSHA during the investigation and that, if a party does not provide such copies, OSHA will do so at a time permitting the other party an opportunity to respond to those submissions. Before providing such materials, OSHA will redact them consistent with the Privacy Act of 1974, 5 U.S.C. 552a and other applicable confidentiality laws. Paragraph (d) of this section discusses confidentiality of information provided during investigations.

Paragraph (e) of this section sets forth the applicable burdens of proof. MAP–21 requires that a complainant make an initial prima facie showing that a protected activity was ''a contributing factor'' in the adverse action alleged in the complaint, *i.e.,* that the protected activity, alone or in combination with other factors, affected in some way the outcome of the employer's decision. The complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing. The complainant's burden may be satisfied, for example, if he or she shows that the adverse action took place within a temporal proximity of the protected activity, or at the first opportunity available to the respondent, giving rise to the inference that it was a contributing factor in the adverse action. *See, e.g. Porter* v. *Cal. Dep't of Corrs.,* 419 F.3d 885, 895 (9th Cir. 2005)

(years between the protected activity and the retaliatory actions did not defeat a finding of a causal connection where the defendant did not have the opportunity to retaliate until he was given responsibility for making personnel decisions).

If the complainant does not make the required prima facie showing, the investigation must be discontinued and the complaint dismissed. *See Trimmer* v. *U.S. Dep't of Labor,* 174 F.3d 1098, 1101 (10th Cir. 1999) (noting that the burden-shifting framework of the Energy Reorganization Act of 1974, which is the same as that under MAP–21, serves a ''gatekeeping function'' that ''stem[s] frivolous complaints''). Even in cases where the complainant successfully makes a prima facie showing, the investigation must be discontinued if the employer demonstrates, by clear and convincing evidence, that it would have taken the same adverse action in the absence of the protected activity. Thus, OSHA must dismiss a complaint under MAP–21 and not investigate further if either: (1) The complainant fails to meet the prima facie showing that protected activity was a contributing factor in the alleged adverse action; or (2) the employer rebuts that showing by clear and convincing evidence that it would have taken the same adverse action absent the protected activity.

Assuming that an investigation proceeds beyond the gatekeeping phase, the statute requires OSHA to determine whether there is reasonable cause to believe that protected activity was a contributing factor in the alleged adverse action. A contributing factor is ''any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision.'' *Marano* v. *Dep't of Justice,* 2 F.3d 1137, 1140 (Fed. Cir. 1993) (internal quotation marks, emphasis and citation omitted) (discussing the Whistleblower Protection Act, 5 U.S.C. 1221(e)(1)); *see also Lockheed Martin Corp.* v. *Admin. Rev. Bd.,* 717 F.3d 1121, 1136 (10th Cir. 2013) (discussing *Marano* as applied to analogous whistleblower provision in the Sarbanes-Oxley Act); *Araujo* v. *New Jersey Transit Rail Ops., Inc.,* 708 F.3d 152, 158 (3d Cir. 2013) (discussing *Marano* as applied to analogous whistleblower provision in the Federal Railroad Safety Act). For protected activity to be a contributing factor in the adverse action, '' 'a complainant need not necessarily prove that the respondent's articulated reason was a pretext in order to prevail,' because a complainant alternatively can prevail by showing that the respondent's 'reason, while true, is only one of the reasons for its conduct,' and that another reason was the complainant's protected activity.'' *See Klopfenstein* v. *PCC Flow Techs. Holdings, Inc.,* ARB No. 04–149, 2006 WL 3246904, at *13 (ARB May 31, 2006) (quoting *Rachid* v. *Jack in the Box, Inc.,* 376 F.3d 305, 312 (5th Cir. 2004)) (discussing contributing factor test under the Sarbanes-Oxley Act whistleblower provision), *aff'd sub nom. Klopfenstein* v. *Admin. Rev. Bd.,* 402 F. App'x 936, 2010 WL 4746668 (5th Cir. 2010).

If OSHA finds reasonable cause to believe that the alleged protected activity was a contributing factor in the adverse action, OSHA may not order relief if the employer demonstrates by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. *See* 49 U.S.C. 30171(b)(2)(B). The ''clear and convincing evidence'' standard is a higher burden of proof than a ''preponderance of the evidence'' standard. Clear and convincing evidence is evidence indicating that the thing to be proved is highly probable or reasonably certain. *Clarke* v. *Navajo Express,* ARB No. 09–114, 2011 WL 2614326, at *3 (ARB June 29, 2011).

Paragraph (f) describes the procedures OSHA will follow prior to the issuance of findings and a preliminary order when OSHA has reasonable cause to believe that a violation has occurred. Its purpose is to ensure compliance with the Due Process Clause of the Fifth Amendment, as interpreted by the Supreme Court in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987) (requiring OSHA to give a Surface Transportation Assistance Act respondent the opportunity to review the substance of the evidence and respond, prior to ordering preliminary reinstatement).

Section 1988.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue, within 60 days of the filing of a complaint, written findings regarding whether or not there is reasonable cause to believe that the complaint has merit. If the findings are that there is reasonable cause to believe that the complaint has merit, the Assistant Secretary will order appropriate relief, including preliminary reinstatement, affirmative action to abate the violation, back pay with interest, compensatory damages, attorney and expert witness fees, and costs. The findings and, where appropriate, preliminary order, advise the parties of their right to file objections to the findings of the Assistant Secretary and to request a hearing. The findings and, where appropriate, the preliminary order, also advise the respondent of the right to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final decision and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

The remedies provided under MAP–21 aim to make the complainant whole by restoring the complainant to the position that he or she would have occupied absent the retaliation and to counteract the chilling effect of retaliation on protected whistleblowing in complainant's workplace. The back pay and other remedies appropriate in each case will depend on the individual facts of the case and the complainant's interim earnings must be taken into account in determining the appropriate back pay award. However, OSHA notes that a back pay award under MAP–21 includes not only wages but also may include other compensation that the complainant would have received from the employer absent the retaliation, such as lost bonuses, overtime, benefits, raises and promotions when there is evidence to determine these figures. Thus, for example, a back pay award under MAP–21 might include amounts that the complainant would have earned in commissions or amounts that the employer would have contributed to a 401(k) plan on the complainant's behalf had the complainant not been discharged in retaliation for engaging in protected activity under MAP–21.

In ordering interest on back pay under MAP–21, the Secretary has determined that interest due will be computed by compounding daily the Internal Revenue Service interest rate for the underpayment of taxes, which under 26 U.S.C. 6621 is generally the Federal short-term rate plus three percentage points, against back pay. In the Secretary's view, 26 U.S.C. 6621 provides the appropriate rate of interest to ensure that victims of unlawful retaliation under MAP–21 are made whole. The Secretary has long applied the interest rate in 26 U.S.C. 6621 to calculate interest on back pay in whistleblower cases. *Doyle* v. *Hydro*

*Nuclear Servs.,* ARB Nos. 99–041, 99–042, 00–012, 2000 WL 694384, at *14–15, 17 (ARB May 17, 2000); *see also Cefalu* v. *Roadway Express, Inc.,* ARB No. 09–070, 2011 WL 1247212, at *2 (ARB Mar. 17, 2011); *Pollock* v. *Cont'l Express,* ARB Nos. 07–073, 08–051, 2010 WL 1776974, at *8 (ARB Apr. 10, 2010); *Murray* v. *Air Ride, Inc.,* ARB No. 00–045, slip op. at 9 (ARB Dec. 29, 2000). Section 6621 provides the appropriate measure of compensation under MAP–21 and other Department of Labor (DOL)-administered whistleblower statutes because it ensures that the complainant will be placed in the same position he or she would have been in if no unlawful retaliation occurred. *See Ass't Sec'y* v. *Double R. Trucking, Inc.,* ARB No. 99–061, slip op. at 5 (ARB July 16, 1999) (interest awards pursuant to section 6621 are mandatory elements of complainant's make-whole remedy). Section 6621 provides a reasonably accurate prediction of market outcomes (which represents the loss of investment opportunity by the complainant and the employer's benefit from use of the withheld money) and thus provides the complainant with appropriate make-whole relief. *See EEOC* v. *Erie Cnty.,* 751 F.2d 79, 82 (2d Cir. 1984) (''[S]ince the goal of a suit under the [Fair Labor Standards Act] and the Equal Pay Act is to make whole the victims of the unlawful underpayment of wages, and since [section 6621] has been adopted as a good indicator of the value of the use of money, it was well within'' the district court's discretion to calculate prejudgment interest under § 6621); *New Horizons for the Retarded,* 283 NLRB No. 181, 1987 WL 89652, at *2 (NLRB May 28, 1987) (observing that ''the short-term Federal rate [used by section 6621] is based on average market yields on marketable Federal obligations and is influenced by private economic market forces'').

The Secretary further believes that daily compounding of interest achieves the make-whole purpose of a back pay award. Daily compounding of interest has become the norm in private lending and was found to be the most appropriate method of calculating interest on back pay by the National Labor Relations Board (NLRB). *See Jackson Hosp. Corp.* v. *United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int'l Union,* 356 NLRB No. 8, 2010 WL 4318371, at *3–4 (NLRB Oct. 22, 2010). Additionally, interest on tax underpayments under the Internal Revenue Code, 26 U.S.C. 6621, is compounded daily pursuant to 26 U.S.C. 6622(a).

In ordering back pay, OSHA will require the respondent to submit the appropriate documentation to the Social Security Administration (SSA) allocating the back pay to the appropriate calendar quarters. Requiring the reporting of back pay allocation to the SSA serves the remedial purposes of MAP–21 by ensuring that employees subjected to retaliation are truly made whole. *See Don Chavas, LLC d/b/a Tortillas Don Chavas,* 361 NLRB No. 10, 2014 WL 3897178, at *4–5 (NLRB Aug. 8, 2014). As the NLRB has explained, when back pay is not properly allocated to the years covered by the award, a complainant may be disadvantaged in several ways. First, improper allocation may interfere with a complainant's ability to qualify for any old-age Social Security benefit. *Id.* at *4 (''Unless a [complainant's] multiyear backpay award is allocated to the appropriate years, she will not receive appropriate credit for the entire period covered by the award, and could therefore fail to qualify for any old-age social security benefit.''). Second, improper allocation may reduce the complainant's eventual monthly benefit. *Id.* ''[I]f a backpay award covering a multi-year period is posted as income for 1 year, it may result in SSA treating the [complainant] as having received wages in that year in excess of the annual contribution and benefit base.'' *Id.* Wages above this base are not subject to Social Security taxes, which reduces the amount paid on the employee's behalf. ''As a result, the [complainant's] eventual monthly benefit will be reduced because participants receive a greater benefit when they have paid more into the system.'' *Id.* Finally, ''social security benefits are calculated using a progressive formula: Although a participant receives more in benefits when she pays more into the system, the rate of return diminishes at higher annual incomes.'' Therefore, a complainant may ''receive a smaller monthly benefit when a multiyear award is posted to 1 year rather than being allocated to the appropriate periods, even if social security taxes were paid on the entire amount.'' *Id.* The purpose of a make-whole remedy such as back pay is to put the complainant in the same position the complainant would have been absent the prohibited retaliation. That purpose is not achieved when the complainant suffers the disadvantages described above. The Secretary believes that requiring proper SSA allocation is necessary to achieve the make-whole purpose of a back pay award.

In appropriate circumstances, in lieu of preliminary reinstatement, OSHA may order that the complainant receive the same pay and benefits that he or she received prior to termination but not actually return to work. Such ''economic reinstatement'' is akin to an order of front pay and frequently is employed in cases arising under section 105(c) of the Federal Mine Safety and Health Act of 1977, which protects miners from retaliation. 30 U.S.C. 815(c); *see, e.g., Sec'y of Labor ex rel. York* v. *BR&D Enters., Inc.,* 23 FMSHRC 697, 2001 WL 1806020, at *1 (ALJ June 26, 2001). Front pay has been recognized as a possible remedy in cases under the whistleblower statutes enforced by OSHA in circumstances where reinstatement would not be appropriate. *See, e.g., Brown* v. *Lockheed Martin Corp.,* ALJ No. 2008–SOX–00049, 2010 WL 2054426, at *55–56 (ALJ Jan. 15, 2010) (noting that while reinstatement is the ''presumptive remedy'' under Sarbanes-Oxley, front pay may be awarded as a substitute when reinstatement is inappropriate); *see, e.g., Luder* v. *Cont'l Airlines, Inc.,* ARB No. 10–026, 2012 WL 376755, at *11 (ARB Jan. 31, 2012), *aff'd, Cont'l Airlines, Inc.* v. *Admin. Rev. Bd.,* No. 15–60012, slip op. at 8, 2016 WL 97461, at *4 (5th Cir. Jan. 7, 2016) (unpublished) (under Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, ''front-pay is available when reinstatement is not possible''); *see also Moder* v. *Vill. of Jackson,* ARB Nos. 01–095, 02–039, 2003 WL 21499864, at *10 (ARB June 30, 2003) (under environmental whistleblower statutes, ''front pay may be an appropriate substitute when the parties prove the impossibility of a productive and amicable working relationship, or the company no longer has a position for which the complainant is qualified''); *Hobby* v. *Georgia Power Co.,* ARB Nos. 98–166, 98–169 (ARB Feb. 9, 2001), *aff'd sub nom. Hobby* v. *U.S. Dep't of Labor,* No. 01–10916 (11th Cir. Sept. 30, 2002) (unpublished) (noting circumstances where front pay may be available in lieu of reinstatement but ordering reinstatement). Congress intended that employees be preliminarily reinstated to their positions if OSHA finds reasonable cause to believe that they were discharged in violation of MAP–21. When a violation is found, the norm is for OSHA to order immediate preliminary reinstatement. Neither an employer nor an employee has a statutory right to choose economic

reinstatement. Rather, economic reinstatement is designed to accommodate situations in which evidence establishes to OSHA's satisfaction that immediate reinstatement is inadvisable for some reason, notwithstanding the employer's retaliatory discharge of the employee. In such situations, actual reinstatement might be delayed until after the administrative adjudication is completed as long as the employee continues to receive his or her pay and benefits and is not otherwise disadvantaged by a delay in reinstatement. There is no statutory basis for allowing the employer to recover the costs of economically reinstating an employee should the employer ultimately prevail in the whistleblower adjudication.

*Subpart B—Litigation*

Section 1988.106 Objections to the Findings and the Preliminary Order and Requests for a Hearing

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of the filing; if the objection is filed in person, by hand-delivery or other means, the objection is filed upon receipt. The filing of objections also is considered a request for a hearing before an ALJ. Although the parties are directed to serve a copy of their objections on the other parties of record, as well as the OSHA official who issued the findings and order, OSHA, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards, the failure to serve copies of the objections on the other parties of record does not affect the ALJ's jurisdiction to hear and decide the merits of the case. *See Shirani* v. *Calvert Cliffs Nuclear Power Plant, Inc.,* ARB No. 04–101, 2005 WL 2865915, at *7 (ARB Oct. 31, 2005).

The timely filing of objections stays all provisions of the preliminary order, except for the portion requiring reinstatement. A respondent may file a motion to stay the Assistant Secretary's preliminary order of reinstatement with the Office of Administrative Law Judges. However, such a motion will be granted only based on exceptional circumstances. The Secretary believes that a stay of the Assistant Secretary's preliminary order of reinstatement under MAP–21 would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay. If no timely objection to the Assistant Secretary's findings and/or preliminary order is filed, then the Assistant Secretary's findings and/or preliminary order become the final decision of the Secretary not subject to judicial review.

Section 1988.107 Hearings

This section adopts the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, as set forth in 29 CFR part 18 subpart A. This section provides that the hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo, on the record. As noted in this section, formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

Section 1988.108 Role of Federal Agencies

The Assistant Secretary, at his or her discretion, may participate as a party or amicus curiae at any time in the administrative proceedings under MAP–21. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an ALJ; petition for review of a decision of an ALJ, including a decision based on a settlement agreement between the complainant and the respondent, regardless of whether the Assistant Secretary participated before the ALJ; or participate as amicus curiae before the ALJ or in the ARB proceeding. Although OSHA anticipates that ordinarily the Assistant Secretary will not participate, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, multiple employees, alleged violations that appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The NHTSA, if interested in a proceeding, also may participate as amicus curiae at any time in the proceedings.

Section 1988.109 Decision and Orders of the Administrative Law Judge

This section sets forth the requirements for the content of the decision and order of the ALJ, and includes the standard for finding a violation under MAP–21. Specifically, the complainant must demonstrate (*i.e.* prove by a preponderance of the evidence) that the protected activity was a ''contributing factor'' in the adverse action. *See, e.g., Allen* v. *Admin. Rev. Bd.,* 514 F.3d 468, 475 n.1 (5th Cir. 2008) (''The term 'demonstrates' [under identical burden-shifting scheme in the Sarbanes-Oxley whistleblower provision] means to prove by a preponderance of the evidence.''). If the employee demonstrates that the alleged protected activity was a contributing factor in the adverse action, the employer, to escape liability, must demonstrate by ''clear and convincing evidence'' that it would have taken the same action in the absence of the protected activity. *See* 49 U.S.C. 30171(b)(2)(B).

Paragraph (c) of this section further provides that OSHA's determination to dismiss the complaint without an investigation or without a complete investigation under section 1988.104 is not subject to review. Thus, section 1988.109(c) clarifies that OSHA's determinations on whether to proceed with an investigation under MAP–21 and whether to make particular investigative findings are discretionary decisions not subject to review by the ALJ. The ALJ hears cases de novo and, therefore, as a general matter, may not remand cases to OSHA to conduct an investigation or make further factual findings. Paragraph (d) notes the remedies that the ALJ may order under MAP–21 and, as discussed under section 1988.105 above, provides that interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily, and that the respondent will be required to submit appropriate documentation to the SSA allocating any back pay award to the appropriate calendar quarters. Paragraph (e) requires that the ALJ's decision be served on all parties to the proceeding, OSHA, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. Paragraph (e) also provides that any ALJ decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the ARB. If no timely petition for review is filed with the ARB, the decision of the ALJ becomes the final decision of the

Secretary and is not subject to judicial review.

Section 1988.110 Decision and Orders of the Administrative Review Board

Upon the issuance of the ALJ's decision, the parties have 14 days within which to petition the ARB for review of that decision. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing of the petition; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt.

The appeal provisions in this part provide that an appeal to the ARB is not a matter of right but is accepted at the discretion of the ARB. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. The ARB has 30 days to decide whether to grant the petition for review. If the ARB does not grant the petition, the decision of the ALJ becomes the final decision of the Secretary. If a timely petition for review is filed with the ARB, any relief ordered by the ALJ, except for that portion ordering reinstatement, is inoperative while the matter is pending before the ARB. When the ARB accepts a petition for review, the ALJ's factual determinations will be reviewed under the substantial evidence standard.

This section also provides that, based on exceptional circumstances, the ARB may grant a motion to stay an ALJ's preliminary order of reinstatement under MAP–21, which otherwise would be effective, while review is conducted by the ARB. The Secretary believes that a stay of an ALJ's preliminary order of reinstatement under MAP–21 would be appropriate only where the respondent can establish the necessary criteria for equitable injunctive relief, *i.e.,* irreparable injury, likelihood of success on the merits, a balancing of possible harms to the parties, and the public interest favors a stay.

If the ARB concludes that the respondent has violated the law, it will issue a final order providing relief to the complainant. The final order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes pursuant to 26 U.S.C. 6621 and will be compounded daily, and the respondent will be required to submit appropriate documentation to the SSA allocating any back pay award to the appropriate calendar quarters. If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney fee, not exceeding $1,000.

*Subpart C—Miscellaneous Provisions*

Section 1988.111 Withdrawal of Complaints, Findings, Objections, and Petitions for Review; Settlement

This section provides the procedures and time periods for withdrawal of complaints, the withdrawal of findings and/or preliminary orders by the Assistant Secretary, and the withdrawal of objections to findings and/or orders. It permits complainants to withdraw their complaints orally, and provides that, in such circumstances, OSHA will confirm a complainant's desire to withdraw in writing. It also provides for approval of settlements at the investigative and adjudicative stages of the case.

Section 1988.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the ARB or the ALJ to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1988.113 Judicial Enforcement

This section describes the Secretary's authority under MAP–21 to obtain judicial enforcement of orders and terms of settlement agreements. MAP–21 expressly authorizes district courts to enforce orders issued by the Secretary under 49 U.S.C. 30171. Specifically, the statute provides that ''[w]henever any person fails to comply with an order issued under paragraph (3), the Secretary [of Labor] may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this paragraph, the district courts shall have jurisdiction to grant all appropriate relief, including injunctive relief and compensatory damages.'' 49 U.S.C. 30171(b)(5).

All orders issued by the Secretary under 49 U.S.C. 30171 may also be enforced by any person on whose behalf an order was issued in district court, under 49 U.S.C. 30171(b)(6). The Secretary interprets these provisions to grant the district court authority to enforce preliminary orders of reinstatement. Subsection (b)(3) provides that the Secretary shall order the person who has committed a violation to reinstate the complainant to his or her former position, (49 U.S.C. 30171(b)(3)(B)(ii)). Subsection (b)(2) also instructs the Secretary to accompany any reasonable cause finding that a violation has occurred with a preliminary order containing the relief prescribed by paragraph (b)(3)(B), which includes reinstatement, (*see* 49 U.S.C. 30171(b)(3)(B)). Subsection (b)(2)(A) declares that any reinstatement remedy contained in a preliminary order is not stayed upon the filing of objections. 49 U.S.C. 30171(b)(2)(A) (''The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order.''). Thus, under the statute, enforceable orders under paragraph (b)(3) include both preliminary orders issued under subsection (b)(2)(A) and final orders issued under subsection (b)(3), both of which may contain the relief of reinstatement as prescribed by subsection (b)(3)(B).

This statutory interpretation is consistent with the Secretary's interpretation of similar language in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121, and Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002, Title VIII of the Sarbanes-Oxley Act of 2002, 18 U.S.C. 1514A. *See* Brief for the Intervenor/Plaintiff-Appellee Secretary of Labor, *Solis* v. *Tenn. Commerce Bancorp, Inc.,* No. 10–5602 (6th Cir. 2010); *Solis* v. *Tenn. Commerce Bancorp, Inc.,* 713 F. Supp. 2d 701 (M.D. Tenn. 2010); *but see Bechtel* v. *Competitive Techs., Inc.,* 448 F.3d 469 (2d Cir. 2006); *Welch* v. *Cardinal Bankshares Corp.,* 454 F. Supp. 2d 552 (W.D. Va. 2006), (*decision vacated, appeal dismissed,* No. 06–2295 (4th Cir. Feb. 20, 2008)).

Section 1988.114 District Court Jurisdiction of Retaliation Complaints

This section sets forth MAP–21's provisions allowing a complainant to bring an original de novo action in district court, alleging the same allegations contained in the complaint filed with OSHA, if there has been no final decision of the Secretary within 210 days after the date of the filing of

the complaint. *See* 49 U.S.C. 30171(b)(3)(E). This section also incorporates the statutory provisions that allow for a jury trial at the request of either party in a district court action and that specify the burdens of proof in a district court action.

This section also requires that, within seven days after filing a complaint in district court, a complainant must provide a file-stamped copy of the complaint to OSHA, the ALJ, or the ARB, depending on where the proceeding is pending. A copy of the district court complaint also must be provided to the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the U.S. Department of Labor's Associate Solicitor for Fair Labor Standards. This provision is necessary to notify the agency that the complainant has opted to file a complaint in district court. This provision is not a substitute for the complainant's compliance with the requirements for service of process of the district court complaint contained in the Federal Rules of Civil Procedure and the local rules of the district court where the complaint is filed.

Finally, the Secretary notes that although a complainant may file an action in district court if the Secretary has not issued a final decision within 210 days of the filing of the complaint with OSHA, it is the Secretary's position that complainants may not initiate an action in federal court after the Secretary issues a final decision, even if the date of the final decision is more than 210 days after the filing of the complaint. Thus, for example, after the ARB has issued a final decision denying a whistleblower complaint, the complainant no longer may file an action for de novo review in federal district court. The purpose of the ''kick-out'' provision is to aid the complainant in receiving a prompt decision. That goal is not implicated in a situation where the complainant already has received a final decision from the Secretary. In addition, permitting the complainant to file a new case in district court in such circumstances could conflict with the parties' rights to seek judicial review of the Secretary's final decision in the court of appeals. *See* 49 U.S.C. 30171(b)(4)(B) (providing that an order with respect to which review could have been obtained in the court of appeals shall not be subject to judicial review in any criminal or other civil proceeding).

Section 1988.115 Special Circumstances; Waiver of Rules

This section provides that, in circumstances not contemplated by these rules or for good cause, the ALJ or the ARB may, upon application and notice to the parties, waive any rule as justice or the administration of MAP–21 requires.

## IV. Paperwork Reduction Act

This rule contains a reporting provision (filing a retaliation complaint, section 1988.103) which was previously reviewed as a statutory requirement of MAP–21 and approved for use by the Office of Management and Budget (OMB), as part of the Information Collection Request (ICR) assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (PRA). *See* Public Law 104–13, 109 Stat. 163 (1995). An ICR has been submitted to OMB to include the regulatory citation.

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- Enhancing the quality, utility, and clarity of the information collected; and
- Minimizing the burden on employees who must comply; for example, by using automated or other technological information collection and transmission techniques.

In addition to having an opportunity to file comments with the Department, the PRA provides that an interested party may file comments on the information collection requirements contained in an interim final rule directly with OMB by mail: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments to the Department. See **ADDRESSES** section of the preamble. OMB will consider all written comments that the agency receives within thirty (30) days of publication of this Interim Final Rule in the **Federal Register.** In order to help ensure appropriate consideration, comments should mention OMB control number 1218–0236. Comments submitted in response to this rule are public records; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth.

To access the complete electronic copy of the related ICR, containing the Supporting Statement with attachments describing the paperwork requirement and determinations of the ICR in detail, visit the Web page, *http://www.reginfo.gov/public/do/PRAMain,* select ''Department of Labor'' under the ''Currently under Review'' to view all DOL ICRs currently under OMB consideration, including the ICR related to this rulemaking.

OSHA notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless the collection of information displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

## V. Administrative Procedure Act

The notice and comment rulemaking procedures of Section 553 of the Administrative Procedure Act (APA) do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). This is a rule of agency procedure, practice, and interpretation within the meaning of that section. Therefore, publication in the **Federal Register** of a notice of proposed rulemaking and request for comments are not required for this rule, which provides the procedures for the handling of retaliation complaints. Although this is a procedural and interpretive rule not subject to the notice and comment procedures of the APA, OSHA is providing persons interested in this interim final rule 60 days to submit comments. A final rule will be published after OSHA receives and reviews the public's comments.

Furthermore, because this rule is procedural and interpretative rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. OSHA also finds good cause to provide an immediate effective date for this interim final rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

**VI. Executive Orders 12866 and 13563; Unfunded Mandates Reform Act of 1995; Executive Order 13132**

The Department has concluded that this rule is not a ''significant regulatory action'' within the meaning of Executive Order 12866, reaffirmed by Executive Order 13563, because it is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. Therefore, no economic impact analysis under Section 6(a)(3)(C) of Executive Order 12866 has been prepared. For the same reason, and because no notice of proposed rulemaking has been published, no statement is required under Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532. In any event, this rulemaking is procedural and interpretive in nature and is thus not expected to have a significant economic impact. Finally, this rule does not have ''federalism implications.'' The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'' and therefore is not subject to Executive Order 13132 (Federalism).

**VII. Regulatory Flexibility Analysis**

The notice and comment rulemaking procedures of Section 553 of the APA do not apply ''to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice.'' 5 U.S.C. 553(b)(A). Rules that are exempt from APA notice and comment requirements are also exempt from the Regulatory Flexibility Act (RFA). See Small Business Administration Office of Advocacy, A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act, at 9; also found at *https://www.sba.gov/advocacy/guide-government-agencies-how-comply-regulatory-flexibility-act.* This is a rule of agency procedure, practice, and interpretation within the meaning of 5 U.S.C. 553; and, therefore, the rule is exempt from both the notice and comment rulemaking procedures of the APA and the requirements under the RFA.

**List of Subjects in 29 CFR Part 1988**

Administrative practice and procedure, Automobile dealers, Employment, Investigations, Motor vehicle defects, Motor vehicle manufacturers, Part supplies, Reporting and recordkeeping requirements, Whistleblower.

**Authority and Signature**

This document was prepared under the direction and control of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on February 25, 2016.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

■ Accordingly, for the reasons set out in the preamble, 29 CFR part 1988 is added to read as follows:

## PART 1988—PROCEDURES FOR HANDLING RETALIATION COMPLAINTS UNDER SECTION 31307 OF THE MOVING AHEAD FOR PROGRESS IN THE 21ST CENTURY ACT (MAP–21)

### Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.



### Subpart B—Litigation



### Subpart C—Miscellaneous Provisions



**Authority:** 49 U.S.C. 30171; Secretary of Labor's Order No. 1–2012 (Jan. 18, 2012), 77 FR 3912 (Jan. 25, 2012); Secretary of Labor's Order No. 2–2012 (Oct. 19, 2012), 77 FR 69378 (Nov. 16, 2012).

### Subpart A—Complaints, Investigations, Findings and Preliminary Orders

#### § 1988.100 Purpose and scope.

(a) This part sets forth procedures for, and interpretations of, section 31307 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, 126 Stat. 405, 765 (July 6, 2012) (codified at 49 U.S.C. 30171). MAP–21 provides for employee protection from retaliation because the employee has engaged in protected activity pertaining to the manufacture or sale of motor vehicles and motor vehicle equipment.

(b) This part establishes procedures under MAP–21 for the expeditious handling of retaliation complaints filed by employees, or by persons acting on their behalf. These rules, together with those codified at 29 CFR part 18, set forth the procedures under MAP–21 for submission of complaints, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges (ALJs), post-hearing administrative review, and withdrawals and settlements. In addition, these rules provide the Secretary's interpretations on certain statutory issues.

#### § 1988.101 Definitions.

As used in this part:

*Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under MAP–21.

*Business days* means days other than Saturdays, Sundays, and Federal holidays.

*Complainant* means the person who filed a MAP–21 complaint or on whose behalf a complaint was filed.

*Dealer* or *Dealership* means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

*Defect* includes any defect in performance, construction, a component, or material of a motor vehicle or motor vehicle equipment.

*Employee* means an individual presently or formerly working for, an individual applying to work for, or an individual whose employment could be affected by a motor vehicle manufacturer, dealer, part supplier, or dealership.

*Manufacturer* means a person:

(1) Manufacturing or assembling motor vehicles or motor vehicle equipment; or

(2) Importing motor vehicles or motor vehicles equipment for resale.

*MAP–21* means Section 31307 of the Moving Ahead for Progress in the 21st Century Act of 2012, Pub. L. 112–141, 126 Stat. 405, 765 (July 6, 2012) (codified at 49 U.S.C. 30171).

*Motor vehicle* means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line.

*Motor vehicle equipment* means—

(1) Any system, part, or component of a motor vehicle as originally manufactured;

(2) Any similar part or component manufactured or sold for replacement or improvement of a system, part, or component, or as an accessory or addition to a motor vehicle; or

(3) Any device or an article or apparel, including a motorcycle helmet and excluding medicine or eyeglasses prescribed by a licensed practitioner, that—

(i) Is not a system, part or component of a motor vehicle; and

(ii) Is manufactured, sold, delivered, or offered to be sold for use on public streets, roads, and highways with the apparent purpose of safeguarding users of motor vehicles against risk of accident, injury, or death.

*NHTSA* means the National Highway Traffic Safety Administration of the United States Department of Transportation.

*OSHA* means the Occupational Safety and Health Administration of the United States Department of Labor.

*Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

*Respondent* means the person named in the complaint who is alleged to have violated MAP–21.

*Secretary* means the Secretary of Labor.

### § 1988.102 Obligations and prohibited acts.

(a) No motor vehicle manufacturer, part supplier, or dealership may discharge or otherwise retaliate against, including, but not limited to, intimidating, threatening, restraining, coercing, blacklisting or disciplining, an employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, has engaged in any of the activities specified in paragraphs (b)(1) through (5) of this section.

(b) An employee is protected against retaliation (as described in paragraph (a) of this section) by a motor vehicle manufacturer, part supplier, or dealership because he or she:

(1) Provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the employer or the Secretary of Transportation, information relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of Chapter 301 of Title 49 of the United States Code;

(2) Filed, or caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any motor vehicle defect, noncompliance, or any violation or alleged violation of any notification or reporting requirement of Chapter 301 of Title 49 of the United States Code;

(3) Testified or is about to testify in such a proceeding;

(4) Assisted or participated or is about to assist or participate in such a proceeding; or

(5) Objected to, or refused to participate in, any activity that the employee reasonably believed to be in violation of any provision of Chapter 301 of Title 49 of the United States Code, or any order, rule, regulation, standard, or ban under such provision.

### § 1988.103 Filing of retaliation complaint.

(a) *Who may file.* A person who believes that he or she has been discharged or otherwise retaliated against by any person in violation of MAP–21 may file, or have filed by any person on his or her behalf, a complaint alleging such retaliation.

(b) *Nature of filing.* No particular form of complaint is required. A complaint may be filed orally or in writing. Oral complaints will be reduced to writing by OSHA. If the complainant is unable to file the complaint in English, OSHA will accept the complaint in any language.

(c) *Place of filing.* The complaint should be filed with the OSHA office responsible for enforcement activities in the geographical area where the complainant resides or was employed, but may be filed with any OSHA officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *http://www.osha.gov.*

(d) *Time for filing.* Within 180 days after an alleged violation of MAP–21 occurs, any person who believes that he or she has been retaliated against in violation of the MAP–21 may file, or have filed by any person on his or her behalf, a complaint alleging such retaliation. The date of the postmark, facsimile transmittal, electronic communication transmittal, telephone call, hand-delivery, delivery to a third-party commercial carrier, or in-person filing at an OSHA office will be considered the date of filing. The time for filing a complaint may be tolled for reasons warranted by applicable case law. For example, OSHA may consider the time for filing a complaint to be tolled if a complainant mistakenly files a complaint with an agency other than OSHA within 180 days after an alleged adverse action.

### § 1988.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, OSHA will notify the respondent of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint. Such materials will be redacted, if necessary, consistent with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. OSHA will also notify the respondent of its rights under paragraphs (b) and (f) of this section and paragraph (e) of § 1988.110. OSHA will provide an unredacted copy of these same materials to the complainant (or the complainant's legal counsel if complainant is represented by counsel) and to the NHTSA.

(b) Within 20 days of receipt of the notice of the filing of the complaint provided under paragraph (a) of this section, the respondent may submit to OSHA a written statement and any affidavits or documents substantiating its position. Within the same 20 days, the respondent may request a meeting with OSHA to present its position.

(c) During the investigation, OSHA will request that each party provide the other parties to the whistleblower complaint with a copy of submissions to OSHA that are pertinent to the whistleblower complaint. Alternatively, if a party does not provide its submissions to OSHA to the other party, OSHA will provide them to the other party (or the party's legal counsel if the party is represented by counsel) at a time permitting the other party an opportunity to respond. Before providing such materials to the other party, OSHA will redact them, if necessary, consistent with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. OSHA will also provide each party with an

opportunity to respond to the other party's submissions.

(d) Investigations will be conducted in a manner that protects the confidentiality of any person who provides information on a confidential basis, other than the complainant, in accordance with part 70 of this title.

(e)(1) A complaint will be dismissed unless the complainant has made a prima facie showing that a protected activity was a contributing factor in the adverse action alleged in the complaint.

(2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a prima facie showing as follows:

(i) The employee engaged in a protected activity;

(ii) The respondent knew or suspected that the employee engaged in the protected activity;

(iii) The employee suffered an adverse action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was a contributing factor in the adverse action.

(3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.,* to give rise to an inference that the respondent knew or suspected that the employee engaged in protected activity and that the protected activity was a contributing factor in the adverse action. The burden may be satisfied, for example, if the complaint shows that the adverse action took place within a temporal proximity of the protected activity, or at the first opportunity available to the respondent, giving rise to the inference that it was a contributing factor in the adverse action. If the required showing has not been made, the complainant (or the complainant's legal counsel if complainant is represented by counsel) will be so notified and the investigation will not commence.

(4) Notwithstanding a finding that a complainant has made a prima facie showing, as required by this section, further investigation of the complaint will not be conducted if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of the complainant's protected activity.

(5) If the respondent fails to make a timely response or fails to satisfy the burden set forth in the prior paragraph, OSHA will proceed with the investigation. The investigation will proceed whenever it is necessary or appropriate to confirm or verify the information provided by the respondent.

(f) Prior to the issuance of findings and a preliminary order as provided for in § 1988.105, if OSHA has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the respondent has violated MAP–21 and that preliminary reinstatement is warranted, OSHA will contact the respondent (or the respondent's legal counsel if respondent is represented by counsel) to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be redacted to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be redacted without revealing the identity of confidential informants, summaries of their contents will be provided. The complainant will also receive a copy of the materials that must be provided to the respondent under this paragraph. Before providing such materials, OSHA will redact them, if necessary, consistent with the Privacy Act of 1974, 5 U.S.C. 552a, and other applicable confidentiality laws. The respondent will be given the opportunity to submit a written response, to meet with the investigator, to present statements from witnesses in support of its position, and to present legal and factual arguments. The respondent must present this evidence within 10 business days of OSHA's notification pursuant to this paragraph, or as soon thereafter as OSHA and the respondent can agree, if the interests of justice so require.

**§ 1988.105 Issuance of findings and preliminary orders.**

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of the filing of the complaint, written findings as to whether or not there is reasonable cause to believe that the respondent has retaliated against the complainant in violation of MAP–21.

(1) If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, the Assistant Secretary will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The preliminary order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters.

(2) If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) The findings and, where appropriate, the preliminary order will be sent by certified mail, return receipt requested (or other means that allow OSHA to confirm receipt), to all parties of record (and each party's legal counsel if the party is represented by counsel). The findings and, where appropriate, the preliminary order will inform the parties of the right to object to the findings and/or order and to request a hearing, and of the right of the respondent to request an award of attorney fees not exceeding $1,000 from the ALJ, regardless of whether the respondent has filed objections, if the respondent alleges that the complaint was frivolous or brought in bad faith. The findings and, where appropriate, the preliminary order also will give the address of the Chief Administrative Law Judge, U.S. Department of Labor. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge a copy of the original complaint and a copy of the findings and/or order.

(c) The findings and any preliminary order will be effective 30 days after receipt by the respondent (or the respondent's legal counsel if the respondent is represented by counsel), or on the compliance date set forth in the preliminary order, whichever is later, unless an objection and/or a request for hearing has been timely filed as provided at § 1988.106. However, the portion of any preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and the preliminary order, regardless of any objections to the findings and/or the order.

## Subpart B—Litigation

### § 1988.106 Objections to the findings and the preliminary order and requests for a hearing.

(a) Any party who desires review, including judicial review, of the findings and/or preliminary order, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees under MAP–21, must file any objections and/or a request for a hearing on the record within 30 days of receipt of the findings and preliminary order pursuant to § 1988.105. The objections, request for a hearing, and/or request for attorney fees must be in writing and state whether the objections are to the findings, the preliminary order, and/or whether there should be an award of attorney fees. The date of the postmark, facsimile transmittal, or electronic communication transmittal is considered the date of filing; if the objection is filed in person, by hand delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, and copies of the objections must be mailed at the same time to the other parties of record, the OSHA official who issued the findings and order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely objection is filed, all provisions of the preliminary order will be stayed, except for the portion requiring preliminary reinstatement, which will not be automatically stayed. The portion of the preliminary order requiring reinstatement will be effective immediately upon the respondent's receipt of the findings and preliminary order, regardless of any objections to the order. The respondent may file a motion with the Office of Administrative Law Judges for a stay of the Assistant Secretary's preliminary order of reinstatement, which shall be granted only based on exceptional circumstances. If no timely objection is filed with respect to either the findings or the preliminary order, the findings and/or the preliminary order will become the final decision of the Secretary, not subject to judicial review.

### § 1988.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at subpart A of part 18 of this title.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to an ALJ who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted de novo on the record. ALJs have broad discretion to limit discovery in order to expedite the hearing.

(c) If both the complainant and the respondent object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence will not apply, but rules or principles designed to assure production of the most probative evidence will be applied. The ALJ may exclude evidence that is immaterial, irrelevant, or unduly repetitious.

### § 1988.108 Role of Federal agencies.

(a)(1) The complainant and the respondent will be parties in every proceeding and must be served with copies of all documents in the case. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or as amicus curiae at any time at any stage of the proceeding. This right to participate includes, but is not limited to, the right to petition for review of a decision of an ALJ, including a decision approving or rejecting a settlement agreement between the complainant and the respondent.

(2) Parties must send copies of documents to OSHA and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, only upon request of OSHA, or when OSHA is participating in the proceeding, or when service on OSHA and the Associate Solicitor is otherwise required by these rules.

(b) The NHTSA, if interested in a proceeding, may participate as amicus curiae at any time in the proceeding, at NHTSA's discretion. At the request of NHTSA, copies of all documents in a case must be sent to NHTSA, whether or not it is participating in the proceeding.

### § 1988.109 Decision and orders of the administrative law judge.

(a) The decision of the ALJ will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (d) of this section, as appropriate. A determination that a violation has occurred may be made only if the complainant has demonstrated by a preponderance of the evidence that protected activity was a contributing factor in the adverse action alleged in the complaint.

(b) If the complainant has satisfied the burden set forth in the prior paragraph, relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same adverse action in the absence of any protected activity.

(c) Neither OSHA's determination to dismiss a complaint without completing an investigation pursuant to § 1988.104(e) nor OSHA's determination to proceed with an investigation is subject to review by the ALJ, and a complaint may not be remanded for the completion of an investigation or for additional findings on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the ALJ will hear the case on the merits or dispose of the matter without a hearing if the facts and circumstances warrant.

(d)(1) If the ALJ concludes that the respondent has violated the law, the ALJ will issue an order that will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters.

(2) If the ALJ determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ALJ determines that a complaint was frivolous or was brought in bad faith, the ALJ may award to the respondent a reasonable attorney fee, not exceeding $1,000.

(e) The decision will be served upon all parties to the proceeding, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor. Any ALJ's decision requiring reinstatement or lifting an order of

reinstatement by the Assistant Secretary will be effective immediately upon receipt of the decision by the respondent. All other portions of the ALJ's order will be effective 14 days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board (ARB), U.S. Department of Labor. The decision of the ALJ will become the final order of the Secretary unless a petition for review is timely filed with the ARB and the ARB accepts the petition for review.

**§ 1988.110 Decision and orders of the Administrative Review Board.**

(a) Any party desiring to seek review, including judicial review, of a decision of the ALJ, or a respondent alleging that the complaint was frivolous or brought in bad faith who seeks an award of attorney fees, must file a written petition for review with the ARB, which has been delegated the authority to act for the Secretary and issue final decisions under this part. The parties should identify in their petitions for review the legal conclusions or orders to which they object, or the objections may be deemed waived. A petition must be filed within 14 days of the date of the decision of the ALJ. The date of the postmark, facsimile transmittal, or electronic communication transmittal will be considered to be the date of filing; if the petition is filed in person, by hand delivery or other means, the petition is considered filed upon receipt. The petition must be served on all parties and on the Chief Administrative Law Judge at the time it is filed with the ARB. Copies of the petition for review must be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

(b) If a timely petition for review is filed pursuant to paragraph (a) of this section, the decision of the ALJ will become the final order of the Secretary unless the ARB, within 30 days of the filing of the petition, issues an order notifying the parties that the case has been accepted for review. If a case is accepted for review, the decision of the ALJ will be inoperative unless and until the ARB issues an order adopting the decision, except that any order of reinstatement will be effective while review is conducted by the ARB, unless the ARB grants a motion by the respondent to stay that order based on exceptional circumstances. The ARB will specify the terms under which any briefs are to be filed. The ARB will review the factual determinations of the ALJ under the substantial evidence standard. If no timely petition for review is filed, or the ARB denies review, the decision of the ALJ will become the final order of the Secretary. If no timely petition for review is filed, the resulting final order is not subject to judicial review.

(c) The final decision of the ARB will be issued within 120 days of the conclusion of the hearing, which will be deemed to be 14 days after the decision of the ALJ, unless a motion for reconsideration has been filed with the ALJ in the interim. In such case, the conclusion of the hearing is the date the motion for reconsideration is ruled upon or 14 days after a new decision is issued. The ARB's final decision will be served upon all parties and the Chief Administrative Law Judge by mail. The final decision will also be served on the Assistant Secretary and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, even if the Assistant Secretary is not a party.

(d) If the ARB concludes that the respondent has violated the law, the ARB will issue a final order providing relief to the complainant. The final order will require, where appropriate: Affirmative action to abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay and interest), terms, conditions, and privileges of the complainant's employment; and payment of compensatory damages, including, at the request of the complainant, the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred. Interest on back pay will be calculated using the interest rate applicable to underpayment of taxes under 26 U.S.C. 6621 and will be compounded daily. The order will also require the respondent to submit appropriate documentation to the Social Security Administration allocating any back pay award to the appropriate calendar quarters.

(e) If the ARB determines that the respondent has not violated the law, an order will be issued denying the complaint. If, upon the request of the respondent, the ARB determines that a complaint was frivolous or was brought in bad faith, the ARB may award to the respondent a reasonable attorney fee, not exceeding $1,000.

## Subpart C—Miscellaneous Provisions

**§ 1988.111 Withdrawal of complaints, findings, objections, and petitions for review; settlement.**

(a) At any time prior to the filing of objections to the Assistant Secretary's findings and/or preliminary order, a complainant may withdraw his or her complaint by notifying OSHA, orally or in writing, of his or her withdrawal. OSHA then will confirm in writing the complainant's desire to withdraw and determine whether to approve the withdrawal. OSHA will notify the parties (and each party's legal counsel if the party is represented by counsel) of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section. A complainant may not withdraw his or her complaint after the filing of objections to the Assistant Secretary's findings and/or preliminary order.

(b) The Assistant Secretary may withdraw the findings and/or preliminary order at any time before the expiration of the 30-day objection period described in § 1988.106, provided that no objection has been filed yet, and substitute new findings and/or a new preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the Assistant Secretary's findings and/or order become final, a party may withdraw objections to the Assistant Secretary's findings and/or order by filing a written withdrawal with the ALJ. If the case is on review with the ARB, a party may withdraw a petition for review of an ALJ's decision at any time before that decision becomes final by filing a written withdrawal with the ARB. The ALJ or the ARB, as the case may be, will determine whether to approve the withdrawal of the objections or the petition for review. If the ALJ approves a request to withdraw objections to the Assistant Secretary's findings and/or order, and there are no other pending objections, the Assistant Secretary's findings and/or order will become the final order of the Secretary. If the ARB approves a request to withdraw a petition for review of an ALJ decision, and there are no other pending petitions for review of that decision, the ALJ's decision will become the final order of the Secretary. If objections or a petition for review are withdrawn because of settlement, the settlement must be submitted for approval in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, but before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if OSHA, the complainant, and the respondent agree to a settlement. OSHA's approval of a settlement reached by the respondent and the complainant demonstrates OSHA's consent and achieves the consent of all three parties.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the ALJ if the case is before the ALJ, or by the ARB if the ARB has accepted the case for review. A copy of the settlement will be filed with the ALJ or the ARB, as appropriate.

(e) Any settlement approved by OSHA, the ALJ, or the ARB will constitute the final order of the Secretary and may be enforced in United States district court pursuant to § 1988.113.

**§ 1988.112 Judicial review.**

(a) Within 60 days after the issuance of a final order under §§ 1988.109 and 1988.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of the violation.

(b) A final order is not subject to judicial review in any criminal or other civil proceeding.

(c) If a timely petition for review is filed, the record of a case, including the record of proceedings before the ALJ, will be transmitted by the ARB or the ALJ, as the case may be, to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

**§ 1988.113 Judicial enforcement.**

Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under MAP–21, the Secretary may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred. Whenever any person has failed to comply with a preliminary order of reinstatement, or a final order, including one approving a settlement agreement, issued under MAP–21, a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the appropriate United States district court.

**§ 1988.114 District court jurisdiction of retaliation complaints.**

(a) If the Secretary has not issued a final decision with 210 days of the filing of the complaint, and there is no showing that there has been delay due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States, which will have jurisdiction over such an action without regard to the amount in controversy. At the request of either party, the action shall be tried by the court with a jury.

(b) A proceeding under paragraph (a) of this section shall be governed by the same legal burdens of proof specified in § 1988.109.

(c) Within seven days after filing a complaint in federal court, a complainant must file with OSHA, the ALJ, or the ARB, depending on where the proceeding is pending, a copy of the file-stamped complaint. A copy of the complaint also must be served on the OSHA official who issued the findings and/or preliminary order, the Assistant Secretary, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor.

**§ 1988.115 Special circumstances; waiver of rules.**

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the ALJ or the ARB on review may, upon application, after three-days' notice to all parties, waive any rule or issue such orders that justice or the administration of MAP–21 requires.

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### 31 CFR Part 515

### Cuban Assets Control Regulations

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury's Office of Foreign Assets Control (OFAC) is amending the Cuban Assets Control Regulations to further implement elements of the policy announced by the President on December 17, 2014 to engage and empower the Cuban people. Among other things, these amendments further facilitate travel to Cuba for authorized purposes, expand the range of authorized financial transactions, and authorize additional business and physical presence in Cuba. These amendments also implement certain technical and conforming changes.

**DATES:** *Effective:* March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** The Department of the Treasury's Office of Foreign Assets Control: Assistant Director for Licensing, tel.: 202–622–2480, Assistant Director for Regulatory Affairs, tel.: 202–622–4855, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the Chief Counsel (Foreign Assets Control), Office of the General Counsel, tel.: 202–622–2410.

**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

The Department of the Treasury issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''Regulations''), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. 4301–4341). OFAC has amended the Regulations on numerous occasions.

Most recently, on January 16, June 15, and September 21, 2015, and January 27, 2016, OFAC amended the Regulations, in coordinated actions with the Department of Commerce, to implement certain policy measures announced by the President on December 17, 2014 to further engage and empower the Cuban people. Today, OFAC and the Department of Commerce are taking additional coordinated actions in support of the President's Cuba policy.

OFAC is making additional amendments to the Regulations with respect to travel and related transactions, financial transactions, business and physical presence, and certain other activities, as set forth below.

#### Travel and Related Transactions

*Individual people-to-people educational travel.* OFAC is amending section 515.565(b) to remove the requirement that people-to-people educational travel be conducted under

the auspices of an organization that sponsors such exchanges. This section now authorizes individuals to travel to Cuba provided that, among other things, the traveler engage while in Cuba in a full-time schedule of educational exchange activities that are intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities, and that will result in meaningful interaction between the traveler and individuals in Cuba. The predominant portion of the activities engaged in by the traveler must not be with certain Government of Cuba or Cuban Communist Party officials. Persons relying upon this authorization must retain records related to the authorized travel transactions, including records demonstrating a full-time schedule of authorized activities.

*Payment of salaries.* OFAC is amending section 515.571 to remove the limitation on the receipt of compensation in excess of amounts covering living expenses and the acquisition of goods for personal consumption by a Cuban national present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government. New section (a)(5)(i) explicitly authorizes the receipt of any salary or other compensation consistent with the individual's non-immigrant status or other non-immigrant travel authorization, provided that the recipient is not subject to any special tax assessment by the Cuban government in connection with the receipt of the salary or other compensation. New section 515.571(e) authorizes all transactions related to the sponsorship or hiring of a Cuban national to work in the United States and provides that an employer may not make additional payments to the Cuban government in connection with the sponsorship or hiring of a Cuban national. Section 515.571(e) also authorizes transactions in connection with the filing of an application for non-immigrant travel authorization. OFAC is also making conforming edits in section 515.560(d)(3) and the Note to section 515.565(a)(5).

*Dealings in merchandise subject to section 515.204, including Cuban-origin goods, for personal use.* OFAC is adding section 515.585(c) to authorize individuals who are persons subject to U.S. jurisdiction and who are located in a third country to engage in the purchase or acquisition of merchandise subject to the prohibitions in section 515.204, including Cuban-origin goods, for personal consumption while in a third country, and to receive or obtain services from Cuba or a Cuban national that are ordinarily incident to travel and maintenance within a third country. This provision does not authorize the importation of such merchandise into the United States, including as accompanied baggage. OFAC is making a conforming change to section 515.410.

**Financial Transactions**

*U-turn payments through the U.S. financial system.* OFAC is amending section 515.584(d) to authorize U-turn transactions in which Cuba or a Cuban national has an interest to be conducted through the U.S. financial system. This provision authorizes funds transfers from a bank outside the United States that pass through one or more U.S. financial institutions before being transferred to a bank outside the United States where neither the originator nor the beneficiary is a person subject to U.S. jurisdiction. Transactions through the U.S. financial system that do not meet these criteria, including all transactions where the originator or beneficiary is a person subject to U.S. jurisdiction, remain prohibited unless otherwise authorized or exempt under the Regulations. OFAC is also making conforming edits to section 515.584(e), regarding unblocking of certain previously blocked funds transfers.

*Processing of U.S. dollar monetary instruments.* OFAC is adding new section 515.584(g) to authorize U.S. banking institutions to process U.S. dollar monetary instruments presented indirectly by Cuban financial institutions. Correspondent accounts used for transactions authorized pursuant to this section may be denominated in U.S. dollars. This section does not authorize banking institutions subject to U.S. jurisdiction to open correspondent accounts for banking institutions that are nationals of Cuba.

*Certain bank accounts on behalf of a Cuban national.* OFAC is adding new section 515.584(h) to authorize banking institutions to open and maintain accounts solely in the name of a Cuban national located in Cuba for the purposes only of receiving payments in the United States in connection with transactions authorized pursuant to or exempt from the prohibitions of this part and remitting such payments to Cuba. This provision would allow, for example, a Cuban national author located in Cuba to open an account with a bank or online payment platform in the United States to receive payments for sales of her book. This provision is in addition to the two existing authorizations for banking institutions to operate certain accounts on behalf of certain Cuban nationals. See Note to paragraph (a) of section 515.571(a)(5) and section 515.585(b). To avoid confusion, OFAC also is making conforming edits to the Note to section 515.571(a)(5) to clarify that all three account authorizations extend to banking institutions.

**Business and Physical Presence**

OFAC is amending section 515.573 to authorize additional persons subject to U.S. jurisdiction to establish a business and physical presence in Cuba.

*Business presence.* In September 2015, OFAC amended sections 515.542 and 515.578 to authorize persons subject to U.S. jurisdiction to establish and maintain a business presence in Cuba, including through subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban individual or entity, to facilitate the provision of authorized telecommunications and internet-based services. OFAC is now expanding this authorization to establish a business presence to include the following additional categories of persons subject to U.S. jurisdiction (all of whom were previously authorized to establish a physical presence): exporters of goods authorized for export or reexport to Cuba by section 515.533 or section 515.559 or that are otherwise exempt; entities providing mail or parcel transmission services authorized by section 515.542(a) or providing cargo transportation services in connection with trade involving Cuba authorized by or exempt from the prohibitions of this part; and providers of travel and carrier services authorized by section 515.572. OFAC is clarifying that the business and physical presence authorization for providers of internet-based services extends to persons engaged in transactions authorized by section 515.578(e). OFAC is removing the prior provisions authorizing business presence that were located in sections 515.542 and 515.578 and consolidating these authorizations in section 515.573.

*Physical presence.* In September 2015, OFAC amended section 515.573 to authorize certain persons subject to U.S. jurisdiction to establish a physical presence, such as an office or other facility, in Cuba, to facilitate authorized transactions. OFAC is now expanding this authorization to include the following additional categories of persons subject to U.S. jurisdiction: entities engaging in non-commercial activities authorized by section 515.574 (Support for the Cuban People); entities engaging in humanitarian projects set

forth in section 515.575(b) (Humanitarian projects); and private foundations or research or educational institutes engaging in transactions authorized by section 515.576. OFAC is also adding a note to clarify that the activities that may be carried out by exporters of items exported or reexported pursuant to authorization by the Department of Commerce or OFAC, or that are otherwise exempt, at a physical presence authorized by this section include the assembly of such items.

**Other Transactions**

*Grants and awards.* OFAC is adding a new provision in section 515.565 to authorize the provision of educational grants, scholarships, or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest. This could include, for example, the provision of educational scholarships for Cuban students to pursue academic studies for a degree. OFAC is also adding a note to section 515.575(b) to clarify that the existing authorization includes provision of grants or awards for humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people as set forth in that section.

*Telecommunications and internet-related services.* OFAC is amending section 515.578 to allow the importation of Cuban-origin software.

OFAC is also making several technical and conforming edits. In particular, OFAC is correcting a typographical error in section 515.533(d)(2). OFAC is also conforming the language of the general authorization in section 515.559(d) to the corresponding authorization in section 515.533(d).

**Public Participation**

Because the amendments of the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

**Paperwork Reduction Act**

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations'') and section 515.572 of this part. Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information are covered by the Office of Management and Budget under control numbers 1505–0164, 1505–0167, and 1505–0168. 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 control number.

**List of Subjects in 31 CFR Part 515**

Administrative practice and procedure, Banking, Blocking of assets, Cuba, Financial transactions, Reporting and recordkeeping requirements, Travel restrictions.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as set forth below:

## PART 515—CUBAN ASSETS CONTROL REGULATIONS

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

**Authority:** 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. 4301-4341; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

### Subpart C—Definitions

**§ 515.329 [Amended]**

■ 2. In § 515.329, remove '']'' at the end of the sentence.

### Subpart D—Interpretations

■ 3. Revise § 515.410 to read as follows:

**§ 515.410 Dealing abroad in Cuban-origin commodities.**

Section 515.204 prohibits, unless licensed, the importation of commodities of Cuban origin. It also prohibits, unless licensed, persons subject to the jurisdiction of the United States from purchasing, transporting or otherwise dealing in commodities of Cuban origin which are outside the United States. Attention is directed to § 515.585, which authorizes certain dealings in commodities of Cuban origin outside the United States.

### Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 4. In § 515.505, revise paragraph (a)(4) to read as follows:

**§ 515.505 Certain Cuban nationals unblocked.**

(a) * * *

(4) Any entity, office, or other sub-unit authorized pursuant to § 515.573; and

* * * * *

■ 5. In § 515.533, revise paragraph (d)(2) introductory text to read as follows:

**§ 515.533 Exportations from the United States to Cuba; reexportations of 100% U.S.-origin items to Cuba; negotiation of executory contracts.**

* * * * *

(d) * * *

(2) The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to the facilitation of the temporary sojourn of aircraft and vessels as authorized by 15 CFR 740.15 (License Exception Aircraft, Vessels and Spacecraft) or pursuant to other authorization by the Department of Commerce for travel between the United States and Cuba authorized pursuant to this part, including travel-related transactions by personnel who are persons subject to U.S. jurisdiction and who are required for normal operation and service aboard a vessel or aircraft, as well as personnel who are persons subject to U.S. jurisdiction and who are required to provide services to a vessel in port or aircraft on the ground, are authorized, provided that:

* * * * *

■ 6. In § 515.542, remove and reserve paragraph (f) and revise Notes 1 and 2 to § 515.542 to read as follows:

**§ 515.542 Mail and telecommunications-related transactions.**

* * * * *

**Note 1 to § 515.542:** For an authorization of travel-related transactions that are directly incident to the conduct of market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, or servicing in Cuba of items consistent with the export or reexport policy of the Department of Commerce, see § 515.533(d). For an authorization of travel-related transactions that are directly incident to participation in professional meetings, including where such meetings relate to telecommunications services or other activities authorized by paragraphs (b) through (e) of this section, see § 515.564(a).

**Note 2 to § 515.542:** For general licenses authorizing physical and business presence in Cuba for certain persons, see § 515.573. An authorization related to business presence was previously included in this section. For an authorization of certain internet-related services, see § 515.578.

■ 7. In § 515.559, revise paragraph (d) to read as follows:

**§ 515.559 Certain export and import transactions by U.S.-owned or -controlled foreign firms.**

* * * * *

(d) *General license.* Travel-related transactions set forth in § 515.560(c) and such other transactions as are directly incident to market research, commercial marketing, sales or contract negotiation, accompanied delivery, installation, leasing, or servicing in Cuba of exports that are consistent with the licensing policy under paragraph (a) of this section are authorized, provided that the traveler's schedule of activities does not include free time or recreation in excess of that consistent with a full-time schedule.

* * * * *

■ 8. In § 515.560, revise paragraph (d)(3) to read as follows:

**§ 515.560 Travel-related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.**

* * * * *

(d) * * *

(3) Salaries or other compensation earned by the Cuban national up to any amount that can be substantiated through payment receipts as authorized in § 515.571(a)(5).

* * * * *

■ 9. In § 515.565:
■ a. Revise paragraph (a)(5);
■ b. Redesignate paragraphs (a)(11) and (12) as (a)(12) and (13), respectively;
■ c. Add new paragraph (a)(11);
■ d. Revise newly redesignated paragraph (a)(12);
■ e. Revise paragraph (b);
■ f. Revise the Note to § 515.565(a) and (b); and
■ g. Revise paragraph (c).

The revisions and addition read as follows:

**§ 515.565 Educational activities.**

(a) * * *

(5) Sponsorship of a Cuban scholar to teach or engage in other scholarly activity at the sponsoring U.S. academic institution (in addition to those transactions authorized by the general license contained in § 515.571).

**Note to paragraph (a)(5):** See § 515.571(a) for authorizations related to certain banking transactions and receipt of salary or other compensation by Cuban nationals present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government.

* * * * *

(11) Provision of educational grants, scholarships, or awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest; and

(12) The organization of, and preparation for, activities described in paragraphs (a)(1) through (a)(11) of this section by employees or contractors of the sponsoring organization that is a person subject to U.S. jurisdiction;

* * * * *

(b) *General license for people-to-people travel.* The travel-related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to educational exchanges not involving academic study pursuant to a degree program are authorized, provided that:

(1) Travel-related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full-time schedule of activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities;

(2) Each traveler has a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba;

(3) The predominant portion of the activities engaged in by individual travelers is not with a prohibited official of the Government of Cuba, as defined in § 515.337 of this part, or a prohibited member of the Cuban Communist Party, as defined in § 515.338 of this part;

(4) For travel conducted under the auspices of an organization that is a person subject to U.S. jurisdiction that sponsors such exchanges to promote people-to-people contact, an employee, paid consultant, or agent of the sponsoring organization must accompany each group traveling to Cuba to ensure that each traveler has a full-time schedule of educational exchange activities; and

**Note to § 515.565(b)(4):** An organization that sponsors and organizes trips to Cuba in which travelers engage in individually selected and/or self-directed activities would not qualify for the general license. Authorized trips are expected to be led by the organization and to have a full-time schedule of activities in which the travelers will participate.

(5) In addition to all other information required by § 501.601 of this chapter, persons relying on the authorization in paragraph (b) of this section must retain records sufficient to demonstrate that each individual traveler has engaged in a full-time schedule of activities that satisfy the requirements of paragraphs (b)(1) through (3) of this section. In the case of an individual traveling under the auspices of an organization that is a person subject to U.S. jurisdiction and that sponsors such exchanges to promote people-to-people contact, the individual may rely on the entity sponsoring the travel to satisfy his or her recordkeeping requirements with respect to the requirements of paragraphs (b)(1) through (3) of this section. These records must be furnished to the Office of Foreign Assets Control on demand pursuant to § 501.602 of this chapter.

*Example 1 to § 515.565(b):* An organization wishes to sponsor and organize educational exchanges not involving academic study pursuant to a degree program for individuals to learn side-by-side with Cuban individuals in areas such as environmental protection or the arts. The travelers will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the travelers and individuals in Cuba. The organization's activities qualify for the general license, and the individual may rely on the entity sponsoring the travel to satisfy his or her recordkeeping requirement.

*Example 2 to § 515.565(b):* An individual plans to travel to Cuba to participate in discussions with Cuban artists on community projects, exchanges with the founders of a youth arts program, and to have extended dialogue with local city planners and architects to learn about historical restoration projects in Old Havana. The traveler will have a full-time schedule of such educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba. The individual's activities qualify for the general license, provided that the individual satisfies the recordkeeping requirement.

*Example 3 to § 515.565(b):* An individual plans to travel to Cuba to participate in discussions with Cuban farmers and produce sellers about cooperative farming and agricultural practices and have extended dialogue with religious leaders about the influence of African traditions and religion on society and culture. The traveler fails to keep any records of the travel. Although the traveler will have a full-time schedule of educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, the traveler's failure to keep records means that the individual's activities do not qualify for the general license.

*Example 4 to § 515.565(b):* An individual plans to travel to Cuba to rent a bicycle to explore the streets of Havana, engage in brief exchanges with shopkeepers while making purchases, and have casual conversations with waiters at restaurants and hotel staff. None of these activities are educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, and the traveler's trip does not qualify for the general license.

*Example 5 to § 515.565(b):* An individual plans to travel to Cuba to participate in discussions with Cuban farmers and produce sellers about cooperative farming and agricultural practices and have extended dialogue with religious leaders about the influence of African traditions and religion on society and culture. The individual also plans to spend a few days engaging in brief exchanges with Cuban food vendors while

spending time at the beach. Only some of these activities are educational exchange activities that will result in meaningful interaction between the traveler and individuals in Cuba, and the traveler therefore does not have a full-time schedule of such activities on each day of the trip. The trip does not qualify for the general license.

**Note to § 515.565(a) and (b):** Except as provided in § 515.565(b)(5), each person relying on the general authorizations in these paragraphs, including entities sponsoring travel pursuant to the authorization in § 515.565(b), must retain specific records related to the authorized travel transactions. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements.

(c) Transactions related to activities that are primarily tourist-oriented are not authorized pursuant to this section.

* * * * *

■ 10. In § 515.571, revise paragraph (a)(5) and add paragraph (e) to read as follows:

**§ 515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.**

(a) * * *

(5) All transactions ordinarily incident to the Cuban national's presence in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government.

(i) This paragraph (a)(5) authorizes the receipt of salary or other compensation by a national of Cuba consistent with the individual's non-immigrant status or non-immigrant travel authorization, provided that national of Cuba is not subject to any special tax assessments by the Cuban government in connection with the receipt of the salary or other compensation.

(ii) Examples of other transactions authorized by this paragraph (a)(5) include: the payment of tuition to a U.S. educational institution by a national of Cuba issued a student (F–1) visa, and the rental of a stage by a group of Cubans issued performance (P–2) visas.

**Note to paragraph (a)(5):** This paragraph authorizes banking institutions, as defined in § 515.314, to open and maintain accounts solely in the name of a Cuban national who is present in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization for use while the Cuban national is located in the United States in such status, and to close such accounts prior to departure. See paragraph (b) of this section for an authorization for banking institutions to maintain accounts opened pursuant to this paragraph while the Cuban national is located outside the United States.

* * * * *

(e) The following transactions by or on behalf of a Cuban national are authorized:

(1) All transactions related to the sponsorship or hiring of a Cuban national to work in the United States in a non-immigrant status or pursuant to other non-immigrant travel authorization issued by the U.S. government, except that an employer may not make payments to the Cuban government in connection with the sponsorship or hiring of a Cuban national; and

(2) All transactions in connection with the filing of an application for non-immigrant travel authorization issued by the U.S. government.

* * * * *

■ 11. In § 515.573:

■ a. Revise the section heading;

■ b. Revise paragraph (a) introductory text;

■ c. Reedesignate paragraphs (b) and (c) as paragraphs (c) and (e);

■ d. Add new paragraphs (b) and (d); and

■ e. Revise newly redesignated paragraphs (c) and (e).

The revisions and additions read as follows:

**§ 515.573 Physical presence and business presence in Cuba authorized; Cuban news bureaus.**

(a) *Physical presence:* The persons listed in paragraphs (c) and (d) of this section are authorized to engage in all transactions necessary to establish and maintain a physical presence in Cuba to engage in transactions authorized pursuant to or exempt from the prohibitions of this part, including the following:

* * * * *

(b) *Business presence.* Except for transactions prohibited by § 515.208, the persons listed in paragraph (c) of this section are authorized to engage in all transactions necessary to establish and maintain a business presence in Cuba to engage in transactions authorized pursuant to or exempt from the prohibitions of this part, including the following: establishing and maintaining subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban national, and entering into all necessary agreements or arrangements with such entity or individual.

(c) *Persons authorized to establish physical and business presence.* The following persons subject to U.S. jurisdiction may engage in the transactions authorized pursuant to paragraphs (a) and (b) of this section, provided that such transactions may only be engaged in to support transactions authorized by or exempt from the prohibitions of this part:

(1) Providers of telecommunications services authorized by § 515.542(b) through (d) or persons engaged in activities authorized by § 515.542(e);

(2) Providers of internet-based services authorized by § 515.578(a) or persons engaged in activities authorized by § 515.578(c) or (e);

(3) Exporters of goods authorized for export or reexport to Cuba by § 515.533 or § 515.559 or that are otherwise exempt;

**Note to paragraph (c)(3):** This section authorizes the assembly in Cuba of items exported or reexported pursuant to authorization by the Department of Commerce or OFAC or that are otherwise exempt but does not authorize the incorporation of Cuban-origin goods into items assembled pursuant to this section or the processing of raw materials into finished goods in Cuba.

(4) Entities providing mail or parcel transmission services authorized by § 515.542(a) or providing cargo transportation services in connection with trade involving Cuba authorized by or exempt from the prohibitions of this part; and

(5) Providers of travel and carrier services authorized by § 515.572.

**Note to paragraph (c)(5):** This authorization does not allow persons subject to U.S. jurisdiction to establish a physical or business presence in Cuba for the purpose of providing lodging services in Cuba.

(d) *Persons authorized to establish physical presence.* The following persons subject to U.S. jurisdiction may engage in the transactions authorized pursuant to paragraph (a) of this section, provided that such transactions may only be engaged in to support transactions authorized by or exempt from the prohibitions of this part:

(1) News bureaus whose primary purpose is the gathering and dissemination of news to the general public authorized by paragraph (e) of this section;

(2) Entities organizing or conducting educational activities authorized by § 515.565(a);

(3) Religious organizations engaging in religious activities in Cuba authorized by § 515.566;

(4) Entities engaging in non-commercial activities authorized by § 515.574 (Support for the Cuban People);

(5) Entities engaging in humanitarian projects set forth in § 515.575(b) (Humanitarian projects); and

(6) Private foundations or research or educational institutes engaging in transactions authorized by § 515.576.

* * * * *

■ 12. In § 515.575, redesignate the Note to paragraph (a) as Note 1 to paragraph (a) and add Note 2 to paragraph (a) to read as follows:

**§ 515.575 Humanitarian projects.**

* * * * *

(a) * * *

**Note 2 to paragraph (a):** Transactions authorized by this paragraph include the provision of grants or awards for humanitarian projects in or related to Cuba that are designed to directly benefit the Cuban people as set forth in paragraph (b) of this section.

* * * * *

■ 13. In § 515.577, revise paragraph (e) to read as follows:

**§ 515.577 Authorized transactions necessary and ordinarily incident to publishing.**

* * * * *

(e) Section 515.564(a)(2) authorizes the travel-related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to attendance at or organization of professional meetings that are necessary and ordinarily incident to the publishing and marketing of written publications.

■ 14. In § 515.578, revise the section heading, paragraph (d), and add a Note to § 515.578 to read as follows:

**§ 515.578 Exportation, reexportation, and importation of certain internet-based services; importation of software.**

* * * * *

(d) *Software.* The importation into the United States of Cuban-origin software is authorized.

* * * * *

**Note to § 515.578:** For general licenses authorizing physical and business presence in Cuba for certain persons, see § 515.573. An authorization related to business presence was previously included in this section. For an authorization of certain telecommunications-related services, see § 515.542.

■ 15. In § 515.584, revise paragraph (d) and paragraph (e) introductory text, add paragraph (g), a Note to paragraph (g), and paragraph (h) to read as follows:

**§ 515.584 Certain financial transactions involving Cuba.**

* * * * *

(d) *Funds transfers.* Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to process funds transfers originating and terminating outside the United States, provided that neither the originator nor the beneficiary is a person subject to U.S. jurisdiction.

(e) *Unblocking of certain previously blocked funds transfers authorized.* Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to unblock and return to the originator or originating financial institution or their successor-in-interest previously blocked funds transfers that could have been processed pursuant to paragraph (d) of this section, § 515.562(b), or § 515.579(b) if the processing of those transfers would have been authorized had they been sent under the current text of those provisions. Persons subject to U.S. jurisdiction unblocking funds transfers that were originally blocked on or after August 25, 1997, pursuant to this section must submit a report to the Department of the Treasury, Office of Foreign Assets Control, Attn: Sanctions Compliance & Evaluation Division, 1500 Pennsylvania Avenue NW., Freedman's Bank Building, Washington, DC 20220 within 10 business days from the date such funds transfers are released. Such reports shall include the following:

* * * * *

(g) Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to accept, process, and give value to U.S. dollar monetary instruments presented for processing and payment by a banking institution located in a third country that is not a person subject to U.S. jurisdiction or a Cuban national and that has received the U.S. dollar monetary instruments from a financial institution that is a national of Cuba for which it maintains a correspondent account and which received the U.S. dollar monetary instruments in connection with an underlying transaction that is authorized, exempt, or otherwise not prohibited by this part, such as dollars spent in Cuba by authorized travelers or a third-country transaction that is not prohibited by this part.

**Note to paragraph (g):** Correspondent accounts used for transactions authorized pursuant to § 515.584(g) may be denominated in U.S. dollars.

(h) Any banking institution, as defined in § 515.314, that is a person subject to U.S. jurisdiction is authorized to open and maintain accounts solely in the name of a Cuban national located in Cuba for the purposes only of receiving payments in the United States in connection with transactions authorized pursuant to, or exempt from the prohibitions of, this part and remitting such payments to Cuba.

■ 16. In § 515.585, revise the section heading, add paragraph (c), and revise Note 3 to § 515.585 to read as follows:

**§ 515.585 Certain transactions in third countries.**

* * * * *

(c) Individuals who are persons subject to U.S. jurisdiction who are located in a third country are authorized to purchase or acquire merchandise subject to the prohibitions in § 515.204, including Cuban-origin goods, for personal consumption while in a third country, and to receive or obtain services from Cuba or a Cuban national that are ordinarily incident to travel and maintenance within that country.

**Note to paragraph (c):** This section does not authorize the importation of merchandise, including as accompanied baggage. Please see § 515.544 for an authorization to import certain Cuban-origin merchandise from a third country.

* * * * *

**Note 3 to § 515.585:** Except as provided in paragraph (c) of this section, this section does not authorize any transactions prohibited by § 515.204, including the purchase and sale of Cuban-origin goods.

* * * * *

Dated: March 11, 2016.

**John E. Smith,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2016–06018 Filed 3–15–16; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

**RIN 2900–AP68**

## Telephone Enrollment in the VA Healthcare System

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Interim final rule.

**SUMMARY:** This rulemaking amends VA's medical regulations to allow veterans to complete applications for health care enrollment by telephone by providing application information to a VA employee, agreeing to VA's provisions regarding copayment liability and assignment of third-party insurance benefits, and attesting to the accuracy and authenticity of the information provided over the phone. This action will make it easier for veterans to apply to enroll and will speed VA processing of applications.

**DATES:** *Effective Date:* This rule is effective on March 16, 2016.
*Applicability dates:* This rule applies on March 15, 2016, to veterans who served in a theater of combat operations after November 11, 1998, and were discharged or released from active service on or after January 28, 2003. This rule applies to all other veterans on and after July 5, 2016.

*Comment Date:* Comments must be received on or before May 16, 2016.

**ADDRESSES:** Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1066, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to [''RIN 2900–AP68—Telephone enrollment in the VA healthcare system.''] Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1066, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mathew J. Eitutis, Acting Director, Member Services 3401 SW 21st St. Building 9 Topeka, KS 66604; 785–925–0605. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 1710 of title 38, United States Code (U.S.C.), authorizes VA to provide health care to veterans, and section 1705 requires VA to enroll most veterans in the VA healthcare system before providing health care. This rulemaking amends VA's enrollment regulations, § 17.36(d)(1) of title 38, Code of Federal Regulations (CFR), to allow veterans to apply for enrollment in the VA healthcare system by telephone, in addition to submitting an application on paper or online. Submitting an application does not guarantee enrollment in the VA health care system.

VA's regulation at 38 CFR 17.36(d)(1) has allowed veterans to apply for enrollment in VA health care in two ways, by submitting a signed paper application on the VA Form 10–10EZ or by completing that application online. The current regulation provides for submission of the form to a VA medical facility, which any veteran may. The mailing address on the form, however, is to a VA office not in a VA medical facility. We propose to revise the regulation to explicitly include that the veteran may also submit the form to the address on the form, consistent with actual practice. This change also makes the rule more transparent, showing how veterans actually access VA health care.

The current paper application and its online counterpart include the veteran's consent to pay any copayments the law requires the veteran pay for treatment or services, 38 U.S.C. 1710 and 1722A, and to assign insurance benefits to VA. 38 U.S.C. 1729; 42 U.S.C. 2651. The application also includes a notification of the consequences of making a materially false statement in an application for enrollment.

Under the existing regulations, it is VA's practice to assist veterans in filling out the VA Form 10–10EZ, which often occurs when veterans call a designated telephone number; however, in order to complete the application process, VA currently requires the veteran's signature. In these cases, a VA employee enters into the VA application form the information the veteran provides over the telephone, then VA mails the form to the veteran to sign and return to VA. With this rulemaking, VA is now able to complete the entire enrollment application for the veteran based on information given and attestations made by the veteran over the telephone that are legally equivalent to those in VA Form 10–10EZ. Analysis of our current application process persuades us we can potentially enroll veterans more quickly using this method, particularly those who are transitioning from active duty to veteran status. We also believe the new process will be less burdensome on veterans.

To accomplish a telephone application for enrollment under revised § 17.36(d)(1), a VA employee will verify the veteran's identify based on information already in VA's records or records VA can access, and obtain the information necessary to complete the veteran's application. The VA employee will also inform the veteran of the consequences of making a materially false statement and explain the VA copayment obligation and the assignment of benefits provision.

With respect to the copayment obligation, VA is required by law to charge some veterans a copayment for treatment or services. 38 U.S.C. 1710 and 1722A. As part of the telephone application, the VA employee will provide notice to the veteran that he or she is agreeing to make applicable copayments and that by accepting care or services from VA, he or she may be subject to copayment obligations. In addition, pursuant to 38 U.S.C. 1729 and 42 U.S.C. 2651, VA is authorized to recover or collect from a veteran's health plan or other legally responsible third party for the reasonable charges of nonservice-connected VA care or services. As part of the telephone application, the VA employee will obtain the veteran's verbal consent to assign his or her third-party insurance benefits to VA and inform the veteran that in order to pursue third-party collections, VA may disclose certain information about the veteran and his or her treatment.

The VA employee will obtain the veteran's verbal assurance of his or her understanding of these potential consequences and obligations and continued intent to apply for enrollment in the VA healthcare system. After those steps are complete, the veteran will attest to the accuracy and authenticity of the information provided in the application and must provide verbal confirmation that he or she consents to VA copayment obligations and third-party billing procedures. These steps will be considered to complete the application process in the same manner as submitting the online application or signed paper form under current regulations.

By adding the telephone application to VA's regulations with this amendment, VA will now offer three ways to enroll under 38 CFR 17.36(d)(1). For clarity, we are reorganizing paragraph (d)(1) to show the three alternatives as (d)(1)(i), (ii), or (iii). Paragraphs (d)(1)(i) and (ii) restate the existing means to apply, by paper submission in person or by mail, (d)(1)(i); or online, (d)(1)(ii). We are removing the Web address from the regulation at new paragraph (d)(1)(iii) because VA may change the location of its Web application in the future. Veterans are informed of the Web address in a number of other media. New paragraph (d)(1)(iii) authorizes applications to be completed over the telephone by calling a designated phone number, submitting application information verbally, attesting to the accuracy and authenticity of the verbal application for enrollment and consenting to VA's copayment obligations and third-party billing procedures.

We will begin telephone applications in two phases. Veterans in the first applicability date group (first group) are eligible to receive cost-free VA health care for combat-related conditions and enrollment in Priority Group 6 for 5 years after their separation from active duty. 38 U.S.C. 1710(e). Because these veterans are eligible for a benefit

Congress created with a limited duration, their opportunity to enroll in VA health care with enhanced Priority Group assignment is passing quickly. For this reason, VA will take telephone applications from them first. Beginning March 15, 2016, VA will telephone veterans in the first group with pending applications for enrollment in VA health care to offer them an opportunity to complete their applications by telephone. Veterans in the first group without pending applications may begin calling VA on March 15, 2016, to apply by telephone to enroll in VA health care. All veterans who are not in the first group may begin calling VA on July 5, 2016, to apply by telephone to enroll in VA health care.

The phased initiation of telephone applications permits VA to best marshal limited resources as we perfect the program, which we can only do by processing real applications this new way, while preparing to marshal the additional resources necessary to serve all applicants for enrollment in VA health care who wish to apply by telephone. Although we could wait until we develop the capacity to serve all potential applicants from the first day of this program, that would delay initiating telephone application, and there is no good reason for that delay.

**Administrative Procedure Act**

The Secretary of Veterans Affairs finds that there is good cause under the provisions of 5 U.S.C. 553(b)(B) to publish this rule without prior opportunity for public comment. Failure to authorize verbal applications as soon as possible is contrary to the public interest because it prolongs current delays in processing applications for enrollment in the VA healthcare system. Recently separated combat veterans comprise a large portion of new applicants for VA health care, with an especially great need for immediate access to care. Prompt processing of applications for enrollment in the VA health care system will ease their transition to civilian life. Any delay in initiating an available, viable means of enrolling this group would be detrimental to their well-being and consequently contrary to the public interest.

We are dispensing with the 30-day delay requirement for the effective date of a rule for good cause under 5 U.S.C. 553(d)(3). The object of this rulemaking is to expedite the healthcare application and enrollment process. We anticipate that this regulation will be uncontroversial and believe that any further delay in allowing VA to complete applications by telephone would be contrary to the public interest, for the same reasons described above.

**Effect of Rulemaking**

The Code of Federal Regulations, as revised by this interim final rulemaking, will represent the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance must be read to conform with this interim final rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

**Paperwork Reduction Act**

Although this action contains provisions constituting collections of information, at 38 CFR 17.36(d)(1), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this interim final rule. It will amend an approved collection by allowing a new method for veterans to submit the requested information, but this change will not affect the burden on the public under the approved collection. The information collection requirements for 38 CFR 17.36(d)(1) are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0091.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This interim final rule will directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

**Executive Order 12866 and 13563**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' requiring review by OMB, unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care;

64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

**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. Robert D. Snyder, Interim Chief of Staff, Department of Veterans Affairs, approved this document on February 9, 2016, for publication.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and Dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Dated: March 9, 2016.

**Michael P. Shores,**

*Chief Impact Analyst, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

## PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

■ 2. Amend § 17.36 to revise paragraph (d)(1) to read as follows:

**§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.**

* * * * *

(d) * * *

(1) *Application for enrollment.* A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ:

(i) To a VA medical facility or by mail it to the U.S. Postal address on the form; or

(ii) Online at the designated World Wide Web internet address; or

(iii) By calling a designated telephone number and submitting application information verbally. To complete a telephone application, the veteran seeking enrollment must attest to the accuracy and authenticity of their verbal application for enrollment and consent to VA's copayment requirements and third-party billing procedures.

* * * * *

[FR Doc. 2016–05680 Filed 3–15–16; 8:45 am]

BILLING CODE 8320–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[CS Docket No. 97–80; FCC 16–18]**

### Commercial Availability of Navigation Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission amends a set-top box rule to eliminate a requirement that multichannel video programming distributors rely on separated security in devices that they sell, lease, or otherwise provide to subscribers.

**DATES:** Effective April 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–1573.

**SUPPLEMENTARY INFORMATION:** Section 106 of the STELA Reauthorization Act of 2014, Public Law 113–200, Section 106(a), 128 Stat. 2059, 2063–4 (2014), states that the ''second sentence of section 76.1204(a)(1) of title 47, Code of Federal Regulations, terminates effective on'' December 4, 2015. That second sentence is the portion of our rules that we commonly refer to as the ''integration ban,'' and it required cable operators to rely on identical security elements for leased devices and consumer-owned devices. Section 106 goes on to state that by June 1, 2016, ''the Commission shall complete all actions necessary to remove the sentence'' from our rules. With this Order, we remove that sentence from our rules.

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any 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).

The Commission will send a copy of this Memorandum Opinion and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 76**

Administrative practice and procedure; Cable television; Equal employment opportunity; Political candidates; Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Revise § 76.1204 to read as follows:

**§ 76.1204 Availability of equipment performing conditional access or security functions.**

(a)(1) A multichannel video programming distributor that utilizes Navigation Devices to perform conditional access functions shall make available equipment that incorporates only the conditional access functions of such devices.

(2) The foregoing requirement shall not apply to a multichannel video programming distributor that supports the active use by subscribers of Navigation Devices that:

(i) Operate throughout the continental United States, and

(ii) Are available from retail outlets and other vendors throughout the United States that are not affiliated with the owner or operator of the multichannel video programming system.

(b) Conditional access function equipment made available pursuant to paragraph (a)(1) of this section shall be designed to connect to and function with other Navigation Devices available through the use of a commonly used interface or an interface that conforms to appropriate technical standards promulgated by a national standards organization.

(c) No multichannel video programming distributor shall by contract, agreement, patent, intellectual property right or otherwise preclude the addition of features or functions to the equipment made available pursuant to this section that are not designed, intended or function to defeat the conditional access controls of such devices or to provide unauthorized access to service.

(d) Notwithstanding the foregoing, Navigation Devices need not be made available pursuant to this section where:

(1) It is not reasonably feasible to prevent such devices from being used for the unauthorized reception of service; or

(2) It is not reasonably feasible to separate conditional access from other functions without jeopardizing security.

(e) Paragraphs (a)(1), (b), and (c) of this section shall not apply to the provision of any Navigation Device that:

(1) Employs conditional access mechanisms only to access analog video programming;

(2) Is capable only of providing access to analog video programming offered over a multichannel video programming distribution system; and

(3) Does not provide access to any digital transmission of multichannel video programming or any other digital service through any receiving, decoding, conditional access, or other function, including any conversion of digital programming or service to an analog format.

[FR Doc. 2016–05762 Filed 3–15–16; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Part 52

**[FAC 2005–87; Technical Amendment; Corrections; Docket 2016–0052; Sequence No. 1]**

### Federal Acquisition Regulation; Technical Amendment; Corrections

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Correcting amendments.

**SUMMARY:** DoD, GSA, and NASA are issuing a correction to FAC 2005–87; Technical Amendment; (Item II), which was published in the **Federal Register** at 81 FR 11988, March 7, 2016.

**DATES:** *Effective:* March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Ms. Hada Flowers, Regulatory Secretariat Division (MVCB), 1800 F Street NW., 2nd Floor, Washington, DC 20405, 202–501–4755. Please cite FAC 2005–87, Technical Amendments; Corrections.

**SUPPLEMENTARY INFORMATION:**

**Background**

The dates to the amended FAR sections were inadvertently stated on the **Federal Register** publication.

**Need for Corrections**

As published, the final Technical Amendment document contains errors which may prove to be misleading and need to be clarified.

**List of Subjects in 48 CFR Part 52**

Government procurement.

Accordingly, 48 CFR part 52 is corrected by making the following correcting amendments:

## PART 52–SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

■ 2. In section 52.212–5:

■ a. In paragraphs (c)(8), and (e)(1)(xv), remove ''(MAR 2016)'' and add ''(DEC 2015)'' in their places, respectively.

■ b. Revise the date of Alternate II, and remove from paragraph (e)(1)(ii)(N) ''(MAR 2016)'' and add ''(DEC 2015)'' in its place.

The revision reads as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

*Alternate II* (MAR 2016).

* * * * *

**52.213–4 [Corrected]**

■ 3. Remove from section 52.213–4, paragraph (b)(1)(ix) ''(MAR 2016)'' and add ''(DEC 2015)'' in its place.

Dated: March 11, 2016.

**William Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

[FR Doc. 2016–05920 Filed 3–15–16; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Motor Carrier Safety Administration

### 49 CFR Part 390

**[Docket No. FMCSA–2012–0103]**

**RIN 2126–AB90**

### Lease and Interchange of Vehicles; Motor Carriers of Passengers

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** FMCSA extends the compliance date by which motor carriers of passengers operating CMVs under a lease or interchange agreement are subject to the FMCSA final rule published May 27, 2015, for one year, to January 1, 2018. The Agency received numerous petitions for reconsideration of the final rule and based upon a review of the petitions, determined that the compliance date should be extended to provide sufficient time to address the issues raised by the petitioners. The Agency is adding a temporary section to its regulations to inform the public of this extension. There will no longer be a need for the section on the compliance date after January 1, 2018, thus the temporary section will be in effect only from March 16, 2016 through January 1, 2018.

**DATES:** *Effective date:* March 16, 2016 until January 1, 2018. *Compliance date:* As of March 16, 2016, the compliance date for the requirements in subpart F to 49 CFR part 390 (§§ 390.301, 390.303, and 390.305) is extended until January 1, 2018.

**FOR FURTHER INFORMATION CONTACT:** Ms. Loretta Bitner, (202) 366–2400, *loretta.bitner@dot.gov,* Office of Enforcement and Compliance. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 27, 2015, FMCSA published a final rule entitled ''Lease and Interchange of Vehicles; Motor Carriers of Passengers,'' 80 FR 30164 (May 27, 2015). The American Bus Association (ABA) and United Motorcoach Association (UMA) filed a joint request for an extension of the June 26, 2015, deadline for the submission of petitions for reconsideration of the final rule. (80 FR 37553). On July 1, 2015, the Agency announced an extension of the deadline

for petitions for reconsideration, until August 25, 2015. (80 FR 37553).

The Agency ultimately received 24 unique letters and 24 form letters with additional text as petitions for reconsideration, all of which were filed in the public docket referenced above. After the initial review of the petitions, FMCSA held a meeting on October 28, 2015, with a cross section of the petitioners. Attending were representatives from small and large bus companies, charter and regular-route operations and diverse areas of the nation. Additionally, two insurance company representatives were invited due to the concerns raised in the petitions about liability. The purpose of the meeting was to have an open discussion about petitioners' concerns and to gather additional details about their specific operations.

Based on these communications, and after further analysis, FMCSA has concluded that some of the petitions for reconsideration may have merit. FMCSA mailed a letter to each petitioner on September 9, 2015, acknowledging the Agency had received the petition and will process the petition in accordance with 49 CFR 389.35, ''Petitions for Reconsideration.'' After the Agency has reviewed all relevant information and a determination has been made, the petitioner will again be notified by letter. While the Agency is not yet in a position to grant or deny the petitions, it is mindful of the approaching compliance date of January 1, 2017, and it wishes to allay stakeholder concerns that there will not be sufficient time to adjust passenger carrier operations before compliance with the final rule is required. The Agency is therefore extending the compliance date to January 1, 2018. The Agency is adding a temporary section § 390.300T to subpart F of 49 CFR part 390 to inform the public of this extension. There will no longer be a need for the temporary section dealing with the compliance date after January 1, 2018, thus the temporary section will be in effect only from March 16, 2016 through January 1, 2018.

## II. Regulatory Analyses

### *A. Regulatory Planning and Review*

FMCSA has determined that this action is a non-significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), and DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The Agency does not expect the rule to generate substantial congressional or public interest. This rule has not been reviewed formally by the Office of Management and Budget (OMB).

Please review the final rule's Regulatory Evaluation in docket FMCSA–2012–0103 for a thorough discussion of the assumptions the Agency made, the public comments the Agency considered, the options/alternatives considered in developing the final rule, the analysis conducted, and the petitions for reconsideration received to the May 27, 2015, final rule 80 FR 30164.

### *B. Regulatory Flexibility Act*

Section 603 of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, September 27, 2010), requires FMCSA to perform a detailed analysis of the potential impact of the final rule on small entities. Accordingly, DOT policy requires that agencies shall strive to lessen any adverse effects on these businesses and other entities. The Final Regulatory Flexibility Analysis conducted as part of the May 27, 2015, continues to be applicable to this final rule.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects on themselves. 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 the FMCSA point of contact, Loretta Bitner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

### *C. Federalism (Executive Order 13132)*

A rule has federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA analyzed this rule under E.O. 13132 and has determined that it has no federalism implications.

### *D. Unfunded Mandates Reform Act of 1995*

This final rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $155 million (which is the value of $100 million in 2014 after adjusting for inflation) or more in any 1 year.

### *E. Executive Order 12988 (Civil Justice Reform)*

This final 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.

### *F. Executive Order 13045 (Protection of Children)*

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency has determined that this rule does not create an environmental risk to health or safety that would disproportionately affect children.

### *G. Executive Order 12630 (Taking of Private Property)*

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it would not effect a taking of private property or otherwise have taking implications.

### *H. Privacy Impact Assessment*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This final rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a

matching program. FMCSA has determined this final rule does not result in a new or revised Privacy Act System of Records for FMCSA.

*I. Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*J. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. On August 5, 2015, OMB approved the May 27, 2015, final rule's two information collections titled ''Commercial Motor Vehicle Marking Requirements,'' OMB No. 2126–0054, and ''Lease and Interchange of Motor Vehicles,'' OMB No. 2126–0056. OMB has set the dates for both of these information collections to expire on August 31, 2018.

*K. National Environmental Policy Act and Clean Air Act*

FMCSA analyzed this final rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004, in the **Federal Register** (69 FR 9680), that this action is categorically excluded from further environmental documentation under Appendix 2, Paragraphs y (2) and y (7) of the Order (69 FR 9702). These categorical exclusions relate to:

- y (2) Regulations implementing motor carrier identification and registration reports; and
- y (7) Regulations implementing prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record required by FMCSA.

Thus, the final action will not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

*L. Executive Order 13211 (Energy Effects)*

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects in 49 CFR Part 390**

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

**The Final Rule**

For the reasons stated in the preamble, FMCSA amends 49 CFR part 390 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

## PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 1. The authority citation for part 390 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; sec. 212, 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; sections 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; and 49 CFR 1.87.

■ 2. Effective March 16, 2016 until January 1, 2018, add § 390.300T to subpart F to read as follows:

**§ 390.300T Compliance date.**

Motor carriers of passengers operating CMVs under a lease or interchange agreement are subject to §§ 390.301, 390.303, and 390.305 of this subpart on January 1, 2018.

Issued under the authority delegated in 49 CFR 1.87 on: March 10, 2016.

**Daphne Y. Jefferson,**

*Deputy Administrator.*

[FR Doc. 2016–05932 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 300

**[Docket No. 160203073–6073–01]**

**RIN 0648–BF75**

## Pacific Halibut Fisheries; Catch Sharing Plan

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

**ACTION:** Final rule.

**SUMMARY:** The Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), on behalf of the International Pacific Halibut Commission (IPHC), publishes annual management measures governing the Pacific halibut fishery recommended as regulations by the IPHC and accepted by the Secretary of State. This action is intended to enhance the conservation of Pacific halibut and further the goals and objectives of the Pacific Fishery Management Council and the North Pacific Fishery Management Council (NPFMC).

**DATES:** The IPHC's 2016 annual management measures are effective March 14, 2016. The 2016 management measures are effective until superseded.

**ADDRESSES:** Additional requests for information regarding this action may be obtained by contacting the International Pacific Halibut Commission, 2320 W. Commodore Way, Suite 300, Seattle, WA 98199–1287; or Sustainable Fisheries Division, NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802, Attn: Ellen Sebastian, Records Officer; or Sustainable Fisheries Division, NMFS West Coast Region, 7600 Sand Point Way, NE., Seattle, WA 98115. This final rule also is accessible via the Internet at the Federal eRulemaking portal at *http://www.regulations.gov,* identified by docket number NOAA–NMFS–2016–0015.

**FOR FURTHER INFORMATION CONTACT:** For waters off Alaska, Glenn Merrill or Julie Scheurer, 907–586–7228; or, for waters off the U.S. West Coast, Sarah Williams, 206–526–4646.

**SUPPLEMENTARY INFORMATION:**

### Background

The IPHC has recommended regulations which would govern the Pacific halibut fishery in 2016, pursuant to the Convention between Canada and

the United States for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979).

As provided by the Northern Pacific Halibut Act of 1982 (Halibut Act) at 16 U.S.C. 773b, the Secretary of State, with the concurrence of the Secretary of Commerce, may accept or reject, on behalf of the United States, regulations recommended by the IPHC in accordance with the Convention (Halibut Act, Sections 773–773k). The Secretary of State, with the concurrence of the Secretary of Commerce, accepted the 2016 IPHC regulations as provided by the Halibut Act at 16 U.S.C. 773–773k.

The Halibut Act provides the Secretary of Commerce with the authority and general responsibility to carry out the requirements of the Convention and the Halibut Act. The Regional Fishery Management Councils may develop, and the Secretary of Commerce may implement, regulations governing harvesting privileges among U.S. fishermen in U.S. waters that are in addition to, and not in conflict with, approved IPHC regulations. The NPFMC has exercised this authority most notably in developing halibut management programs for three fisheries that harvest halibut in Alaska: the subsistence, sport, and commercial fisheries.

Subsistence and sport halibut fishery regulations are codified at 50 CFR part 300. Commercial halibut fisheries in Alaska are subject to the Individual Fishing Quota (IFQ) Program and Community Development Quota (CDQ) Program (50 CFR part 679) regulations, and the area-specific catch sharing plans.

The IPHC apportions catch limits for the Pacific halibut fishery among regulatory areas (Figure 1): Area 2A (Oregon, Washington, and California), Area 2B (British Columbia), Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into 5 areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska).

The NPFMC implemented a catch sharing plan (CSP) among commercial IFQ and CDQ halibut fisheries in IPHC Areas 4C, 4D, and 4E (Area 4, Western Alaska) through rulemaking, and the Secretary of Commerce approved the plan on March 20, 1996 (61 FR 11337). The Area 4 CSP regulations were codified at 50 CFR 300.65, and were amended on March 17, 1998 (63 FR 13000). New annual regulations pertaining to the Area 4 CSP also may be implemented through IPHC action, subject to acceptance by the Secretary of State.

The NPFMC recommended and NMFS implemented through rulemaking a CSP for guided sport (charter) and commercial IFQ halibut fisheries in IPHC Area 2C and Area 3A on January 13, 2014 (78 FR 75844, December 12, 2013). The Area 2C and 3A CSP regulations are codified at 50 CFR 300.65. The CSP defines an annual process for allocating halibut between the commercial and charter fisheries so that each sector's allocation varies in proportion to halibut abundance; specifies a public process for setting annual management measures; and authorizes limited annual leases of commercial IFQ for use in the charter fishery as guided angler fish (GAF).

The IPHC held its annual meeting in Juneau, Alaska, January 25–29, 2016, and recommended a number of changes to the previous IPHC regulations (80 FR 13771, March 17, 2015). The Secretary of State accepted the annual management measures, including the following changes to the previous IPHC regulations for 2016:

1. New commercial halibut fishery opening and closing dates in Section 8;
2. New halibut catch limits in all regulatory areas in Section 11;
3. New management measures for Area 2C and Area 3A guided sport fisheries in Section 28, and in Figures 3 and 4;
4. Removal of carcass retention requirements for Area 2C and Area 3A guided sport fisheries (though the requirement remains in 50 CFR 300.65) in Section 28;
5. Additional exemptions from daily bag limits, possession limits, and catch limits for halibut caught bearing IPHC external tags in Section 21;
6. Approval of longline pot gear, as defined by the NPFMC, as legal gear for the commercial halibut fishery in Alaska when NMFS' regulations permit the use of this gear in the IFQ sablefish fishery in Section 19;
7. Approval of use of NMFS electronic logbooks in Alaska in Section 16;
8. Clarifying the wording of regulations for recording on fish tickets in Area 2A treaty Indian fisheries in Section 17;
9. Clarifying the wording of regulations for required information in logbooks for Area 2A treaty Indian fisheries in Section 16; and
10. Modifying definition of Subarea 2A–1 in Section 22.

Pursuant to regulations at 50 CFR 300.62, the 2016 IPHC annual management measures are published in the **Federal Register** to provide notice of their immediate regulatory effectiveness and to inform persons subject to the regulations of their restrictions and requirements. Because NMFS publishes the regulations applicable to the entire Convention area, these regulations include some provisions relating to and affecting Canadian fishing and fisheries. NMFS may implement more restrictive regulations for the sport fishery for halibut or components of it; therefore, anglers are advised to check the current Federal and IPHC regulations prior to fishing.

**Catch Limits**

The IPHC recommended to the governments of Canada and the United States catch limits for 2016 totaling 29,890,000 lb (13,558 mt). The IPHC recommended area-specific catch limits for 2016 that were higher than 2015 in most of its management areas except Area 3A, where catch limits were reduced, and Areas 4A and 4B where catch limits remained at the same level as in 2015. The IPHC is responding to stock challenges with a risk-based precautionary approach and a review of the current harvest policy to ensure the best possible advice. A description of the process the IPHC used to set these catch limits follows.

Since 2012, the stock assessments have been based on an ensemble of models incorporating the uncertainty within each model as well as the uncertainty among models. This approach provides a stronger basis for risk assessment of specific management measures that may be recommended by the IPHC. The 2015 stock assessment used the same suite of models as in 2014, and incorporated several new data sources. The stock assessment ensemble included short and long time-series models based on both the coastwide and the areas-as-fleets (AAF) approaches. The two AAF models considered in 2015 assess the halibut population as a coastwide stock, while allowing for region-specific variations in the selectivity and catchability in the treatment of survey and fishery information. This combination of models included uncertainty in natural mortality rates, environmental effects on recruitment, and uncertainty in other model parameters. New data sources used in 2015 included updated mortality estimates, additional survey sampling stations in the eastern Bering Sea, calibration of IPHC survey data with NMFS trawl survey data, improved weight-at-age estimates by region and for young halibut, and age distribution

information for bycatch, sport, and sublegal discard removals.

The assessment indicates that the Pacific halibut stock declined continuously from the late 1990s to around 2010. That trend is estimated to have been a result of decreasing size at age as well as smaller recruitments than those observed through the 1980s and 1990s. In recent years, the estimated female spawning biomass appears to have stabilized near 200 million pounds. Overall, the ensemble models project a stable or gradual increase in halibut biomass over the next 3 years at current harvest rates.

Since 2013, and as part of an ongoing effort to provide Commissioners with greater flexibility when selecting catch limits, in January 2016 IPHC staff provided a decision table that estimates the consequences to the stock and fishery status and trends from different levels of harvest. This decision table accommodates uncertainty in the stock status and allowed the Commissioners to weigh the risk and benefits of management choices as they set the annual catch limits. After considering harvest advice for 2016 from its scientific staff, Canadian and U.S. harvesters and processors, and other fishery agencies, the IPHC recommended catch limits for 2016 to the U.S. and Canadian governments (see Table 1 below).

The IPHC recommended higher catch limits than 2015 for Areas 2A, 2B, and 2C because the stock assessment survey and fishery weight per unit effort (WPUE) estimates continue to indicate a stable and upward trend in exploitable biomass in these areas. The IPHC recommended higher catch limits than would result from the application of the IPHC's current harvest policy in Areas 2A, 2B, and 2C. The IPHC made these catch limit recommendations after considering the low risk of an adverse impact on the halibut stock and the favorable survey and fishery trends in these areas.

The IPHC recommended a reduced catch limit for Area 3A compared to 2015 because the survey showed a third consecutive annual decrease in WPUE. The IPHC recommended setting the catch limit for Area 3A at halfway between the 2015 catch limit and the limit that would result from the application of the IPHC's current harvest policy. This ''half-down'' approach is intended to minimize negative economic impacts on fishery participants while maintaining a conservative harvest rate.

The IPHC recommended a catch limit consistent with the IPHC's current harvest policy for Area 3B. The IPHC noted that the catch limit recommendation in Area 3B is precautionary and a catch limit greater than the current harvest policy is not warranted. The catch limit in Area 3B increased slightly relative to 2015 due to increased survey and fishery WPUE and an increased biomass estimate.

The IPHC recommended catch limits for Areas 4A and 4B that are the same as the 2015 limits and slightly above the IPHC's current harvest policy for these areas. The IPHC recommended only a slight increase in the catch limit amount in Area 4A relative to the current harvest policy because the stock trends in this area are highly variable and showed a decrease in survey WPUE; therefore, a more precautionary approach to management is appropriate. The IPHC recommended a catch limit somewhat larger than the current harvest policy for Area 4B because this area shows strong signs of stabilization in survey and fishery WPUE.

The IPHC recommended a catch limit for Areas 4CDE that is higher than that adopted in 2015, but only slightly above the catch limit that would result from application of the IPHC's current harvest policy. The IPHC noted the increase in the Area 4CDE survey WPUE and biomass estimate and a significant decrease in halibut bycatch by the commercial groundfish trawl fleet in the Bering Sea in 2015.

The IPHC also considered the Catch Sharing Plan for Area 4 developed by the NPFMC in its catch limit recommendation. When the Area 4CDE catch limit is greater than 1,657,600 lb (751.9 mt), a direct allocation of 80,000 lb (36.3 mt) is made to Area 4E to provide CDQ fishermen in that area with additional harvesting opportunity. After this 80,000 lb allocation is deducted from the catch limit, the remainder is divided among Areas 4C, 4D, and 4E according to the percentages specified in the CSP. Those percentages are 46.43% each to 4C and 4D, and 7.14% to 4E. The IPHC recommended a catch limit for Area 4CDE of 1,660,000 lb (753.0 mt) for 2016 to provide socioeconomic benefits from increased harvest opportunities in Area 4E.

Overall, the IPHC's catch limit recommendations for 2016 are projected to result in a stable or slightly increasing halibut stock in the future.

TABLE 1—PERCENT CHANGE IN CATCH LIMITS FROM 2015 TO 2016 BY IPHC REGULATORY AREA

| Regulatory area | 2016 IPHC recommended catch limit (lb) | 2015 Catch limit (lb) | Percent change from 2015 (percent) |
|---|---|---|---|
| 2A [1] | 1,140,000 | 970,000 | 17.5 |
| 2B [2] | 7,300,000 | 7,038,000 | 3.7 |
| 2C [3] | 4,950,000 | 4,650,000 | 6.5 |
| 3A [3] | 9,600,000 | 10,100,000 | −5.0 |
| 3B | 2,710,000 | 2,650,000 | 2.3 |
| 4A | 1,390,000 | 1,390,000 | 0.0 |
| 4B | 1,140,000 | 1,140,000 | 0.0 |
| 4CDE | 1,660,000 | 1,285,000 | 29.2 |
| Coastwide | 29,890,000 | 29,223,000 | 2.3 |

[1] Area 2A catch limit includes sport, commercial, and tribal catch limits.
[2] Area 2B catch limit includes sport and commercial catch limits.
[3] Shown is the combined commercial and charter allocation under the Area 2C and Area 3A CSP. This value includes allocations to the charter sector, and an amount for commercial wastage. The commercial catch limits after deducting wastage are 3,924,000 lb in Area 2C and 7,336,000 lb in Area 3A.

**Commercial Halibut Fishery Opening and Closing Dates**

Both opening and closing dates take into account advice from the IPHC's two advisory boards. The opening date for the tribal commercial fishery in Area 2A and for the commercial halibut fisheries in Areas 2B through 4E is March 19, 2016. The date takes into account a number of factors, including the timing of halibut migration and spawning, tides, and having a Saturday season opening to facilitate marketing. The closing date for the halibut fisheries is November 7, 2016. This date takes into account the anticipated time required to fully harvest the commercial halibut catch limits, seasonal holidays, and adequate time for IPHC staff to review the complete record of 2016 commercial catch data for use in the 2016 stock assessment process.

In the Area 2A non-treaty directed commercial fishery the IPHC recommended eight 10-hour fishing periods. Each fishing period shall begin at 0800 hours and terminate at 1800 hours local time on June 22, July 6, July 20, August 3, August 17, August 31, September 14, and September 28, 2016, unless the IPHC specifies otherwise. These 10-hour openings will occur until the quota is taken and the fishery is closed.

**Area 2A Catch Sharing Plan**

The NMFS West Coast Region published a proposed rule for changes to the Pacific Halibut Catch Sharing Plan for Area 2A off Washington, Oregon, and California on February 19, 2016 (81 FR 8466), with public comments accepted through March 10, 2016. A separate final rule will be published to approve changes to the Area 2A CSP and to implement the portions of the CSP and management measures that are not implemented through the IPHC annual management measures that are published in this final rule. These measures include the sport fishery allocations and management measures for Area 2A. Once published, the final rule implementing the Area 2A CSP will be available on the NOAA Fisheries West Coast Region's Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html,* and under FDMS Docket Number NOAA–NMFS–2015–0166 at *www.regulations.gov.*

**Catch Sharing Plan for Area 2C and Area 3A**

In 2014, NMFS implemented a CSP for Area 2C and Area 3A. The CSP defines an annual process for allocating halibut between the charter and commercial fisheries in Area 2C and Area 3A, and establishes allocations for each fishery. To allow flexibility for individual commercial and charter fishery participants, the CSP also authorizes annual transfers of commercial halibut IFQ as GAF to charter halibut permit holders for harvest in the charter fishery. Under the CSP, the IPHC recommends combined catch limits (CCLs) for the charter and commercial halibut fisheries in Area 2C and Area 3A. Each CCL includes estimates of discard mortality (wastage) for each fishery. The CSP was implemented to achieve the halibut fishery management goals of the NPFMC. More information is provided in the final rule implementing the CSP (78 FR 75844, December 12, 2013). Implementing regulations for the CSP are at 50 CFR 300.65. The Area 2C and Area 3A CSP allocation tables are located in Tables 1 through 4 of subpart E of 50 CFR part 300. The IPHC recommended a CCL of 4,950,000 lb (2,245.3 mt) for Area 2C. Following the CSP allocations in Tables 1 and 3 of subpart E of 50 CFR part 300, the commercial fishery is allocated 81.7 percent or 4,044,000 lb (1,834.3 mt), and the charter fishery is allocated 18.3 percent or 906,000 lb (411 mt) of the CCL (rounded to the nearest 1,000 lb). Wastage in the amount of 120,000 lb (54.4 mt) was deducted from the commercial allocation to obtain the commercial catch limit of 3,924,000 lb (1,779.9 mt). The charter allocation for 2016 is about 55,000 lb (24.9 mt), or 6.5 percent greater than the charter sector allocation of 851,000 lb (386.0 mt) in 2015.

The IPHC recommended a CCL of 9,600,000 lb (4,354.5 mt) for Area 3A. Following the CSP allocations in Tables 2 and 4 of subpart E of 50 CFR part 300, the commercial fishery is allocated 81.1 percent or 7,786,000 lb (3,531.7 mt), and the charter fishery is allocated 18.9 percent or 1,814,000 lb (822.8 mt). Discard mortality in the amount of 450,000 lb (204.1 mt) was deducted from the commercial allocation to obtain the commercial catch limit of 7,336,000 lb (3,327.6 mt). The charter allocation decreased by about 76,000 lb (34.5 mt), or 4.0 percent, from the 2015 allocation of 1,890,000 lb (857.3 mt).

**Charter Halibut Management Measures for Area 2C and Area 3A**

Guided (charter) recreational halibut anglers are managed under different regulations than unguided recreational halibut anglers in Areas 2C and 3A in Alaska. According to Federal definitions at 50 CFR 300.61, a charter vessel angler, for purposes of §§ 300.65, 300.66, and 300.67, means a person, paying or non-paying, receiving sport fishing guide services for halibut. Sport fishing guide services means assistance, for compensation or with the intent to receive compensation, to a person who is sport fishing, to take or attempt to take halibut by accompanying or physically directing the sport fisherman in sport fishing activities during any part of a charter vessel fishing trip. A charter vessel fishing trip is the time period between the first deployment of fishing gear into the water from a charter vessel by a charter vessel angler and the offloading of one or more charter vessel anglers or any halibut from that vessel. The charter fishery regulations described below apply only to charter vessel anglers receiving sport fishing guide services during a charter vessel fishing trip for halibut in Area 2C or Area 3A. These regulations do not apply to unguided recreational anglers in any regulatory area in Alaska, or guided anglers in areas other than Areas 2C and 3A.

The NPFMC formed the Charter Halibut Management Implementation Committee to provide it with recommendations for annual management measures intended to limit charter harvest to the charter catch limit while minimizing negative economic impacts to the charter fishery participants in times of low halibut abundance. The committee is composed of representatives from the charter fishing industry in Areas 2C and 3A. The committee selected management measures for further analysis from a suite of alternatives that were presented in October 2015. After reviewing an analysis of the effects of the alternative measures on estimated charter removals, the committee made recommendations for preferred management measures to the NPFMC for 2016. The NPFMC considered the recommendations of the committee, its industry advisory body, and public testimony to develop its recommendation to the IPHC, and the IPHC took action consistent with the NPFMC's recommendations. The NPFMC has used this process to select and recommend annual management measures to the IPHC since 2012.

The IPHC recognizes the role of the NPFMC to develop policy and regulations that allocate the Pacific halibut resource among fishermen in and off Alaska, and that NMFS has developed numerous regulations to support the NPFMC's goals of limiting charter harvests over the past several years. The IPHC concluded that new management measures were necessary for 2016 to limit the Area 2C and Area 3A charter halibut fisheries to their

charter catch limits under the CSP, to achieve the IPHC's overall conservation objective to limit total halibut harvests to established catch limits, and to meet the NPFMC's allocation objectives for these areas. The IPHC determined that limiting charter harvests by implementing the management measures discussed below would meet these objectives.

*Management Measures for Charter Vessel Fishing in Area 2C*

The preliminary estimate of charter removals in Area 2C was below the 2015 charter allocation by about 3,000 lb (1.36 mt) or 0.4 percent, indicating that the 2015 management measures were appropriate and effective at limiting harvest by charter vessel anglers to the charter allocation. While charter halibut harvest in Area 2C is projected to increase by 29,000 lb (13.2 mt) in 2016 due to expected increases in angler effort, the catch limit increased by 55,000 lb (24.9 mt), allowing management measures to be relaxed slightly for 2016.

The preliminary estimate of charter wastage (release mortality) in 2015 represented about 5.9 percent of the directed harvest amount. Therefore, projected charter harvest for 2016 was inflated by 6 percent to account for all charter removals in the selection of annual management measures for Area 2C.

Relaxation of management measures is possible, while managing total charter removals, including wastage, in Area 2C to the 2016 allocation of 906,000 lb (411.0 mt). This final rule amends the 2015 measures applicable to the charter vessel fishery in Area 2C to relax restrictions and allow additional harvest relative to 2015.

For 2016, the IPHC recommended the continuation of a one-fish daily bag limit with a reverse slot limit, as was in place in 2015, but increasing the lower size limit. The IPHC recommends a reverse slot limit that prohibits a person on board a charter vessel referred to in 50 CFR 300.65 and fishing in Area 2C from taking or possessing any halibut, with head on, that is greater than 43 inches (109 cm) and less than 80 inches (203 cm), as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail. The 2015 reverse slot limit prohibited retention by charter vessel anglers of halibut that were greater than 42 inches (107 cm) and less than 80 inches. Projected charter harvest under the 2016 recommended reverse slot limit is 877,000 lb (397.8 mt), 29,000 lb (13.2 mt) below the charter allocation. The recommended reverse slot limit for 2016 will increase harvest opportunities for charter vessel anglers, while managing total charter removals to the charter allocation.

*Management Measures for Charter Vessel Fishing in Area 3A*

The preliminary estimate of charter removals in Area 3A in 2015 exceeded the charter allocation by 173,000 lb (78.5 mt), or 9.2 percent, primarily because the halibut that were caught and retained by charter vessel anglers were 9 percent heavier, on average, than predicted for the size and bag limits in place. In 2015, charter vessel anglers in Area 3A were limited to a two-fish daily bag limit with a maximum size limit on one fish. One effect of the maximum size limit was that the number of fish harvested per angler decreased compared to 2014, but the average weight of harvested fish increased as many anglers opted to maximize the size of retained fish. The estimation error for average weight was factored into the analysis of potential management measures for 2016. Trends in effort are projected to remain fairly flat in 2016 in Area 3A.

The preliminary estimate of charter wastage in 2015 represented less than 2 percent of the directed harvest amount. The projected charter harvest for 2016 was increased by 1.5 percent to account for total charter removals in the selection of appropriate annual management measures for Area 3A for 2016.

This final rule amends the 2015 management measures applicable to the charter halibut fishery in Area 3A. The NPFMC and IPHC considered 2015 information on charter removals and the projections of charter harvest for 2016. The NPFMC and IPHC determined that changes to the 2015 Area 3A management measures are necessary to manage total charter removals, including wastage, within the 2016 allocation.

For 2016, the IPHC recommended the following management measures for Area 3A: (1) A two-fish bag limit with a 28-inch size limit on one of the halibut; (2) a one-trip per day limit; (3) a day-of-week closure; and (4) an annual limit, with a new reporting requirement. The projected charter harvest for 2016 under this combination of recommended measures is 1,799,000 lb (816.0 mt), 15,000 lb (6.8 mt) below the charter allocation. Each of these management measures is described in more detail below.

*Size Limit for Halibut Retained on a Charter Vessel in Area 3A*

The 2016 charter halibut fishery in Area 3A will be managed under a two-fish daily bag limit in which one of the retained halibut may be of any size and one of the retained halibut must be 28 inches (71 cm) total length or less. This is a 1-inch (2.5-cm) reduction in the maximum size limit from 2015. The NPFMC and the IPHC recommended the 2015 daily bag limit with a reduced size limit in Area 3A for 2016 to maintain similar angling opportunities to previous years. This daily bag and size limit will be combined with additional restrictions to limit charter halibut removals to the 2016 allocation.

*Trip Limit for Charter Vessels Harvesting Halibut in Area 3A*

In 2014, charter vessels were limited to one charter halibut fishing trip in which halibut were retained per calendar day in Area 3A. The one-trip per day limit remained in place in Area 3A for 2015. If no halibut were retained during a charter vessel fishing trip, the vessel could take an additional trip to catch and retain halibut that day. The trip limit applied to vessels only, not to charter halibut permits. A charter operator could use more than one vessel to take more than one charter vessel fishing trip using the same charter halibut permit per day. Trip limits affect only a small number of charter operators and allow the size of the size-restricted fish in the daily bag limit to be maximized for the entire charter fleet in Area 3A. Without a trip limit, a more restrictive size or bag limit might have been necessary to achieve harvest targets.

For 2016, the NPFMC and IPHC recommended that the trip limit be applied to charter halibut permits and charter vessels to further reduce harvest in Area 3A. That is, a charter halibut permit will only be authorized for use to catch and retain halibut on one charter halibut fishing trip per day. Additionally, a charter vessel will only be authorized for use on one charter halibut fishing trip per day. If no halibut are retained during a charter vessel fishing trip, the charter halibut permit and vessel may be used to take an additional trip to catch and retain halibut that day. This new regulation will make the daily trip limit more restrictive because charter halibut permits will no longer be allowed for use on multiple charter vessels for multiple charter vessel fishing trips in a day.

For purposes of the trip limit in Area 3A in 2016, a charter vessel fishing trip

will end when anglers or halibut are offloaded, or at the end of the calendar day, whichever occurs first. Charter operators are still able to conduct overnight trips and anglers may retain a bag limit of halibut on each calendar day, but operators are not allowed to begin another overnight trip until the day after the trip ends. For example, if an overnight trip started on a Monday and ended on a Tuesday, and charter vessel anglers harvested halibut on Monday and Tuesday, the charter operator is not able to start another charter vessel fishing trip on that vessel until Wednesday. Alternatively, charter vessel anglers could harvest halibut on the first calendar day of an overnight trip, but not the second, allowing the guide to embark on another overnight trip on the second day. GAF halibut are exempt from the trip limit; therefore, GAF could be used to harvest halibut on a second trip in a day, but only if exclusively GAF halibut were harvested on that trip. For example, if an overnight trip started on a Monday and anglers harvested halibut on Monday, they could harvest GAF on Tuesday, allowing the charter operator to start another charter vessel fishing trip on Tuesday on the same charter vessel and charter vessel anglers to harvest halibut on Tuesday.

*Day-of-Week Closure in Area 3A*

The NPFMC and the IPHC recommended continuing a day-of-week closure for Area 3A in 2016. No retention of halibut by charter vessel anglers will be allowed in Area 3A on Wednesdays. In 2015, there was a day-of-week closure on Thursdays between June 15 and August 31. The day of closure is recommended to be changed to Wednesdays because more halibut were estimated to have been harvested on Wednesdays than Thursdays in 2014, the year prior to implementation of the day-of-week closure. To further reduce harvest, the day-of-week closure will be extended in 2016 for the entire season. Retention of only GAF halibut will be allowed on charter vessels on Wednesdays; all other halibut that are caught while fishing on a charter vessel must be released.

*Annual Limit of Four Fish for Charter Vessels Anglers in Area 3A*

Charter vessel anglers will be limited to harvesting no more than four halibut on charter vessel fishing trips in Area 3A during a calendar year. A decrease from the 2015 annual limit of five fish is needed to reduce charter harvest to the 2016 allocation. This limit applies only to halibut caught and retained during charter vessel fishing trips in Area 3A. Halibut harvested while unguided fishing, fishing in other IPHC regulatory areas, or harvested as GAF will not accrue toward the annual limit.

The 2015 regulations, including a 5-fish annual limit for charter vessel anglers in Area 3A, are effective until superseded. It is possible that some charter vessel anglers will have caught and retained halibut in 2016 prior to the publication of these annual management measures. A charter vessel angler in Area 3A would be able to retain five halibut, only if all five halibut were caught before the publication of these annual management measures. If fewer than five halibut were harvested prior to the effective date of this rule, the 4-fish annual limit will apply.

*Reporting Requirement for Annual Limit in Area 3A Guided Sport Fisheries*

In 2015, compliance with the annual limit in Area 3A was determined post-season through landings reported in the Alaska Department of Fish and Game (ADF&G) Saltwater Charter Logbook. Based on monitoring and enforcement activities for the annual limit in 2015, the NPFMC determined that the ability of enforcement agents to monitor and enforce the annual limit could be improved by implementation of a requirement for anglers to provide a cumulative halibut harvest record.

The IPHC approved a reporting requirement for 2016 that was recommended by the NPFMC to complement the annual limit in Area 3A. This reporting requirement will improve compliance and enforceability of the 4-fish annual limit. In 2016, each charter vessel angler who is required to have a State of Alaska sport fishing license and who harvests halibut will be required to record those halibut on the back of the fishing license. For those anglers who are not required to have a sport fishing license (*e.g.,* youth and senior anglers), a nontransferable Sport Harvest Record Card must be obtained from an ADF&G office, the ADF&G Web site, or a fishing license vendor, on which to record halibut harvested aboard a charter vessel. Immediately upon retention of a halibut for which an annual limit has been established, the charter vessel angler must record the date, location (Area 3A), and species of the catch (halibut), in ink, on the harvest record card or back of the sport fishing license.

If the original sport fishing license or harvest record is lost, a duplicate or additional sport fishing license or harvest record card must be obtained and completed for all halibut previously retained during that year that were subject to the annual limit.

Only halibut caught during a charter vessel fishing trip in Area 3A accrue toward the 4-fish annual limit and must be recorded on the license or harvest record card. Halibut that are harvested while charter fishing in regulatory areas other than Area 3A will not accrue toward the annual limit and are not subject to the reporting requirement. Likewise, halibut harvested while sport fishing without a guide in Area 3A, harvested while subsistence fishing, or harvested as GAF do not accrue toward the annual limit and should not be recorded on the license or harvest record. Finally, halibut that are caught during a charter vessel fishing trip that bear IPHC external tags are exempt from the annual limit and reporting requirements (see description below).

*Areas 2C and 3A Carcass Retention Requirement*

NMFS published a final rule on June 19, 2015 (80 FR 35195), that revised Federal regulations for charter halibut fishing in Areas 2C and 3A. That rule revised several Federal regulations and definitions pertaining to charter fishing for halibut, including changing the definition of ''sport fishing guide services.'' Some revisions to the 2015 IPHC annual management measures were also necessary to facilitate compliance and enforcement. The guide definition rule implemented a Federal regulation requiring carcass retention at § 300.65(d)(5) that duplicated 2015 annual management measures at sections 28(2)(d) and 28(3)(d). These regulations require that carcasses of size-restricted halibut be retained on board the vessel until offloading. The carcass-retention requirements were implemented to improve compliance and enforceability of size limits. The IPHC recommended removing the carcass-retention requirements from the IPHC annual management measures after the carcass-retention requirement became effective in Federal regulations. The carcass-retention requirement became effective in Federal regulations on July 20, 2015. The carcass-retention requirements formerly in the IPHC annual management measures at sections 28(2)(b) and 28(3)(b) have been removed for 2016.

**Tagged Halibut Exemption**

IPHC regulations at Section 21 allow any vessel at any time to retain and land a halibut that bears an IPHC external tag at time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by the representative of the IPHC or by an authorized officer. However, these retained tagged halibut

were required to count against commercial individual vessel quotas, community development quotas, individual fishing quotas, and daily bag and possession limits unless otherwise exempted by State, Provincial, or Federal regulations. One such exemption exists at § 679.40(g)(2) for the IPHC regulatory areas in Alaska, which states that halibut bearing an external research tag from any state, Federal, or international agency shall be excluded from IFQ or CDQ deductions. For 2016, the IPHC recommends that halibut with an external IPHC tag will not count against sport daily bag limits or possession limits, can be retained outside of sport fishing seasons, and are not limited to size restrictions in any regulatory area. Likewise, halibut with an external IPHC tag will not count against daily bag limits in the customary and traditional (subsistence) fisheries in Alaska. These changes are intended to encourage sport and subsistence anglers to retain and report externally tagged halibut to the IPHC, as it is important that the IPHC receive the scientific information from these tagged halibut.

**Retention of Incidentally Caught Halibut in Sablefish Pots in Alaska**

IPHC regulations currently authorize only hook-and-line gear for retention of halibut in Alaska. In April 2015, the NPFMC recommended regulatory revisions to authorize the use of longline pot gear in the Gulf of Alaska sablefish IFQ fisheries. These fisheries take place in a portion of IPHC Regulatory Area 2C (not including the inside waters), Regulatory Areas 3A and, 3B, and that portion of Area 4A in the Gulf of Alaska west of Area 3B and east of 170°00′ W. long.. As part of its action, the NPFMC recommended that vessels be able to retain legal-size halibut that are caught incidentally in pots in the sablefish IFQ fisheries if the person(s) on the vessel holds sufficient area-specific halibut IFQ to cover the incidental catch. Because the IPHC has authority to establish legal gear for the retention of the halibut, the NPFMC's recommendation included a request to the IPHC to consider amending the annual management measures to authorize retention of incidentally caught halibut in longline pot gear in the Gulf of Alaska sablefish IFQ fisheries.

The NPFMC's intent is to authorize retention of halibut caught incidentally in longline pot gear subject to current retention requirements for the halibut IFQ Program (*i.e.,* only if the halibut are of legal size and a person(s) on the vessel holds sufficient halibut IFQ). This recommendation is intended to avoid discard mortality of legal-size halibut caught incidentally in longline pots in the sablefish IFQ fishery, similar to current regulations that authorize sablefish and halibut IFQ holders using hook-and-line gear to retain legal-size halibut caught incidentally during the sablefish IFQ fishery.

At its 2016 annual meeting, the IPHC approved longline pot gear, as defined by the NPFMC, as legal gear for the commercial halibut fishery in Alaska when NMFS regulations permit the use of this gear in the IFQ sablefish fishery. The IPHC anticipates that NMFS will implement regulations to allow the use of pot gear in the Gulf of Alaska sablefish IFQ fishery in late 2016 or at the beginning of 2017. The IPHC noted that it intends to review the use of longline pot gear as a legal gear for halibut in this fishery in order to monitor the amount of halibut incidentally caught in longline pot gear in the sablefish IFQ fishery.

**Other Regulatory Amendments**

The IPHC approved several additional amendments to the 2016 annual management measures. First, the IPHC approved the explicit addition of the electronic version of the NMFS Groundfish/IFQ Longline and Pot Gear Daily Fishing Logbook to the list of acceptable logbooks for use in the Alaskan commercial halibut fishery in Section 16, paragraph 1. Second, the IPHC approved revisions to regulations to clarify that the Tribal Identification Number and not the Vessel Identification Number should be recorded in logbooks and on fish tickets in Area 2A treaty Indian fisheries. Finally, the description of Area 2A–1 in Section 22, paragraph 1, was modified to match the description in the Area 2A Catch Sharing Plan, which was changed to account for a recent court order regarding tribal fishing areas.

**Annual Halibut Management Measures**

The following annual management measures for the 2016 Pacific halibut fishery are those recommended by the IPHC and accepted by the Secretary of State, with the concurrence of the Secretary of Commerce.

*1. Short Title*

These Regulations may be cited as the Pacific Halibut Fishery Regulations.

*2. Application*

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, the maritime area as defined in Section 3.

(2) Sections 3 to 6 apply generally to all halibut fishing.

(3) Sections 7 to 20 apply to commercial fishing for halibut.

(4) Section 21 applies to tagged halibut caught by any vessel.

(5) Section 22 applies to the United States treaty Indian fishery in Subarea 2A–1.

(6) Section 23 applies to customary and traditional fishing in Alaska.

(7) Section 24 applies to Aboriginal groups fishing for food, social and ceremonial purposes in British Columbia.

(8) Sections 25 to 28 apply to sport fishing for halibut.

(9) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

*3. Definitions*

(1) In these Regulations,

(a) ''authorized officer'' means any State, Federal, or Provincial officer authorized to enforce these Regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Wildlife Troopers (AWT), United States Coast Guard (USCG), Washington Department of Fish and Wildlife (WDFW), the Oregon State Police (OSP), and California Department of Fish and Wildlife (CDFW);

(b) ''authorized clearance personnel'' means an authorized officer of the United States, a representative of the Commission, or a designated fish processor;

(c) ''charter vessel'' outside of Alaska waters means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator, and in Alaska waters means a vessel used while providing or receiving sport fishing guide services for halibut;

(d) ''commercial fishing'' means fishing, the resulting catch of which is sold or bartered; or is intended to be sold or bartered, other than (i) sport fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined by and regulated pursuant to NMFS regulations published at 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(e) ''Commission'' means the International Pacific Halibut Commission;

(f) ''daily bag limit'' means the maximum number of halibut a person may take in any calendar day from Convention waters;

(g) ''fishing'' means the taking, harvesting, or catching of fish, or any

activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of gear anywhere in the maritime area;

(h) ''fishing period limit'' means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(i) ''land'' or ''offload'' with respect to halibut, means the removal of halibut from the catching vessel;

(j) ''license'' means a halibut fishing license issued by the Commission pursuant to section 4;

(k) ''maritime area'', in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea and internal waters of that Party;

(l) ''net weight'' of a halibut means the weight of halibut that is without gills and entrails, head-off, washed, and without ice and slime. If a halibut is weighed with the head on or with ice and slime, the required conversion factors for calculating net weight are a 2 percent deduction for ice and slime and a 10 percent deduction for the head;

(m) ''operator'', with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(n) ''overall length'' of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(o) ''person'' includes an individual, corporation, firm, or association;

(p) ''regulatory area'' means an area referred to in section 6;

(q) ''setline gear'' means one or more stationary, buoyed, and anchored lines with hooks attached;

(r) ''sport fishing'' means all fishing other than (i) commercial fishing, (ii) treaty Indian ceremonial and subsistence fishing as referred to in section 22, (iii) customary and traditional fishing as referred to in section 23 and defined in and regulated pursuant to NMFS regulations published in 50 CFR part 300, and (iv) Aboriginal groups fishing in British Columbia as referred to in section 24;

(s) ''tender'' means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(t) ''VMS transmitter'' means a NMFS-approved vessel monitoring system transmitter that automatically determines a vessel's position and transmits it to a NMFS-approved communications service provider.[1]

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

*4. Licensing Vessels for Area 2A*

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A, unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A.

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid for one of the following:

(a) The directed commercial fishery during the fishing periods specified in paragraph (2) of section 8;

(b) the incidental catch fishery during the sablefish fishery specified in paragraph (3) of section 8; or

(c) the incidental catch fishery during the salmon troll fishery specified in paragraph (4) of section 8.

(5) No person may apply for or be issued a license for a vessel operating in the incidental catch fishery during the salmon troll fishery in paragraph (4)(c), if that vessel was previously issued a license for either the directed commercial fishery in paragraph (4)(a) or the incidental catch fishery during the sablefish fishery in paragraph (4)(b).

(6) A license issued in respect to a vessel referred to in paragraph (1) of this section must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(7) The Commission shall issue a license in respect to a vessel, without fee, from its office in Seattle, Washington, upon receipt of a completed, written, and signed ''Application for Vessel License for the Halibut Fishery'' form.

(8) A vessel operating in the directed commercial fishery in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 p.m. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(9) A vessel operating in the incidental catch fishery during the sablefish fishery in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 p.m. on March 15, or the next weekday in March if March 15 is a Saturday or Sunday.

(10) A vessel operating in the incidental catch fishery during the salmon troll fishery in Area 2A must have its ''Application for Vessel License for the Halibut Fishery'' form postmarked no later than 11:59 p.m. on March 15, or the next weekday in March if March 15 is a Saturday or Sunday.

(11) Application forms may be obtained from any authorized officer or from the Commission.

(12) Information on ''Application for Vessel License for the Halibut Fishery'' form must be accurate.

(13) The ''Application for Vessel License for the Halibut Fishery'' form shall be completed and signed by the vessel owner.

(14) Licenses issued under this section shall be valid only during the year in which they are issued.

(15) A new license is required for a vessel that is sold, transferred, renamed, or the documentation is changed.

(16) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(17) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, CFR part 904.

*5. In-Season Actions*

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) is consistent with the Convention between Canada and the United States of America for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) is consistent, to the maximum extent practicable, with any domestic catch sharing plans or other domestic allocation programs developed by the United States or Canadian governments.

(2) In-season actions may include, but are not limited to, establishment or modification of the following:

(a) Closed areas;

(b) fishing periods;

[1] Call NOAA Enforcement Division, Alaska Region, at 907–586–7225 between the hours of 0800 and 1600 local time for a list of NMFS-approved VMS transmitters and communications service providers.

(c) fishing period limits;
(d) gear restrictions;
(e) recreational bag limits;
(f) size limits; or
(g) vessel clearances.

(3) In-season changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

*6. Regulatory Areas*

The following areas shall be regulatory areas (see Figure 1) for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11′56″ N. latitude, 136°38′26″ W. longitude) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41′15″ N. latitude, 155°35′00″ W. longitude) to Cape Ikolik (57°17′17″ N. latitude, 154°47′18″ W. longitude), then along the Kodiak Island coastline to Cape Trinity (56°44′50″ N. latitude, 154°08′44″ W. longitude), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29′00″ N. latitude, 164°20′00″ W. longitude) and south of 54°49′00″ N. latitude in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00′00″ W. longitude and south of 56°20′00″ N. latitude;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20′00″ N. latitude;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00′00″ W. longitude, south of 58°00′00″ N. latitude, and west of 168°00′00″ W. longitude;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00′00″ W. longitude; and

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00′00″ W. longitude, and south of 65°34′00″ N. latitude.

*7. Fishing in Regulatory Area 4E and 4D*

(1) Section 7 applies only to any person fishing, or vessel that is used to fish for, Area 4E Community Development Quota (CDQ) or Area 4D CDQ halibut, provided that the total annual halibut catch of that person or vessel is landed at a port within Area 4E or 4D.

(2) A person may retain halibut taken with setline gear in Area 4E CDQ and 4D CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(3) The manager of a CDQ organization that authorizes persons to harvest halibut in the Area 4E or 4D CDQ fisheries must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (2). This report, which shall include data and methodology used to collect the data, must be received by the Commission prior to November 1 of the year in which such halibut were harvested.

*8. Fishing Periods*

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed commercial fishery [2] shall begin at 0800 hours and terminate at 1800 hours local time on June 22, July 6, July 20, August 3, August 17, August 31, September 14, and September 28, 2016, unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (7) of section 11, an incidental catch fishery [3] is authorized during the sablefish seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours local time on March 19 and 1200 hours local time on November 7.

(4) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A in accordance with regulations promulgated by NMFS. This fishery will occur between 1200 hours local time on March 19 and 1200 hours local time on November 7.

(5) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 19 and terminate at 1200 hours local time on November 7, unless the Commission specifies otherwise.

(6) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 7.

*9. Closed Periods*

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved in accordance with paragraph (6).

(9) No person shall possess halibut on board a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

*10. Closed Area*

All waters in the Bering Sea north of 55°00′00″ N. latitude in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36′00″ N. latitude, 164°55′42″ W. longitude) to a point at 56°20′00″ N. latitude, 168°30′00″ W. longitude; thence to a point at 58°21′25″ N. latitude, 163°00′00″ W. longitude; thence to Strogonof Point (56°53′18″ N.

[2] The directed fishery is restricted to waters that are south of Point Chehalis, Washington (46°53′30″ N. latitude) under regulations promulgated by NMFS and published in the **Federal Register**.

[3] The incidental fishery during the directed, fixed gear sablefish season is restricted to waters that are north of Point Chehalis, Washington (46°53′30″ N. latitude) under regulations promulgated by NMFS at 50 CFR 300.63. Landing restrictions for halibut retention in the fixed gear sablefish fishery can be found at 50 CFR 660.231.

latitude, 158°50′37″ W. longitude); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters, except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00′00″ N. latitude and 54°49′00″ N. latitude are closed to halibut fishing.

*11. Catch Limits*

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the net weights expressed in pounds or metric tons shown in the following table:

| Regulatory area | Catch limit—net weight | |
|---|---|---|
| | Pounds | Metric tons |
| 2A: directed commercial, and incidental commercial catch during salmon troll fishery | 227,487 | 103.2 |
| 2A: incidental commercial during sablefish fishery | 49,686 | 22.4 |
| 2B [4] | 7,300,000 | 3,311.3 |
| 2C [5] | 3,924,000 | 1,779.9 |
| 3A [6] | 7,336,000 | 3,327.6 |
| 3B | 2,710,000 | 1,229.2 |
| 4A | 1,390,000 | 630.5 |
| 4B | 1,140,000 | 517.1 |
| 4C | 733,600 | 332.8 |
| 4D | 733,600 | 332.8 |
| 4E | 192,800 | 87.5 |

(2) Notwithstanding paragraph (1), regulations pertaining to the division of the Area 2A catch limit between the directed commercial fishery and the incidental catch fishery as described in paragraph (4) of section 8 will be promulgated by NMFS and published in the **Federal Register**.

(3) The Commission shall determine and announce to the public the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), the commercial fishing in Area 2B will close only when all Individual Vessel Quotas (IVQs) assigned by DFO are taken, or November 7, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all Individual Fishing Quotas (IFQ) and all CDQs issued by NMFS have been taken, or November 7, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10-hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3), and (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

(8) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4E directed commercial fishery is equal to the combined annual catch limits specified for the Area 4D and Area 4E CDQ fisheries. The annual Area 4D CDQ catch limit will decrease by the equivalent amount of halibut CDQ taken in Area 4E in excess of the annual Area 4E CDQ catch limit.

(9) Notwithstanding paragraph (1), the total allowable catch of halibut that may be taken in the Area 4D directed commercial fishery is equal to the combined annual catch limits specified for Area 4C and Area 4D. The annual Area 4C catch limit will decrease by the equivalent amount of halibut taken in Area 4D in excess of the annual Area 4D catch limit.

*12. Fishing Period Limits*

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(a) The vessel's overall length in feet and associated length class;

(b) the average performance of all vessels within that class; and

(c) the remaining catch limit.

(6) Length classes are shown in the following table:

| Overall length (in feet) | Vessel class |
|---|---|
| 1–25 | A |
| 26–30 | B |
| 31–35 | C |
| 36–40 | D |
| 41–45 | E |
| 46–50 | F |
| 51–55 | G |
| 56+ | H |

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

[4] Area 2B includes combined commercial and sport catch limits which will be allocated by DFO. See section 27 for sport fishing regulations.

[5] For the commercial fishery in Area 2C, in addition to the catch limit, the estimate of incidental mortality from the commercial fishery is 120,000 pounds. This amount is included in the combined commercial and guided sport sector catch limit set by IPHC and allocated by NMFS by a catch sharing plan.

[6] For the commercial fishery in Area 3A, in addition to the catch limit, the estimate of incidental mortality from the commercial fishery is 450,000 pounds. This amount is included in the combined commercial and guided sport sector catch limit set by IPHC and allocated by NMFS by a catch sharing plan.

*13. Size Limits*

(1) No person shall take or possess any halibut that:

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 2; or

(b) with the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in Figure 2.

(2) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

*14. Careful Release of Halibut*

(1) All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by:

(a) Hook straightening;

(b) cutting the gangion near the hook; or

(c) carefully removing the hook by twisting it from the halibut with a gaff.

(2) Except that paragraph (1) shall not prohibit the possession of halibut on board a vessel that has been brought aboard to be measured to determine if the minimum size limit of the halibut is met and, if sublegal-sized, is promptly returned to the sea with a minimum of injury.

*15. Vessel Clearance in Area 4*

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the landing of any halibut caught in any of these areas, unless specifically exempted in paragraphs (10), (13), (14), (15), or (16).

(2) An operator obtaining a vessel clearance required by paragraph (1) must obtain the clearance in person from the authorized clearance personnel and sign the IPHC form documenting that a clearance was obtained, except that when the clearance is obtained via VHF radio referred to in paragraphs (5), (8), and (9), the authorized clearance personnel must sign the IPHC form documenting that the clearance was obtained.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Nazan Bay on Atka Island, Dutch Harbor or Akutan, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(5) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St. Paul or St. George, Alaska, from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(6) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(7) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(8) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(9) Before unloading any halibut caught in Area 4C and 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(10) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel obtains a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the areas in which the vessel will fish; and

(b) before unloading any halibut from Area 4, the vessel operator obtains a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(11) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(12) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(13) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Area 4C or 4D or 4E and lands its total annual halibut catch at a port within Area 4C, 4D, 4E, or the closed area defined in section 10, is exempt from the clearance requirements of paragraph (1).

(16) Any vessel that carries a transmitting VMS transmitter while fishing for halibut in Area 4A, 4B, 4C, or 4D and until all halibut caught in any of these areas is landed, is exempt from the clearance requirements of paragraph (1) of this section, provided that:

(a) The operator of the vessel complies with NMFS' vessel monitoring system regulations published at 50 CFR 679.28(f)(3), (4) and (5); and

(b) the operator of the vessel notifies NOAA Fisheries Office for Law Enforcement at 800–304–4846 (select option 1 to speak to an Enforcement Data Clerk) between the hours of 0600 and 0000 (midnight) local time within 72 hours before fishing for halibut in Area 4A, 4B, 4C, or 4D and receives a VMS confirmation number.

*16. Logs*

(1) The operator of any U.S. vessel fishing for halibut that has an overall length of 26 feet (7.9 meters) or greater shall maintain an accurate log of halibut fishing operations. The operator of a vessel fishing in waters in and off Alaska must use one of the following logbooks: the Groundfish/IFQ Longline and Pot Gear Daily Fishing Logbook, in electronic or paper form, provided by NMFS; the Alaska hook-and-line logbook provided by Petersburg Vessel Owners Association or Alaska Longline Fisherman's Association; the Alaska Department of Fish and Game (ADF&G) longline-pot logbook; or the logbook provided by IPHC. The operator of a vessel fishing in Area 2A must use either the WDFW Voluntary Sablefish Logbook, Oregon Department of Fish and Wildlife (ODFW) Fixed Gear Logbook, or the logbook provided by IPHC.

(2) The logbook referred to in paragraph (1) must include the following information:

(a) The name of the vessel and the State (ADF&G, WDFW, ODFW, or CDFW) or Tribal ID number;

(b) the date(s) upon which the fishing gear is set or retrieved;

(c) the latitude and longitude coordinates or a direction and distance from a point of land for each set or day;

(d) the number of skates deployed or retrieved, and number of skates lost; and

(e) the total weight or number of halibut retained for each set or day.

(3) The logbook referred to in paragraph (1) shall be:

(a) Maintained on board the vessel;

(b) updated not later than 24 hours after 0000 (midnight) local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) retained for a period of two years by the owner or operator of the vessel;

(d) open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed.

(4) The log referred to in paragraph (1) does not apply to the incidental halibut fishery during the salmon troll season in Area 2A defined in paragraph (4) of section 8.

(5) The operator of any Canadian vessel fishing for halibut shall maintain an accurate log recorded in the British Columbia Integrated Groundfish Fishing Log provided by DFO.

(6) The logbook referred to in paragraph (5) must include the following information:

(a) The name of the vessel and the DFO vessel registration number;

(b) the date(s) upon which the fishing gear is set and retrieved;

(c) the latitude and longitude coordinates for each set;

(d) the number of skates deployed or retrieved, and number of skates lost; and

(e) the total weight or number of halibut retained for each set.

(7) The logbook referred to in paragraph (5) shall be:

(a) Maintained on board the vessel;

(b) retained for a period of two years by the owner or operator of the vessel;

(c) open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(d) kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and until the offloading of all halibut is completed;

(e) mailed to the DFO (white copy) within seven days of offloading; and

(f) mailed to the Commission (yellow copy) within seven days of the final offload if not collected by a Commission employee.

(8) No person shall make a false entry in a log referred to in this section.

*17. Receipt and Possession of Halibut*

(1) No person shall receive halibut caught in Area 2A from a United States vessel that does not have on board the license required by section 4.

(2) No person shall possess on board a vessel a halibut other than whole or with gills and entrails removed, except that this paragraph shall not prohibit the possession on board a vessel of:

(a) Halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at 50 CFR part 679;

(b) fillets from halibut offloaded in accordance with section 17 that are possessed on board the harvesting vessel in the port of landing up to 1800 hours local time on the calendar day following the offload [7]; and

(c) halibut with their heads removed in accordance with section 13.

(3) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(4) It shall be the responsibility of a vessel operator who lands halibut to continuously and completely offload at a single offload site all halibut on board the vessel.

(5) A registered buyer (as that term is defined in regulations promulgated by NMFS and codified at 50 CFR part 679) who receives halibut harvested in IFQ and CDQ fisheries in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, directly from the vessel operator that harvested such halibut must weigh all the halibut received and record the following information on Federal catch reports: Date of offload; name of vessel; vessel number (State, Tribal or Federal, not IPHC vessel number); scale weight obtained at the time of offloading, including the scale weight (in pounds) of halibut purchased by the registered buyer, the scale weight (in pounds) of halibut offloaded in excess of the IFQ or CDQ, the scale weight of halibut (in pounds) retained for personal use or for future sale, and the scale weight (in pounds) of halibut discarded as unfit for human consumption.

(6) The first recipient, commercial fish processor, or buyer in the United States who purchases or receives halibut directly from the vessel operator that harvested such halibut must weigh and record all halibut received and record the following information on State fish tickets: The date of offload; vessel number (State or Federal, not IPHC vessel number) or Tribal ID number; total weight obtained at the time of offload including the weight (in pounds) of halibut purchased; the weight (in pounds) of halibut offloaded in excess of the IFQ, CDQ, or fishing period limits; the weight of halibut (in pounds) retained for personal use or for future sale; and the weight (in pounds) of halibut discarded as unfit for human consumption.

(7) The individual completing the State fish tickets for the Area 2A fisheries as referred to in paragraph (6) must additionally record whether the halibut weight is of head-on or head-off fish.

(8) For halibut landings made in Alaska, the requirements as listed in paragraphs (5) and (6) can be met by recording the information in the Interagency Electronic Reporting Systems, eLandings in accordance with NMFS regulation published at 50 CFR part 679.

(9) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date; locality; name of vessel; the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of

[7] DFO has more restrictive regulations; therefore, section 17 paragraph (2)(b) does not apply to fish caught in Area 2B or landed in British Columbia.

offloading of all halibut on board the vessel including the pounds purchased, pounds in excess of IVQs, pounds retained for personal use, and pounds discarded as unfit for human consumption.

(10) No person shall make a false entry on a State or Provincial fish ticket or a Federal catch or landing report referred to in paragraphs (5), (6), and (9) of section 17.

(11) A copy of the fish tickets or catch reports referred to in paragraphs (5), (6), and (9) shall be:

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) open to inspection by an authorized officer or any authorized representative of the Commission.

(12) No person shall possess any halibut taken or retained in contravention of these Regulations.

(13) When halibut are landed to other than a commercial fish processor, the records required by paragraph (6) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (11).

(14) No person shall tag halibut unless the tagging is authorized by IPHC permit or by a Federal or State agency.

*18. Fishing Multiple Regulatory Areas*

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in more than one of the Regulatory Areas 2C, 3A, or 3B may be possessed on board a vessel at the same time, provided the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations [8] published at 50 CFR 679.7(f)(4); and

(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in more than one of the Regulatory Areas 4A, 4B, 4C, or 4D may be possessed on board a vessel at the same time, provided the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel as required by NMFS regulations published at 50 CFR 679.7(f)(4); or has an operational VMS on board actively transmitting in all regulatory areas fished and does not possess at any time more halibut on board the vessel than the IFQ permit holders on board the vessel have cumulatively available for any single Area 4 regulatory area fished; and

(b) can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) If halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

*19. Fishing Gear*

(1) No person shall fish for halibut using any gear other than hook and line gear,

(a) except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined in the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by DFO; or

(b) except that a person may retain halibut taken with longline pot gear in the sablefish IFQ fishery if such retention is authorized by NMFS regulations published at 50 CFR part 679.

(2) No person shall possess halibut taken with any gear other than hook and line gear,

(a) except that vessels licensed to catch sablefish in Area 2B using sablefish trap gear as defined by the Condition of Sablefish Licence can retain halibut caught as bycatch under regulations promulgated by DFO; or

(b) except that a person may possess halibut taken with longline pot gear in the sablefish IFQ fishery if such possession is authorized by NMFS regulations published at 50 CFR part 679.

(3) No person shall possess halibut while on board a vessel carrying any trawl nets or fishing pots capable of catching halibut,

(a) except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut heads, skin, entrails, bones or fins for use as bait may be possessed on board a vessel carrying pots capable of catching halibut, provided that a receipt documenting purchase or transfer of these halibut parts is on board the vessel; or

(b) except that in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E, halibut may be possessed on board a vessel carrying pots capable of catching halibut, provided such possession is authorized by NMFS regulations published at 50 CFR part 679 as referenced in paragraphs (1) and (2) of this section; or

(c) except that in Area 2B, halibut may be possessed on board a vessel carrying sablefish trap gear, provided such possession is authorized by the Condition of Licence regulations promulgated by DFO as referenced in paragraphs (1) and (2) of this section.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's State license number; or

(b) the vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be:

(a) Floating and visible on the surface of the water; and

(b) legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery shall catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either:

(a) Made a landing and completely offloaded its catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(8) No vessel used to fish for any species of fish anywhere in Area 2A during the 72-hour period immediately before the fishing period for the directed commercial fishery may be used to catch or possess halibut anywhere in those waters during that halibut fishing period unless, prior to the start of the halibut fishing period, the vessel has removed its gear from the water and has either:

(a) Made a landing and completely offloaded its catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel

[8] Without an observer, a vessel cannot have on board more halibut than the IFQ for the area that is being fished, even if some of the catch occurred earlier in a different area.

has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72-hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either:

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these Regulations, a person may retain, possess and dispose of halibut taken with trawl gear only as authorized by Prohibited Species Donation regulations of NMFS.

*20. Supervision of Unloading and Weighing*

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

*21. Retention of Tagged Halibut*

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission external tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut:

(a) May be retained for personal use; or

(b) may be sold only if the halibut is caught during commercial halibut fishing and complies with the other commercial fishing provisions of these Regulations.

(3) Any halibut that bears a Commission external tag must count against commercial IVQs, CDQs, or IFQs, unless otherwise exempted by State, Provincial, or Federal regulations.

(4) Any halibut that bears a Commission external tag will not count against sport daily bag limits or possession limits, may be retained outside of sport fishing seasons, and are not subject to size limits in these regulations.

(5) Any halibut that bears a Commission external tag will not count against daily bag limits, possession limits, or catch limits in the fisheries described in section 22, paragraph (7), section 23, or section 24.

*22. Fishing by United States Treaty Indian Tribes*

(1) Halibut fishing in Subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by NMFS and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of the Quinault River, WA, (47°21.00' N. lat.) and east of 125°44.00' W. long; all waters off the coast of Washington that are between the Quinault River, WA (47°21.00' N. lat.) and Point Chehalis, WA, (46°53.30′ N. lat.) and east of 125°08.50′ W. long.; and all inland marine waters of Washington.

(3) Section 13 (size limits), section 14 (careful release of halibut), section 16 (logs), section 17 (receipt and possession of halibut) and section 19 (fishing gear), except paragraphs (7) and (8) of section 19, apply to commercial fishing for halibut in Subarea 2A–1 by the treaty Indian tribes.

(4) Regulations in paragraph (3) of this section that apply to State fish tickets apply to Tribal tickets that are authorized by WDFW.

(5) Section 4 (Licensing Vessels for Area 2A) does not apply to commercial fishing for halibut in Subarea 2A–1 by treaty Indian tribes.

(6) Commercial fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from March 19 through November 7, or until 365,100 pounds (165.6 metric tons) net weight is taken, whichever occurs first.

(7) Ceremonial and subsistence fishing for halibut in Subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 33,900 pounds (15.4 metric tons) net weight.

*23. Customary and Traditional Fishing in Alaska*

(1) Customary and traditional fishing for halibut in Regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall be governed pursuant to regulations promulgated by NMFS and published in 50 CFR part 300.

(2) Customary and traditional fishing is authorized from January 1 through December 31.

*24. Aboriginal Groups Fishing for Food, Social and Ceremonial Purposes in British Columbia*

(1) Fishing for halibut for food, social and ceremonial purposes by Aboriginal groups in Regulatory Area 2B shall be governed by the Fisheries Act of Canada and regulations as amended from time to time.

*25. Sport Fishing for Halibut—General*

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) Any minimum overall size limit promulgated under IPHC or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(3) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(4) No person may possess halibut on a vessel while fishing in a closed area.

(5) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(6) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard said vessel are destined for commercial use, sale, trade, or barter.

(7) The operator of a charter vessel shall be liable for any violations of these Regulations committed by an angler on board said vessel. In Alaska, the charter vessel guide, as defined in 50 CFR 300.61 and referred to in 50 CFR 300.65, 300.66, and 300.67, shall be liable for any violation of these Regulations committed by an angler on board a charter vessel.

*26. Sport Fishing for Halibut—Area 2A*

(1) The total allowable catch of halibut shall be limited to:

(a) 214,110 Pounds (97.1 metric tons) net weight in waters off Washington;

(b) 220,077 pounds (99.8 metric tons) net weight in waters off Oregon; and

(c) 29,640 pounds (13.4 metric tons) net weight in waters off California.

(2) The Commission shall determine and announce closing dates to the public for any area in which the catch limits promulgated by NMFS are estimated to have been taken.

(3) When the Commission has determined that a subquota under paragraph (8) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in

that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(4) In California, Oregon, or Washington, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(5) The possession limit on a vessel for halibut in the waters off the coast of Washington is the same as the daily bag limit. The possession limit on land in Washington for halibut caught in U.S. waters off the coast of Washington is two halibut.

(6) The possession limit on a vessel for halibut caught in the waters off the coast of Oregon is the same as the daily bag limit. The possession limit for halibut on land in Oregon is three daily bag limits.

(7) The possession limit on a vessel for halibut caught in the waters off the coast of California is one halibut. The possession limit for halibut on land in California is one halibut.

(8) [The Area 2A CSP will be published under a separate final rule that, once published, will be available on the NOAA Fisheries West Coast Region's Web site at *http://www.westcoast.fisheries.noaa.gov/fisheries/management/pacific_halibut_management.html,* and under FDMS Docket Number NOAA–NMFS–2015–0166 at *www.regulations.gov*.]

*27. Sport Fishing for Halibut—Area 2B*

(1) In all waters off British Columbia: [9] [10]

(a) The sport fishing season will open on February 1 unless more restrictive regulations are in place; [9]

(b) the sport fishing season will close when the sport catch limit allocated by DFO, is taken, or December 31, whichever is earlier; and

(c) the daily bag limit is two halibut of any size per day per person.

(2) In British Columbia, no person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(3) The possession limit for halibut in the waters off the coast of British Columbia is three halibut.[9] [10]

*28. Sport Fishing for Halibut—Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, 4E*

(1) In Convention waters in and off Alaska: [11] [12]

(a) The sport fishing season is from February 1 to December 31.

(b) The daily bag limit is two halibut of any size per day per person unless a more restrictive bag limit applies in Commission regulations or Federal regulations at 50 CFR 300.65.

(c) No person may possess more than two daily bag limits.

(d) No person shall possess on board a vessel, including charter vessels and pleasure craft used for fishing, halibut that have been filleted, mutilated, or otherwise disfigured in any manner, except that each halibut may be cut into no more than 2 ventral pieces, 2 dorsal pieces, and 2 cheek pieces, with skin on all pieces.[13]

(e) Halibut in excess of the possession limit in paragraph (1)(c) of this section may be possessed on a vessel that does not contain sport fishing gear, fishing rods, hand lines, or gaffs.

(f) All halibut harvested on a charter vessel fishing trip in Area 2C or Area 3A must be retained on board the charter vessel on which the halibut was caught until the end of the charter vessel fishing trip as defined at 50 CFR 300.61.

(g) Guided angler fish (GAF), as described at 50 CFR 300.65, may be used to allow a charter vessel angler to harvest additional halibut up to the limits in place for unguided anglers, and are exempt from the requirements in paragraphs 2 and 3 of this section.[13]

(2) For guided sport fishing (as referred to in 50 CFR 300.65) in Regulatory Area 2C:

(a) The total catch allocation, including an estimate of incidental mortality (wastage), is 906,000 pounds (411.0 metric tons).

(b) No person on board a charter vessel (as referred to in 50 CFR 300.65) shall catch and retain more than one halibut per calendar day.

(c) No person on board a charter vessel (as referred to in 50 CFR 300.65) shall catch and retain any halibut that with head on is greater than 43 inches (109 cm) and less than 80 inches (203 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 3.

(3) For guided sport fishing (as referred to in 50 CFR 300.65) in Regulatory Area 3A:

(a) The total catch allocation, including an estimate of incidental mortality (wastage), is 1,814,000 pounds (822.8 metric tons).

(b) No person on board a charter vessel (as referred to in 50 CFR 300.65) shall catch and retain more than two halibut per calendar day.

(c) At least one of the retained halibut must have a head-on length of no more than 28 inches (71 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with mouth closed, to the extreme end of the middle of the tail, as illustrated in Figure 4. If a person sport fishing on a charter vessel in Area 3A retains only one halibut in a calendar day, that halibut may be of any length.

(d) A charter halibut permit may only be used for one charter vessel fishing trip in which halibut are caught and retained per calendar day. A charter vessel fishing trip is defined at 50 CFR 300.61 as the time period between the first deployment of fishing gear into the water by a charter vessel angler (as defined at 50 CFR 300.61) and the offloading of one or more charter vessel anglers or any halibut from that vessel. For purposes of this trip limit, a charter vessel fishing trip ends at 11:59 p.m. (Alaska local time) on the same calendar day that the fishing trip began, or when any anglers or halibut are offloaded, whichever comes first.[13]

(e) A charter vessel on which one or more anglers catch and retain halibut may only make one charter vessel fishing trip per calendar day. A charter vessel fishing trip is defined at 50 CFR 300.61 as the time period between the first deployment of fishing gear into the water by a charter vessel angler (as defined at 50 CFR 300.61) and the offloading of one or more charter vessel anglers or any halibut from that vessel. For purposes of this trip limit, a charter vessel fishing trip ends at 11:59 p.m. (Alaska local time) on the same calendar day that the fishing trip began, or when any anglers or halibut are offloaded, whichever comes first.[13]

(f) No person on board a charter vessel may catch and retain halibut on Wednesdays.[13]

(g) Charter vessel anglers may catch and retain no more than four (4) halibut per calendar year on board charter vessels in Area 3A. Halibut that are retained as GAF, retained while on a charter vessel fishing trip in other Commission regulatory areas, or retained while fishing without the

[9] DFO could implement more restrictive regulations for the sport fishery; therefore, anglers are advised to check the current Federal or Provincial regulations prior to fishing.

[10] For regulations on the experimental recreational fishery implemented by DFO, check the current Federal or Provincial regulations.

[11] NMFS could implement more restrictive regulations for the sport fishery or components of it; therefore, anglers are advised to check the current Federal or State regulations prior to fishing.

[12] Charter vessels are prohibited from harvesting halibut in Areas 2C and 3A during one charter vessel fishing trip under regulations promulgated by NMFS at 50 CFR 300.66.

[13] Additional regulations governing use of GAF are at 50 CFR 300.65.

services of a guide do not accrue toward the 4-fish annual limit. For purposes of enforcing the annual limit, each angler must:

(1) Maintain a nontransferable harvest record in the angler's possession if retaining a halibut for which an annual limit has been established. Such harvest record must be maintained either on the back of the angler's State of Alaska sport fishing license or on a Sport Fishing Harvest Record Card obtained, without charge, from ADF&G offices, the ADF&G Web site, or fishing license vendors; and

(2) immediately upon retaining a halibut for which an annual limit has been established, record the date, location (Area 3A), and species of the catch (halibut), in ink, on the harvest record; and

(3) record the information required by paragraph 3(g)(2) on any duplicate or additional sport fishing license issued to the angler or any duplicate or additional Sport Fishing Harvest Record Card obtained by the angler for all halibut previously retained during that year that were subject to the harvest record reporting requirements of this section; and

(4) carry the harvest record on his or her person while fishing for halibut.

*29. Previous Regulations Superseded*

These Regulations shall supersede all previous regulations of the Commission, and these Regulations shall be effective each succeeding year until superseded.

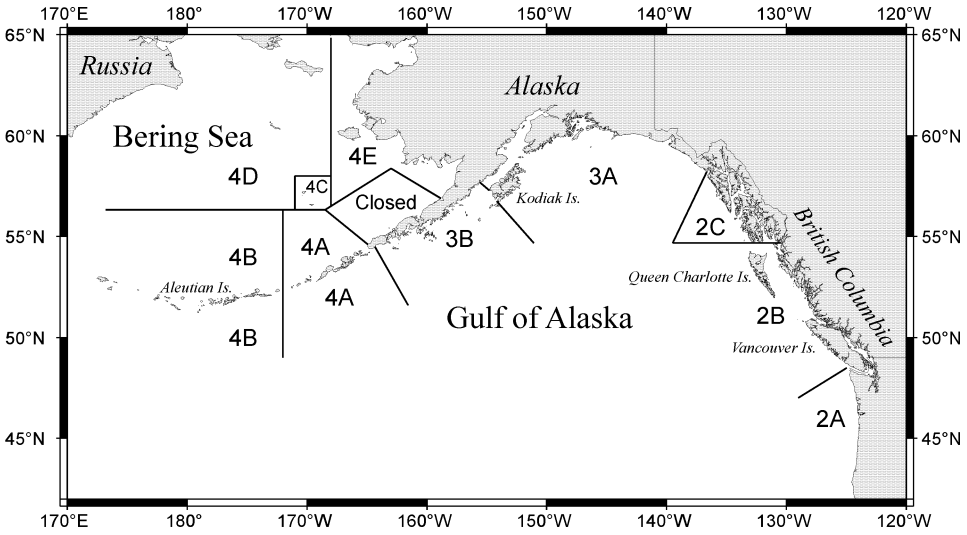


Figure 1. Regulatory areas for the Pacific halibut fishery.

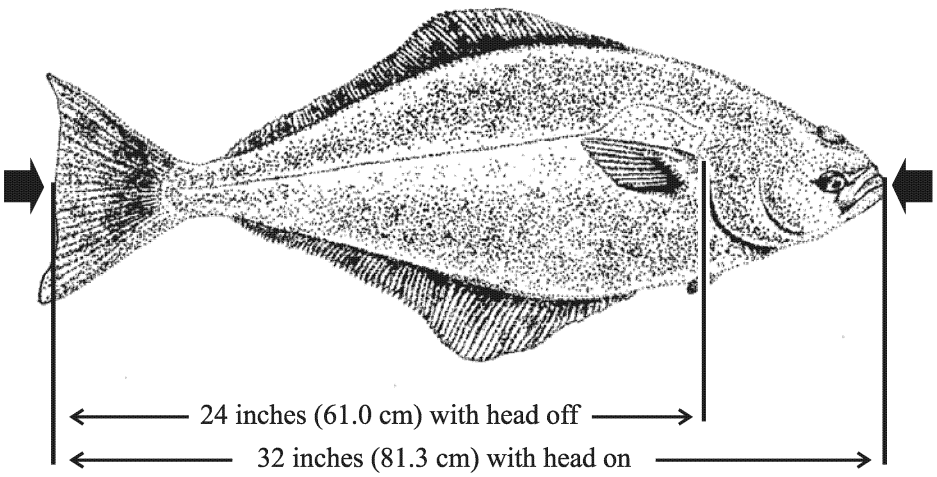


Figure 2. Minimum commercial size.

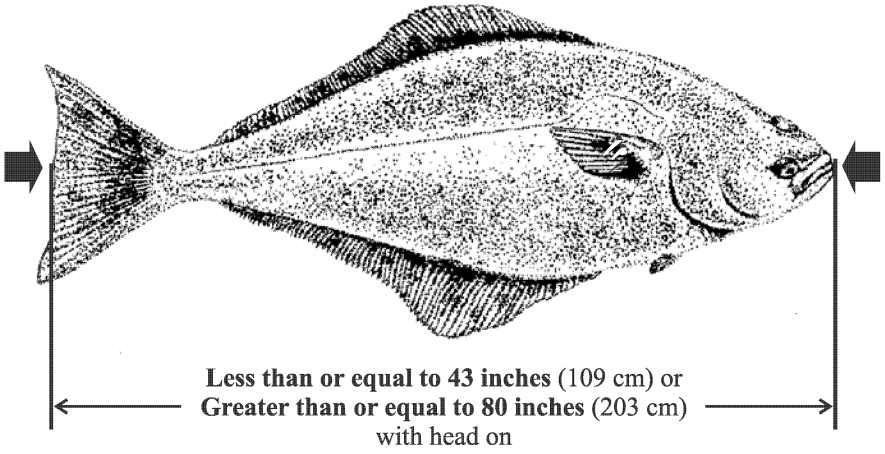


Figure 3. Recreational reverse slot limit for halibut on board a charter vessel referred to in 50 CFR 300.65 and fishing in Regulatory Area 2C (see Section 28 paragraph 2(c)).

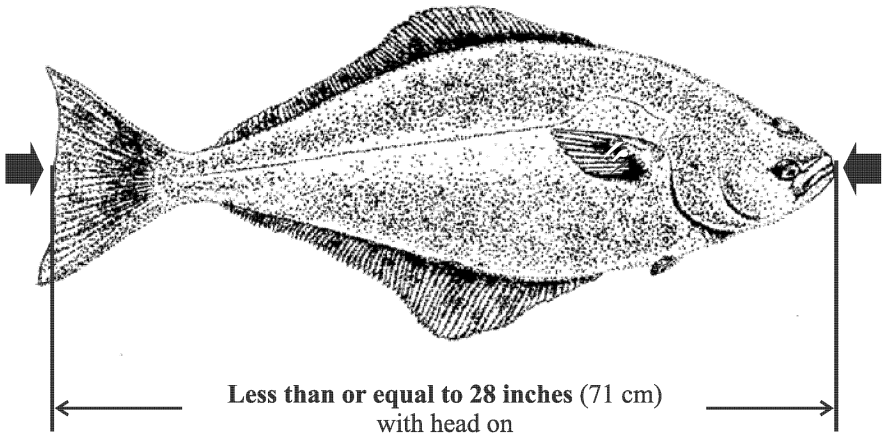


Figure 4. Recreational maximum size limit for one fish in two-fish bag limit for halibut on board a charter vessel referred to in 50 CFR 300.65 and fishing in Regulatory Area 3A (see Section 28 paragraph 3(c)). If only one halibut is retained, it may be of any size.

**Classification**

*IPHC Regulations*

These IPHC annual management measures are a product of an agreement between the United States and Canada and are published in the **Federal Register** to provide notice of their effectiveness and content. Pursuant to section 4 of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c, the Secretary of State, with the concurrence of the Secretary of Commerce, may ''accept or reject'' but not modify these recommendations of the IPHC. The notice-and-comment and delay-in-effectiveness date provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553(c) and (d), are inapplicable to IPHC management measures because this regulation involves a foreign affairs function of the United States, 5 U.S.C. 553(a)(1). The additional time necessary to comply with the notice-and-comment and delay-in-effectiveness requirements of the APA would disrupt coordinated international conservation and management of the halibut fishery pursuant to the Convention. Furthermore, no other law requires prior

notice and public comment for this rule. Because prior notice and an opportunity for public comment are not required to be provided for these portions of this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable. Accordingly, no Regulatory Flexibility Analysis is required for this portion of the rule and none has been prepared.

**Authority:** 16 U.S.C. 773 *et seq.*

Dated: March 11, 2016.

**Samuel D. Rauch III,**

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

[FR Doc. 2016–05948 Filed 3–14–16; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 140918791–4999–02]**

**RIN 0648–XE504**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2016 total allowable catch of pollock for Statistical Area 630 in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), March 13, 2016, through 1200 hrs, A.l.t., May 31, 2016.

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

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

The B seasonal apportionment of pollock TAC in Statistical Area 630 of the GOA is 5,083 mt as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015) and inseason adjustment (81 FR 188, January 5, 2016). In accordance with § 679.20(a)(5)(iv)(B), the Regional Administrator hereby increases the B seasonal apportionment for Statistical Area 630 by 1,017 mt to account for the underharvest of the TAC in Statistical Areas 620 and 630 in the A season. This increase is in proportion to the estimated pollock biomass and is not greater than 20 percent of the B seasonal apportionment of the TAC in Statistical Area 630. Therefore, the revised B seasonal apportionment of pollock TAC in Statistical Area 630 is 6,100 mt (5,083 mt plus 1,017 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2016 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,600 mt and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 10, 2016.

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

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

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

Dated: March 11, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–05923 Filed 3–11–16; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 140918791–4999–02]**

**RIN 0648–XE505**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Trawl Catcher Vessels in the Western Regulatory Area of the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2016 Pacific cod total allowable catch apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), March 12, 2016, through 1200 hours, A.l.t., June 10, 2016.

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

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

fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2016 Pacific cod total allowable catch (TAC) apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA is 7,579 metric tons (mt), as established by the final 2015 and 2016 harvest specifications for groundfish of the GOA (80 FR 10250, February 25, 2015) and inseason adjustment (81 FR 188, January 5, 2016).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2016 Pacific cod TAC apportioned to trawl catcher vessels in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,279 mt and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod by catcher vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 10, 2016.

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

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

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

Dated: March 11, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–05929 Filed 3–11–16; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 81, No. 51
Wednesday, March 16, 2016

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 915

**[Doc. No. AMS–SC–15–0083; SC16–915–2 PR]**

## Avocados Grown in South Florida; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement a recommendation from the Avocado Administrative Committee (Committee) to increase the assessment rate established for the 2016–17 and subsequent fiscal periods from $0.30 to $0.35 per 55-pound bushel container of Florida avocados handled under the marketing order (order). The Committee locally administers the order and is comprised of growers and handlers of avocados operating within the area of production. Assessments upon Florida avocado handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by April 15, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Antoinette.Carter@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Order No. 915, as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 13175.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable Florida avocados beginning on April 1, 2016, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would increase the assessment rate established for the Committee for the 2016–17 and subsequent fiscal periods from $0.30 to $0.35 per 55-pound bushel container of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2013–14 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 9, 2015, and recommended 2016–17 expenditures of $302,553 and an assessment rate of $0.35 per 55-pound bushel container of avocados. In comparison, last year's budgeted expenditures were $602,553. The assessment rate of $0.35 is $0.05 higher than the rate currently in effect. During the 2015–16 season, the Committee used its authorized reserves to fund several large research projects to address the Laurel Wilt fungus, which can infect

and kill avocado trees. This substantially reduced the funds in the Committee's reserves to $214,733. Further, at the current assessment rate, assessment income would equal only $300,000, an amount insufficient to cover the Committee's anticipated expenditures of $302,553. By increasing the assessment rate by $0.05, assessment income would be approximately $350,000. This amount should provide sufficient funds to meet 2016–2017 anticipated expenses and add money back into the Committee's authorized reserves.

The major expenditures recommended by the Committee for the 2016–17 year include $119,483 for salaries, $51,500 for employee benefits, and $25,500 for insurance and bonds. Budgeted expenses for these items in 2015–16 were $119,483, $51,500, and $25,500, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and the level of funds in reserve. As mentioned earlier, avocado shipments for the year are estimated at one million 55-pound bushel containers which should provide $350,000 in assessment income. Income derived from handler assessments at the proposed rate, along with interest income, would be adequate to cover budgeted expenses. Funds in the reserve (currently $214,733) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses as authorized in § 915.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2016–17 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

**Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 producers of Florida avocados in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistical Service (NASS), the average grower price paid for Florida avocados during the 2014–15 season was approximately $18.00 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-pound bushels. Based on this information, the majority of avocado producers would have annual receipts less than $750,000. In addition, based on Committee information, the majority of Florida avocado handlers could be considered small business under SBA's definition. Thus, the majority of Florida avocado producers and handlers may be classified as small entities.

This proposal would increase the assessment rate established for the Committee and collected from handlers for the 2016–17 and subsequent fiscal periods from $0.30 to $0.35 per 55-pound bushel container of avocados. The Committee recommended 2016–17 expenditures of $302,553 and an assessment rate of $0.35 per 55-pound bushel container. The proposed assessment rate of $0.35 is $0.05 higher than the previous rate. The quantity of assessable avocados for the 2016–17 season is estimated at one million 55-pound bushel containers. Thus, the $0.35 rate should provide $350,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2016–17 fiscal period include $119,483 for salaries, $51,500 for employee benefits, and $25,500 for insurance and bonds. Budgeted expenses for these items in 2015–16 were $119,483, $51,500, and $25,500, respectively.

During the 2015–16 season, the Committee used its authorized reserves to fund several large research projects to address the Laurel Wilt fungus. This substantially reduced the funds in the Committee's reserves. Further, at the current assessment rate and with the 2016–17 crop estimated to be one million 55-pound bushel containers, assessment income would equal only $300,000, an amount insufficient to cover the Committee's anticipated expenditures of $302,553. By increasing the assessment rate by $0.05, assessment income would be approximately $350,000. This amount should provide sufficient funds to meet 2016–2017 anticipated expenses and add money back into the Committee's authorized reserves. Consequently, the Committee recommended increasing the assessment rate.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee. Alternative expenditure levels were discussed by this group, based upon the relative value of various activities to the South Florida avocado industry. The Committee ultimately determined that 2016–17 expenditures of $302,553 were appropriate, and the recommended assessment rate, along with interest income, would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2016–17 season should be around $18 per 55-pound bushel container of avocados. Therefore, the estimated assessment revenue for the 2016–17 fiscal period as a percentage of total grower revenue would be approximately two percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Additionally, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to

attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 9, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189 (Generic Fruit Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2016–17 fiscal period begins on April 1, 2016, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

**List of Subjects in 7 CFR Part 915**

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ 1. The authority citation for 7 CFR part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 915.235 is revised to read as follows:

**§ 915.235 Assessment rate.**

On and after April 1, 2016, an assessment rate of $0.35 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: March 10, 2016.

**Elanor Starmer,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–05834 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1250

**[Doc. No. AMS–LPS–15–0042]**

## Egg Research and Promotion: Updates to Patents, Copyrights, Trademarks, and Information Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would update the Patents, Copyrights, Trademarks, and Information Language (IP) of the Egg Research and Promotion Rules and Regulations (Regulations). The proposed amendment would model current commodity research and promotion program orders created under the Commodity Promotion, Research, and Information Act of 1996.

**DATES:** Comments must be received by May 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Research and Promotion Division; Livestock, Poultry, and Seed Program; AMS, USDA; 1400 Independence Avenue SW., Room 2096–S; Washington, DC 20250; telephone: (202) 720–5705; fax (202) 720–1125; or email: *Kenneth.Payne@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

This proposed rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This action would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this proposed rule. The Egg Research and Consumer Information Act (Act), 7 U.S.C. 2701 *et seq.,* provides that administrative proceedings be filed before parties may consider suit in court. Under section 14 of the Act, 7 U.S.C. 2713, a person subject to the Egg Promotion and Research Order (Order) may file a petition with the U.S. Department of Agriculture (USDA) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601–612], the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by RFA. The purpose of RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be disproportionately burdened. As such, these changes will not impose a significant impact on persons subject to the program.

According to the American Egg Board (Board), around 181 producers are subject to the provisions of the Order, including paying assessments. Under the current Order, producers in the 48 contiguous United States and the District of Columbia who own more than 75,000 laying hens each currently pay a mandatory assessment of 10 cents per 30-dozen case of eggs. Handlers are

responsible for collecting and remitting assessments to the Board. There are approximately 138 egg handlers who collect assessments. Assessments under the program are used by the Board to finance promotion, research, and consumer information programs designed to increase consumer demand for eggs in domestic and international markets.

In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than $750,000 and small agricultural service firms as those having annual receipts of no more than $7 million. Under this definition, the vast majority of the egg producers that would be affected by this rulemaking would not be considered small entities. Producers owning 75,000 or fewer laying hens are eligible to be exempt from this program. This rulemaking does not impose additional recordkeeping requirements on egg producers or collecting handlers. There are no federal rules that duplicate, overlap, or conflict with this proposed rule.

**Paperwork Reduction Act**

In accordance with OMB regulation 5 CFR part 1320, which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Order and Rules and Regulations have been approved previously under OMB control number 0581–0093. This proposed rule does not result in a change to those information collection and recordkeeping requirements.

**Background**

The Act established a national egg research and promotion program—administered by the Board—that is financed through industry assessments and subject to oversight by USDA's Agricultural Marketing Service. This program of promotion, research, and consumer information is designed to strengthen the position of eggs in the marketplace and to establish, maintain, and expand markets for eggs.

Under the current Regulations initially established in 1976, any IP financed by assessment funds or other revenues of the Board shall become property of the U.S. Government as represented by the Board. The language does not allow for alternative ownership arrangements. In addition, there is no explicit allowance for alternative ownership arrangements in cases where the Board is not providing all of the funding for a project. The current language in the Regulation has made negotiating contracts for shared ownership of IP rights with research entities difficult and in some cases impossible. Specifically, a majority of university policies typically reflect a requirement for the university to own any IP created under research projects they conduct, even if the project is funded with outside money. These university policies have made it difficult for the Board to contract with universities for research due to the IP ownership requirements contained in the Regulation. As a result, USDA is proposing to amend § 1250.542 of the Regulations to incorporate language utilized by research and promotion boards created under the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7411 *et seq.,* that would provide the Board with some flexibility in negotiating the ownership of IP rights.

The research and promotion boards created under the Commodity Promotion, Research and Information Act of 1996 have utilized the language proposed herein to negotiate IP ownership rights to effectively expend assessment funds to promote agricultural commodities. Currently, the Regulations state that IP accruing from work funded by the Board shall become property of the U.S Government as represented by the Board and that IP may be licensed subject to approval by the Secretary of Agriculture (Secretary). This proposed rule would change the language to allow that ownership of any IP developed during a project funded by the Board to be determined by agreement between the Board and another party, which will provide the Board with the flexibility it needs to negotiate contracts for projects that may involve IP rights.

**List of Subjects in 7 CFR Part 1250**

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1250 be amended as follows:

## PART 1250—EGG RESEARCH AND PROMOTION

■ 1. The authority citation of 7 CFR part 1250 continues to read as follows:

**Authority:** 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

■ 2. Revise § 1250.542 to read as follows:

**§ 1250.542 Patents, copyrights, inventions, trademarks, information, publications, and product formulations.**

(a) Any patents, copyrights, inventions, trademarks, information, publications, or product formulations developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1250.358 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section.

Dated: March 10, 2016.

**Elanor Starmer,**

*Acting Administrator.*

[FR Doc. 2016–05838 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1260

**[No. AMS–LPS–15–0084]**

### Amendment to the Beef Promotion and Research Rules and Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Beef Promotion and Research Order (Order) established under the

Beef Promotion and Research Act of 1985 (Act) to increase assessment levels for imported veal and veal products based on revised determinations of live animal equivalencies and to update and expand the Harmonized Tariff System (HTS) numbers and categories, which identify imported veal and veal products to conform with recent updates in the numbers and categories used by the U.S. Customs and Border Protection (Customs).

**DATES:** Comments must be received by May 16, 2016.

**ADDRESSES:** Comments should be posted online at *www.regulations.gov.* Comments received will be posted without change, including any personal information provided. All comments should reference the docket number, AMS–LPS–15–0084; the date of submission; and the page number of this issue of the **Federal Register**. Comments may also be sent to Mike Dinkel, Promotion and Research Division, Livestock, Poultry, and Seed Program, Agricultural Marketing Service, Department of Agriculture, Room 2610–S, STOP 0251, 1400 Independence Avenue SW., Washington, DC 20250–0251; or via Fax to (202) 720–1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at *www.regulations.gov.* Comments must be received by May 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mike Dinkel, Agricultural Marketing Specialist; Research and Promotion Division, Room 2610–S; Livestock, Poultry and Seed Program; Agricultural Marketing Service, USDA; STOP 0251; 1400 Independence Avenue SW., Washington, DC 20250–0251; facsimile (202) 720–1125; telephone (301) 352–7497, or by email at *Michael.Dinkel@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the U.S. or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

**Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Acting Administrator of AMS has considered the economic effect of this action on small entities and has determined that this proposed rule will not have a significant economic impact on a substantial number of small business entities. The effect of the Beef Order upon small entities was discussed in the July 18, 1986, **Federal Register** [51 FR 26132]. The purpose of RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly burdened.

There are approximately 270 importers who import beef or edible beef products into the U.S. and 198 importers who import live cattle into the U.S. The majority of these operations subject to the Beef Order are considered small businesses under the criteria established by the Small Business Administration (SBA)[13 CFR 121.201]. SBA defines small agricultural service firms as those having annual receipts of $7.5 million or less.

The proposed rule will impose no significant burden on the industry. It will merely update and expand the HTS numbers and categories for veal and veal products to conform to recent updates in the numbers and categories used by Customs. This proposed rule will adjust the live animal equivalencies used to determine the amount of assessments collected on imported veal and veal products. This adjustment reflects an increase in the assessment of imported veal product so that it coincides with the assessment on domestic veal product. Accordingly, the Acting Administrator of AMS has determined that this action will not have a significant impact on a substantial number of small entities.

**Paperwork Reduction Act**

In accordance with the Office of Management and Budget (OMB) regulations [5 CFR part 1320] that implement the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements contained in the Beef Order and Rules and Regulations have previously been approved by OMB under OMB control number 0581–0093.

**Background**

The Act authorized the establishment of a national beef promotion and research program. The final Beef Order was published in the **Federal Register** on July 18, 1986, (51 FR 21632), and the collection of assessments began on October 1, 1986. The program is administered by the Cattlemen's Beef Promotion and Research Board (Board), appointed by the Secretary of Agriculture (Secretary) from industry nominations, and composed of 100 cattle producers and importers. The program is funded by a $1-per-head assessment on producer marketing of cattle in the U.S. and on imported cattle as well as an equivalent amount on imported beef and beef products.

Importers pay assessments on imported cattle, beef, and beef products. Customs collects and remits the assessment to the Board. The term ''importer'' is defined as ''any person who imports cattle, beef, or beef products from outside the United States.'' Imported beef or beef products is defined as ''products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States.''

The purpose of this proposed rule is to update, expand, and revise the table found under § 1260.172 (7 CFR 1260.172) to reflect the current HTS numbers and assessments on veal and veal products.

As a result of these changes to HTS, there are 6 new categories that cover imported veal and veal products subject to assessment. The 30 categories identifying imported beef and beef products have been expanded to 66 categories.

This proposed rule updates and expands the chart published in the 2006 final rule to conform with recent changes to the HTS numbering system and revises the live weight equivalents used to calculate import veal assessments. Importers are currently paying a lower assessment level for imported veal and veal products than what is being paid for domestic veal and veal products. At that time, the average dressed weight of veal slaughtered under Federal inspection was determined to be 154 pounds. USDA determined that using the average dressed weight of domestic veal slaughtered under Federal inspection would be most suitable because most of the imported veal and veal products were similar to domestic veal.

The Act requires that assessments on imported beef and beef products be determined by converting such imports into live animal equivalents to ascertain

the corresponding number of head of cattle. Carcass weight is the principle factor in calculating live animal equivalents.

Prior to publishing the proposed rule, USDA received information from the Board regarding imported veal assessments on April 7, 2015. The Board requested to expand the number of HTS codes for imported veal and veal products in order to capture product that is not currently being assessed and to update the live animal equivalency rate on imported veal to reflect the same assessment as domestic veal and veal products. The Board also suggested that AMS update the dressed veal weight to better reflect current dressed veal weights. The Board recommends using an average dressed veal weight from 2010 to the most current data. The Board states that ''establishing an average over this period of time takes into account short term highs and lows due to the cattle cycle, weather effects, and feed prices.'' This average would be 154 pounds.

**List of Subjects in 7 CFR Part 1260**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Meat and meat products, Beef, and Beef products.

For the reasons set forth in the preamble, title 7 of the CFR part 1260 is proposed to be amended as follows:

## PART 1260—BEEF PROMOTION AND RESEARCH

■ 1. The authority citation for 7 CFR part 1260 continues to read as follows:

**Authority:** 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 2. Amend § 1260.172 by revising paragraph (b)(2) to read as follows:

**§ 1260.172 Assessments.**

* * * * *

(b) * * *

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

IMPORTED LIVE CATTLE

| HTS No. | Assessment rate |
|---|---|
| 0102.10.0010 | $1.00/head. |
| 0102.10.0020 | $1.00/head. |
| 0102.10.0030 | $1.00/head. |
| 0102.10.0050 | $1.00/head. |
| 0102.90.2011 | $1.00/head. |
| 0102.90.2012 | $1.00/head. |
| 0102.90.4024 | $1.00/head. |
| 0102.90.4028 | $1.00/head. |
| 0102.90.4034 | $1.00/head. |
| 0102.90.4038 | $1.00/head. |
| 0102.90.4054 | $1.00/head. |

IMPORTED LIVE CATTLE—Continued

| HTS No. | Assessment rate |
|---|---|
| 0102.90.4058 | $1.00/head. |
| 0102.90.4062 | $1.00/head. |
| 0102.90.4064 | $1.00/head. |
| 0102.90.4066 | $1.00/head. |
| 0102.90.4068 | $1.00/head. |
| 0102.90.4072 | $1.00/head. |
| 0102.90.4074 | $1.00/head. |
| 0102.90.4082 | $1.00/head. |
| 0102.90.4084 | $1.00/head. |

IMPORTED BEEF AND BEEF PRODUCTS

| HTS No. | Assessment rate per kg |
|---|---|
| 0201.10.0510 | .01693600 |
| 0201.10.0590 | .00379102 |
| 0201.10.1010 | .01693600 |
| 0201.10.1090 | .00379102 |
| 0201.10.5010 | .01693600 |
| 0201.10.5090 | .00511787 |
| 0201.20.0200 | .00530743 |
| 0201.20.0400 | .00511787 |
| 0201.20.0600 | .00379102 |
| 0201.20.1000 | .00530743 |
| 0201.20.3000 | .00511787 |
| 0201.20.5000 | .00379102 |
| 0201.20.8090 | .00379102 |
| 0201.30.0200 | .00530743 |
| 0201.30.0400 | .00511787 |
| 0201.30.0600 | .00379102 |
| 0201.30.1000 | .00530743 |
| 0201.30.3000 | .00511787 |
| 0201.30.5000 | .00511787 |
| 0201.30.8090 | .00511787 |
| 0202.10.0510 | .01693600 |
| 0202.10.0590 | .00379102 |
| 0202.10.1010 | .01693600 |
| 0202.10.1090 | .00370102 |
| 0202.10.5010 | .01693600 |
| 0202.10.5090 | .00379102 |
| 0202.20.0200 | .00530743 |
| 0202.20.0400 | .00511787 |
| 0202.20.0600 | .00379102 |
| 0202.20.1000 | .00530743 |
| 0202.20.3000 | .00511787 |
| 0202.20.5000 | .00379102 |
| 0202.20.8000 | .00379102 |
| 0202.30.0200 | .00530743 |
| 0202.30.0400 | .00511787 |
| 0202.30.0600 | .00527837 |
| 0202.30.1000 | .00530743 |
| 0202.30.3000 | .00511787 |
| 0202.30.5000 | .00511787 |
| 0202.30.8000 | .00379102 |
| 0206.10.0000 | .00379102 |
| 0206.21.0000 | .00379102 |
| 0206.22.0000 | .00379102 |
| 0206.29.0000 | .00379102 |
| 0210.20.0000 | .00615701 |
| 1601.00.4010 | .00473877 |
| 1601.00.4090 | .00473877 |
| 1601.00.6020 | .00473877 |
| 1602.50.0900 | .00663428 |
| 1602.50.1020 | .00663428 |
| 1602.50.1040 | .00663428 |
| 1602.50.2020 | .00701388 |
| 1602.50.2040 | .00701388 |
| 1602.50.6000 | .00720293 |

NEW IMPORTED (VEAL) BEEF AND BEEF PRODUCTS

| HTS No. | Assessment rate per kg |
|---|---|
| 0201.20.5010 | .01693600 |
| 0201.20.5020 | .01693600 |
| 0201.30.5010 | .01693600 |
| 0201.30.5020 | .01693600 |
| 0202.30.5010 | .01693600 |
| 0202.30.5020 | .01693600 |

* * * * *

Dated: March 10, 2016.

**Elanor Starmer,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–05859 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[Docket Number EERE–2016–BT–STD–0004]**

**RIN 1904–AD61**

### Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Circulator Pumps Working Group To Negotiate a Notice of Proposed Rulemaking (NOPR) for Energy Conservation Standards and Test Procedures

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Department of Energy (DOE) announces public meetings and webinars for the Circulator Pumps Working Group. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for meeting dates.

**ADDRESSES:** The meetings will be held at U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, 6th Floor SW., Washington, DC, unless otherwise stated in the **SUPPLEMENTARY INFORMATION** section. Individuals will also have the opportunity to participate by webinar. To register for the webinars and receive call-in information, please register at DOE's Web site: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=2.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Joe Hagerman, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building

Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–4549. Email: *asrac@ee.doe.gov.*

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307 Email: *Johanna.Jochum@Hq.Doe.Gov.*

**SUPPLEMENTARY INFORMATION:** On January 20, 2016, ASRAC met and unanimously passed the recommendation to form a circulator pumps working group. The purpose of the working group is to discuss and, if possible, reach consensus on a proposed rule regarding definitions, test procedures, and energy conservation standards, as authorized by the Energy Policy and Conservation Act (EPCA) of 1975, as amended. The working group consists of representatives of parties having a defined stake in the outcome of the proposed standards, and will consult as appropriate with a range of experts on technical issues. Per the ASRAC Charter, the working group is expected to make a concerted effort to negotiate a final term sheet by September 30, 2016. This notice announces the next series of meetings for this working group.

DOE will host public meetings and webinars on the below dates.

- Tuesday, March 29, 2016 at 12 p.m. to 4 p.m. EST *Webinar only.*
- Thursday, March 31, 2016 from 9 a.m. to 5 p.m. EST at 950 L'Enfant Plaza, 6th Floor SW., Washington, DC.
- Friday, April 1, 2016 from 8 a.m. to 3 p.m. EST at 950 L'Enfant Plaza, 6th Floor SW., Washington, DC.

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov* . In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If you are a foreign national, and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes have been made regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

*Docket:* The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *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.

Issued in Washington, DC, on March 10, 2016.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

[FR Doc. 2016–05917 Filed 3–15–16; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R05–OAR–2011–0969; EPA–R05–OAR–2014–0704; FRL–9943–76–Region 5]**

## Indiana; Ohio; Wisconsin; Disapproval of Interstate Transport Requirements for the 2008 Ozone NAAQS

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to disapprove elements of State Implementation Plan (SIP) submissions from Indiana and Ohio regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standards (NAAQS), and to partially approve and partially disapprove elements of the SIP submission from Wisconsin addressing the same requirements. The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning interstate transport provisions. Ohio, Indiana, and Wisconsin made SIP submissions that, among other things, certified that their existing SIPs were sufficient to meet the interstate transport infrastructure SIP requirements for the 2008 ozone NAAQS. EPA is proposing to disapprove portions of submissions from Indiana and Ohio, and to partially approve and partially disapprove a portion of Wisconsin's submission addressing these requirements.

**DATES:** Comments on this proposed rule must be received on or before April 15, 2016.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0969 (Indiana and Ohio) and EPA–R05–OAR–2014–0704 (Wisconsin) at *http://www.regulations.gov* or via email to *Aburano.Douglas@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:



## I. Background

This rulemaking addresses CAA section 110(a)(2)(D)(i) requirements in three infrastructure SIP submissions addressing the applicable infrastructure requirements with respect to the 2008 ozone NAAQS: a December 12, 2011, submission from the Indiana Department of Environmental Management (IDEM), clarified in a May 24, 2012, letter; a December 27, 2012, submission from the Ohio Environmental Protection Agency (Ohio EPA); and a June 20, 2013, submission from the Wisconsin Department of Natural Resources (WDNR), clarified in a January 28, 2015, letter.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address. EPA commonly refers to such state plans as ''infrastructure SIPs.''

This rulemaking proposes action on three CAA section 110(a)(2)(D)(i) requirements of these submissions. In particular, section 110(a)(2)(D)(i)(I) requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS (''prong one''), or interfering with maintenance of the NAAQS (''prong two''), by any another state. Section 110(a)(2)(D)(i)(II) requires that infrastructure SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality (''prong three'') and to protect visibility (''prong four'') in another state. This rulemaking addresses prongs one, two, and four of this CAA section. The majority of the other infrastructure elements were approved in rulemakings on April 29, 2015 (80 FR 23713) for Indiana; October 16, 2014 (79 FR 62019) for Ohio; and September 11, 2015 (80 FR 54725) for Wisconsin.

## II. EPA's Review

On September 13, 2013, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act sections 110(a)(1) and 110(a)(2)'' (2013 Guidance). This guidance provides, among other things, recommendations on the development of infrastructure SIPs for the 2008 ozone NAAQS.[1] As noted in the 2013 Guidance, pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. IDEM, Ohio EPA, and WDNR provided public comment opportunities on their SIP submissions. In this action of proposed rulemaking, EPA is also soliciting comment on our evaluation of each state's infrastructure SIP submission. The states summarized how various components of their SIPs met each of the applicable requirements in section 110(a)(2) for the 2008 ozone NAAQS, as applicable. The following review evaluates only the state's submissions for three CAA section 110(a)(2)(D)(i) requirements.

### *A. Section 110(a)(2)(D)(i)(I)—Prongs One and Two*

IDEM's submission addressing the prong one and two requirements states that it is currently ''in the process of promulgating rules'' to implement EPA's 2011 Cross-State Air Pollution Rule (CSAPR). IDEM noted, however, that at the time of its submission CSAPR was being implemented pursuant to a Federal Implementation Plan (FIP). IDEM did not cite any additional rules or regulations controlling emissions from the state or otherwise provide any additional analysis regarding the impacts of emissions from sources in Indiana on air quality in other states with respect to the 2008 ozone NAAQS.

Ohio EPA's submission cited various state rules related generally to interstate transport of pollutants including rules concerning stack height requirements, acid rain permits and compliance, the nitrogen oxide budget trading program, the Clean Air Interstate Rule (CAIR), and the Clean Air Mercury Rule. Ohio EPA also noted EPA's development of CAIR and regional haze programs that help address interstate transport. Finally, Ohio EPA noted that it has ''responded to requests'' from Indiana and West Virginia to ameliorate interstate transport by revising state rules applicable to Hamilton and Jefferson Counties. Ohio EPA did not provide any additional analysis regarding the impacts of emissions from sources in Ohio on air quality in other states with respect to the 2008 ozone NAAQS, particularly as to whether the state rules identified in its submission are sufficient to prohibit emissions that significantly contribute to nonattainment or interfere with maintenance of the standard in other states.

WDNR's submission states that the Wisconsin SIP implements the state portions of CAIR as a means of addressing the interstate transport of ozone precursors, and that current state and regional controls are sufficient to meet the state's transport obligations. WDNR also noted that it has ''the authority to develop'' additional control requirements once the EPA complies with the DC Circuit's opinion in *EME*

[1] The 2013 Guidance does not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I) requirements—*i.e.,* prongs one and two. EPA issued the Guidance shortly after the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012), which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by that ongoing litigation, EPA elected at the time to not provide additional guidance on those requirements. As guidance is neither binding, nor required by statute, whether EPA's elects to provide guidance on a particular section has no impact on a state's CAA obligations.

*Homer City Generation* v. *EPA,* 696 F.3d 7 (2012), instructing EPA to quantify each state's significant contribution to air quality problems in other states before requiring states to submit SIPs addressing such pollution. Subsequent to WDNR's submission, however, the U.S. Supreme Court reversed the DC Circuit. *See EPA* v. *EME Homer City Generation,* 134 S. Ct. 1584 (2014). WDNR has not supplemented its initial submission and did not provide any additional analysis regarding the impacts of emissions from sources in Wisconsin on air quality in other states with respect to the 2008 ozone NAAQS.

Although many of the programs and rules cited by Ohio EPA, IDEM, and WDNR reduce precursor emissions that contribute to ozone formation and interstate transport, they were not developed to address interstate transport for the more stringent 2008 ozone NAAQS. None of the states have demonstrated how these programs and rules provide sufficient controls on emissions to address interstate transport for the 2008 ozone NAAQS. IDEM in particular does not cite any rules currently being implemented by the state that are part of Indiana's approved SIP or that are being submitted as part of the present SIP submission to address interstate transport for the 2008 ozone NAAQS, instead Indiana refers only to rules that it anticipates may be implemented by the state in the future.

Ohio EPA and WDNR's submissions both rely on the states' implementation of CAIR, which was designed to address the 1997 Ozone NAAQS, but not the more stringent 2008 ozone standard being evaluated in this action. Regardless, neither the states nor EPA are currently implementing the ozone-season $NO_X$ trading program promulgated in CAIR, as it has been replaced by CSAPR.

In turn, CSAPR addresses interstate transport requirements for the 1997 $PM_{2.5}$ NAAQS, 1997 ozone NAAQS, and 2006 $PM_{2.5}$ NAAQS. Because the three submissions addressed by this action concern states' interstate transport obligations for a different and more stringent standard (the 2008 ozone NAAQS), it is not sufficient to merely cite as evidence of compliance that these older programs have been implemented by the states or EPA.[2] These submissions all lack any technical analysis evaluating or demonstrating whether emissions in each state impact air quality in other states with respect to the 2008 ozone NAAQS. As such, the submissions themselves do not provide EPA with a basis to agree with the conclusions that the states already have adequate provisions in their SIPs to address CAA section 110(a)(2)(D)(i)(I) requirements for the 2008 ozone NAAQS.

Although these submissions contain no data or analysis to support their conclusions with respect to section 110(a)(2)(D)(i)(I), EPA has recently shared technical information with states to facilitate their efforts to address interstate transport requirements for the 2008 ozone NAAQS. EPA developed this technical information following the same approach used to evaluate interstate contribution in CSAPR in order to support the recently proposed Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 80 FR 75706 (December 3, 2015) (''CSAPR Update Rule'').

In CSAPR, EPA used detailed air quality analyses to determine whether an eastern state's contribution to downwind air quality problems was at or above specific thresholds. If a state's contribution did not exceed the specified air quality screening threshold, the state was not considered ''linked'' to identified downwind nonattainment and maintenance receptors and was therefore not considered to significantly contribute or interfere with maintenance of the standard in those downwind areas. If a state exceeded that threshold, the state's emissions were further evaluated, taking into account both air quality and cost considerations, to determine what, if any, emissions reductions might be necessary. For the reasons stated below, we believe it is appropriate to use the same approach we used in CSAPR to establish an air quality screening threshold for the evaluation of interstate transport requirements for the 2008 ozone standard.

In CSAPR, EPA proposed an air quality screening threshold of one percent of the applicable NAAQS and requested comment on whether one percent was appropriate. EPA evaluated the comments received and ultimately determined that one percent was an appropriately low threshold because there were important, even if relatively small, contributions to identified nonattainment and maintenance receptors from multiple upwind states. In response to commenters who advocated a higher or lower threshold than one percent, EPA compiled the contribution modeling results for CSAPR to analyze the impact of different possible thresholds for the eastern United States. EPA's analysis showed that the one percent threshold captures a high percentage of the total pollution transport affecting downwind states, while the use of higher thresholds would exclude increasingly larger percentages of total transport. For example, at a five percent threshold, the majority of interstate pollution transport affecting downwind receptors would be excluded. In addition, EPA determined that it was important to use a relatively lower one percent threshold because there are adverse health impacts associated with ambient ozone even at low levels. EPA also determined that a lower threshold such as 0.5 percent would result in relatively modest increases in the overall percentages of fine particulate matter and ozone pollution transport captured relative to the amounts captured at the one-percent level. EPA determined that a ''0.5 percent threshold could lead to emission reduction responsibilities in additional states that individually have a very small impact on those receptors—an indicator that emission controls in those states are likely to have a smaller air quality impact at the downwind receptor. We are not convinced that selecting a threshold below one percent is necessary or desirable.''

In the final CSAPR, EPA determined that one percent was a reasonable choice considering the combined downwind impact of multiple upwind states in the eastern United States, the health effects of low levels of fine particulate matter and ozone pollution, and EPA's previous use of a one percent threshold in CAIR. EPA used a single ''bright line'' air quality threshold equal to one percent of the 1997 8-hour ozone standard, or 0.08 parts per million (ppm). The projected contribution from each state was averaged over multiple days with projected high modeled ozone, and then compared to the one percent threshold. We concluded that this approach for setting and applying the air quality threshold for ozone was appropriate because it provided a robust metric, was consistent with the approach for fine particulate matter used in CSAPR, and because it took into account, and would be applicable to, any future ozone standards below 0.08 ppm. EPA has subsequently proposed to use the same threshold for purposes of evaluating interstate transport with respect to the 2008 ozone standard in the CSAPR Update Rule.

On August 4, 2015, EPA issued a Notice of Data Availability (NODA) containing air quality modeling data that applies the CSAPR approach to contribution projections for the year 2017 for the 2008 8-hour ozone NAAQS. The modeling data released in this

[2] This is particularly true where, as here, the states have failed to include any analysis of the downwind impacts of emissions originating within their borders. *See, e.g., Westar Energy Inc.* v. *EPA,* 608 Fed. Appx. 1, 3–4 (D.C. Cir. 2015).

NODA was also used to support the proposed CSAPR Update Rule. The moderate area attainment date for the 2008 ozone standard is July 20, 2018. In order to demonstrate attainment by this attainment deadline, states will use 2015 through 2017 ambient ozone data. Therefore, EPA proposed that 2017 is an appropriate future year to model for the purpose of examining interstate transport for the 2008 ozone NAAQS. EPA used photochemical air quality modeling to project ozone concentrations at air quality monitoring sites to 2017 and estimated state-by-state ozone contributions to those 2017 concentrations. This modeling used the Comprehensive Air Quality Model with Extensions (CAMx version 6.11) to model the 2011 base year, and the 2017 future base case emissions scenarios to identify projected nonattainment and maintenance sites with respect to the 2008 ozone NAAQS in 2017. EPA used nationwide state-level ozone source apportionment modeling (CAMx Ozone Source Apportionment Technology/Anthropogenic Precursor Culpability Analysis technique) to quantify the contribution of 2017 base case $NO_X$ and VOC emissions from all sources in each state to the 2017 projected receptors. The air quality model runs were performed for a modeling domain that covers the 48 contiguous United States and adjacent portions of Canada and Mexico. The NODA and the supporting technical support documents have been included in the docket for this SIP action. The modeling data released in the NODA on August 4, 2015, and the CSAPR Update are the most up-to-date information EPA has developed to inform our analysis of upwind state linkages to downwind air quality problems. As discussed in the CSAPR Update proposal for the 2008 ozone NAAQS, the air quality modeling: (1) Identified locations in the U.S. where EPA expects nonattainment or maintenance problems in 2017 for the 2008 ozone NAAQS (*i.e.,* nonattainment or maintenance receptors), and (2) quantified the projected contributions of emissions from upwind states to downwind ozone concentrations at those receptors in 2017 (80 FR 75706, 75720–30, December 3, 2015). Consistent with CSAPR, EPA proposed to use a threshold of one percent of the 2008 ozone NAAQS (0.75 parts per billion) to identify linkages between upwind states and downwind nonattainment or maintenance receptors. EPA proposed that eastern states with contributions to a specific receptor that meet or exceed this screening threshold are considered ''linked'' to that receptor, and were analyzed further to quantify available emissions reductions necessary to address interstate transport to these receptors.

The results of EPA's air quality modeling with respect to Ohio, Indiana, and Wisconsin are summarized in Table 1 below. That modeling indicates that emissions from Ohio and Indiana are linked to both nonattainment and maintenance receptors in downwind states, and that Wisconsin is linked only to downwind maintenance receptors.

TABLE 1—CSAPR UPDATE PROPOSAL CONTRIBUTIONS TO DOWNWIND NONATTAINMENT AND MAINTENANCE AREAS

| State | Largest contribution to nonattainment | Largest contribution to maintenance | Downwind nonattainment receptors located in states | Downwind maintenance receptors located in states |
|---|---|---|---|---|
| Indiana | 6.24 ppb | 14.95 ppb | Connecticut and Wisconsin | Kentucky, Maryland, Michigan, New Jersey, New York, Ohio and Pennsylvania. |
| Ohio | 2.18 ppb | 7.92 ppb | Connecticut and Wisconsin | Connecticut, Kentucky, Maryland, Michigan, New Jersey, New York, and Pennsylvania. |
| Wisconsin | 0.34 ppb | 2.59 ppb | | Michigan. |

Accordingly, the most recent technical analysis available to EPA contradicts Indiana, Ohio, and Wisconsin's conclusion that each state's SIP contains adequate provisions to address interstate transport as to the 2008 ozone standard.

EPA is proposing to disapprove the Indiana and Ohio SIPs for both the prong one and prong two requirements of CAA section 110(a)(2)(D)(i)(I). As explained above, the IDEM and Ohio EPA SIP submissions do not provide an adequate technical analysis demonstrating that each state's SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with the 2008 ozone NAAQS in any other state. Moreover, EPA's most recent modeling indicates that emissions from those states are projected to significantly contribute to downwind nonattainment and maintenance receptors in other states.

EPA is proposing to disapprove the Wisconsin SIP for the prong two requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. As explained above, the WDNR SIP submission does not provide an adequate technical analysis demonstrating that the state's SIP contains adequate provisions prohibiting emissions that will significantly contribute to nonattainment or interfere with the 2008 ozone NAAQS in any other state. Moreover, EPA's most recent modeling indicates that emissions from Wisconsin are projected to contribute to projected downwind maintenance receptors in another state.

However, EPA is proposing to approve the Wisconsin SIP for the prong one requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS. Although WDNR did not provide information or analyses explaining why existing SIP provisions are adequate to prevent significant contribution to nonattainment in downwind states, EPA's independent modeling presented in the NODA and the CSAPR Update Rule indicates that Wisconsin emissions are not linked to any projected downwind nonattainment receptors. Accordingly, EPA proposes to find that the Wisconsin SIP has adequate provisions to prevent such significant contribution to nonattainment as to the 2008 ozone standard, and to accordingly approve the SIP for the prong one requirement of CAA section 110(a)(2)(D)(i)(I) with respect to the 2008 ozone NAAQS.

*B. Section 110(a)(2)(D)(i)(II)—Prong Four Only*

No action is being taken today on prong three relating to PSD. This prong was approved for Indiana on April 29, 2015 (80 FR 23713) and for Ohio on February 27, 2015 (80 FR 10591), and will be acted on for Wisconsin in a future rulemaking.

The 2013 Guidance states that section 110(a)(2)(D)(i)(II)'s prong four requirements can be satisfied by approved SIP provisions that EPA has

found to adequately address any contribution of a state's sources to impacts on visibility programs in other states. The Guidance lays out two ways in which a state's infrastructure SIP may comply with prong four. The first way is through an air agency's confirmation in its infrastructure SIP submission that it has an EPA-approved regional haze SIP that fully meets the requirements of 40 CFR 51.308 or 51.309. These sections specifically require that a state participating in a regional planning process include all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process. A fully approved regional haze SIP will ensure that emissions from sources under an air agency's jurisdiction are not interfering with measures in other air agencies' plans to protect visibility.

Alternatively, in the absence of a fully approved regional haze SIP, a state may meet its prong four requirements through a demonstration in its infrastructure SIP that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Such a submission would need to include measures to limit visibility-impairing pollutants and ensure that the reductions conform with any mutually agreed regional haze reasonable progress goals for mandatory Class I areas in other states.

What is EPA's assessment of the states' prong four submissions?

For prong four, relating to protection of visibility in another state, in this rulemaking EPA is proposing to disapprove the relevant portion of the SIPs for Ohio and Indiana. On September 11, 2015 (80 FR 54725), EPA approved Wisconsin's visibility requirements for the 2008 ozone NAAQS. Therefore, in this rulemaking, no action is necessary regarding Wisconsin's prong four requirements.

IDEM's submission acknowledges that Indiana is subject to the regional haze program, which addresses visibility-impairing pollutants. EPA finalized a limited approval of Indiana's regional haze SIP submission for, among other things, BART for non-electric generating units (EGUs) and PM from EGUs on June 11, 2012 (77 FR 34218).

Ohio EPA's submission also mentions the regional haze program for addressing visibility, as well as the air agency's work with Federal Land Managers to address proposed major new sources in the state. EPA finalized a limited approval of Ohio's regional haze SIP submission for, among other things, non-EGUs on July 2, 2012 (77 FR 39177).

However, Indiana and Ohio's regional haze plans both rely on CAIR for addressing visibility for EGUs. EPA had originally found that CAIR was an acceptable solution for meeting the requirement of the regional haze program for EGUs.[3] However, the D.C Circuit remanded CAIR to EPA with instructions to replace that rulemaking with a new rulemaking consistent with the Court's opinion.[4] Subsequently EPA issued a rulemaking stating that CAIR's replacement, CSAPR, could be used to satisfy the EGU portion of the regional haze plans. June 7, 2012 (77 FR 33642). In that same rulemaking, EPA issued limited disapprovals of Indiana and Ohio's regional haze SIP submissions, among other states, and issued FIPs that allowed CSAPR to meet the regional haze requirements for EGUs in applicable states (77 FR 33642).

Although both Indiana and Ohio have approved regional haze plans for their non-EGUs, they do not have fully approved regional haze SIPs in place because both States' EGU-related obligations are satisfied by EPA's CSAPR-based FIPs. Furthermore, neither Indiana nor Ohio has provided a demonstration in its infrastructure SIP submission showing that emissions within its jurisdiction do not interfere with other air agencies' plans to protect visibility. Because the States have failed to meet either option for satisfying their prong four obligations laid out in the 2013 Guidance, EPA is proposing to disapprove prong four for the infrastructure element under section 110(a)(2)(D)(i)(II) for the 2008 ozone standard.

## III. What action is EPA taking?

EPA is proposing to disapprove a portion of submissions from Indiana, Ohio, and Wisconsin certifying that each of their current SIPs are sufficient to meet the required infrastructure element under CAA section 110(a)(2)(D)(i) for the 2008 ozone NAAQS, specifically prongs one, two, and four for Indiana and Ohio, and prong two for Wisconsin. In addition, EPA is proposing to approve the prong one portion of Wisconsin's SIP submission with respect to CAA section 110(a)(2)(D)(i).

[3] ''Technical Support Document for the Final Clean Air Interstate Rule: Demonstration that CAIR Satisfies the ''Better-than-BART'' Test As proposed in the Guidelines for Making BART Determinations.'' March 2005.

[4] *See North Carolina* v. *EPA,* 531 F.3d 896; modified by 550 F.3d 1176 (D.C. Cir. 2008).

## IV. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

### *B. Paperwork Reduction Act (PRA)*

This rulemaking does not impose an information collection burden under the provisions of the PRA.

### *C. Regulatory Flexibility Act (RFA)*

The Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rulemaking will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law.

### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because it proposes to disapprove a state rule.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

**List of Subjects in 40 CFR Part 52**

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

Dated: March 7, 2016.

**Robert A. Kaplan,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 2016–05953 Filed 3–15–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2015–0032; FRL–9942–86]**

## Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of filing of petitions and request for comment.

**SUMMARY:** This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

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

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT** for the division listed at the end of the pesticide petition summary of interest.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

### II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or

information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

*PP 5F8351.* EPA–HQ–OPP–2015–0478. Makhteshim Agan of North America, Inc. (d/b/a ADAMA), 3120 Highwoods Blvd. Suite 100, Raleigh, NC 27604, requests to establish a tolerance in 40 CFR part 180 for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on berry, low growing, subgroup 13–07G at 0.30 parts per million (ppm); head and stem brassica subgroup 5A at 1.3 ppm; leafy brassica greens subgroup 5B at 13 ppm; leafy vegetables, group 4, except brassica vegetables at 2.6 ppm; leaves of root and tuber vegetables, group 2 at 20 ppm; radish, oriental at 0.50 ppm; and root vegetables, subgroup 1B, except sugar beet and oriental radish at 3.3 ppm. Compliance with the tolerance levels is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid. The liquid chromotography with tandem mass spectrometry (LC–MS/MS) residue analytical method is used to measure and evaluate the chemical fluensulfone. Contact: RD.

*PP 5F8379.* EPA–HQ–OPP–2015–0559. Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR 180.664 for residues of the fungicide penflufen, in or on sugarbeet seed treatment at 0.01 parts per million (ppm). The LC/MS/MS is used to measure and evaluate the chemical penflufen. Contact: RD.

*PP 5E8399.* EPA–HQ–OPP–2015–0658. Interregional Research Project Number 4 (IR–4), IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances in 40 CFR 180.568 for residues of the herbicide, flumioxazin 2-[7-fluoro-3,4-dihydro3-oxo-4-(2-proponyl)-2H–1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1Hisoindole-1,3(2H)-dione in or on the raw agricultural commodities: Berry, low growing, subgroup 13–07G at 0.07 parts per million (ppm); brassica, head and stem, subgroup 5A at 0.02 ppm; caneberry, subgroup 13–07A at 0.40; citrus oil at 0.1 ppm; clover, forage at 0.02 ppm; clover, hay at 0.15 ppm; fruit, citrus group 10–10 at 0.02 ppm; fruit, pome group 11–10 at 0.02 ppm; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.02 ppm; fruit, stone, group 12–12 at 0.02 ppm; nut, tree group 14–12 at 0.02 ppm; onion, bulb subgroup 3–07A at 0.02 ppm and vegetable, fruiting group 8–10 ppm at 0.02 ppm. Adequate enforcement methodology (gas chromatography/nitrogen-phosphorus detection (GC/NPD) method, Valent Method RM30–A–3) is available to enforce the tolerance expression. Contact: RD.

*PP 5F8400.* EPA–HQ–OPP–2015–0695. Isagro S.P.A. (d/b/a Isagro USA, Inc.) 430 Davis Drive, Suite 240, Morrisville, NC 27560, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide tetraconazole in or on vegetable, cucurbit group 9 at 0.15 parts per million (ppm) and vegetable, fruiting group 8–10 at 0.30 ppm. The capillary gas chromatography with electron capture detector (GC/ECD)) as well as a QuEChERS multi-residue method (LC/MS–MS detection) is used to measure and evaluate the chemical tetraconazole. Contact: RD.

*PP 5F8404.* EPA–HQ–OPP–2013–0226. Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide, flupyradifurone, in or on abiu at 0.6 parts per million (ppm); akee apple at 0.6 ppm; avocado at 0.6 ppm; bacury at 0.6 ppm; banana at 0.6 ppm; binjai at 0.6 ppm; caneberry, subgroup 13–07A at 5 ppm; canistel at 0.6 ppm; cilantro, fresh leaves at 30 ppm; cupuacú at 0.6 ppm; etambe at 0.6 ppm; jatobá at 0.6 ppm; kava, fresh leaves at 40 ppm; kava, roots at 0.9 ppm; kei apple at 0.6 ppm; langstat at 0.6 ppm; lanjut at 0.6 ppm; lucuma at 0.6 ppm; mabolo at 0.6 ppm; mango at 0.6 ppm; mangosteen at 0.6 ppm; paho at 0.6 ppm; papaya at 0.6 ppm; pawpaw, common at 0.6 ppm; pelipisan at 0.6 ppm; pequi at 0.6 ppm; pequia at 0.6 ppm; persimmon, american at 0.6 ppm; plantain at 0.6 ppm; pomegranate at 0.6 ppm; poshte at 0.6 ppm; quinoa at 3 ppm; quandong at 0.6 ppm; sapote at 0.6 ppm; sataw at 0.6 ppm; screw-pine at 0.6 ppm; star apple at 0.6 ppm; stone fruit, stone group 12–12 at 1.5 ppm, tamarind-of-the-Indies at 0.6 ppm; and wild loquat at 0.6 ppm. High performance liquid chromatography-electrospray ionization/tandem mass spectrometry (HPLC/MS/MS) is used to measure and evaluate the chemical flupyradifuron. Contact: RD.

*PP 5F8406.* EPA–HQ–OPP–2015–0727. Arysta LifeScience North America, LLC 15401 Weston Parkway, Suite 150, Cary, North Carolina 27513, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluoxastrobin in or on avocado at 0.9 parts per million (ppm), barley, grain at 0.4 ppm; barley, hay at 15 ppm; barley, straw at 15 ppm, rapeseed subgroup 20A at 0.8 ppm, and dried shelled pea and bean (except soybean) subgroup 6C at 0.2 ppm. The method comprises microwave solvent extraction followed by a solid phase extraction clean up and quantification by high performance liquid chromatography with tandem mass spectrometric detection (HPLC/MS/MS) is used to measure and evaluate the chemical fluoxastrobin. Contact: RD.

*PP 5F8412.* EPA–HQ–OPP–2015–0795. Gowan Company, P.O. Box 5569, Yuma, AZ, 85366–5569, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide, hexythiazox, in or on bermudagrass, forage at 40.0 parts per million (ppm); and bermudagrass, hay at 70.0 ppm. High performance liquid chromatography (HPLC) method using mass spectrometric detection (LC–MS/MS) is proposed for enforcement purposes. Contact: RD.

*PP 5F8413.* EPA–HQ–OPP–2015–0797. Gowan Company, P.O. Box 5569, Yuma, AZ, 85366–5569, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide hexythiazox, in or on beet, sugar, dried pulp at 0.60 parts per million (ppm); beet, sugar, molasses at 0.21 ppm; beet, sugar, roots at 0.15 ppm and beet, sugar, tops at 1.5 ppm. High performance liquid chromatography (HPLC) method using mass spectrometric detection (LC–MS/MS) is proposed for enforcement purposes. Contact: RD.

*PP 5F8414.* EPA–HQ–OPP–2015–0791. Valent U.S.A. Corporation, 1600 Riviera Avenue, Suite 200, Walnut

Creek, CA 94596 requests to establish a tolerance in 40 CFR 180.627 for residues of the fungicide, fluopicolide in or on potato chips 0.1 at parts per million (ppm) and potato flakes at 0.15 ppm. Practical analytical methods for detecting and measuring levels of fluopicolide and its metabolites have been developed, validated, and submitted for all appropriate plant and animal matrices. Contact: RD.

*PP 5F8415.* EPA–HQ–OPP–2015–0820. Geo Logic Corporation, P.O. Box 3091, Tequesta, FL 33409, requests to establish a tolerance in 40 CFR 180.337 for residues of the bactericide/fungicide oxytetracycline in or on fruit, citrus group 10–10 at 0.01 parts per million (ppm). The reversed-phase liquid chromatography with detection by MS/MS spectrometry (LC–MS/MS) is used to measure and evaluate the chemical oxytetracycline. Contact: RD.

*PP 5F8429.* EPA–HQ–OPP–2016–0029. Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569, requests to establish a tolerance in 40 CFR part 180 for residues of the miticide/insecticide fenazaquin, [3-[2-[4-(1,1,-dimethylethyl) phenyl] ethoxy] quinazoline] in or on the raw commodity for nut, tree group 14–12 at 0.02 parts per million (ppm). The LC/MS/MS with positive-ion electrospray ionization tandem mass spectrometry is used to measure and evaluate the chemical fenazaquin. Contact: RD.

*PP 5E8439.* EPA–HQ–OPP–2016–0066. Dow AgroSciences, LLC, 9330 Zionsville Road Indianapolis, IN 46268, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide pyroxsulam, in or on the cereal crops: teff at 0.06 parts per million (ppm); teff, forage at 0.01 ppm; teff, grain at 0.03 ppm; teff, hay at 0.01 ppm; and teff, straw at 0.01 ppm. The Dow AgroSciences Method GRM 04/17 is used to measure and evaluate the chemical residues of pyroxsulam in wheat commodities. Contact: RD.

*PP 6F8442.* EPA–HQ–OPP–2016–0029. Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569, requests to establish a tolerance in 40 CFR part 180 for residues of the miticide/insecticide fenazaquin, [3-[2-[4-(1,1,-dimethylethyl) phenyl] ethoxy] quinazoline] in or on the raw commodity for hops at 30 parts per million (ppm). The LC/MS/MS with positive-ion electrospray ionization tandem mass spectrometry is used to measure and evaluate the chemical fenazaquin. Contact: RD.

Amended Tolerances

*PP 5F8351.* EPA–HQ–OPP–2015–0478. Makhteshim Agan of North America, Inc. (d/b/a ADAMA), 3120 Highwoods Blvd. Suite 100, Raleigh, NC 27604, requests to amend 40 CFR 180.680 for residues of the nematicide fluensulfone [5-chloro-2-[(3,4,4-trifluoro-3-buten-1-yl)sulfonyl]thiazole], to revise the existing tolerance expression in the introductory paragraph (a) to read ''Tolerances are established for residues of the nematicide fluensulfone, including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only 3,4,4-trifluoro-but-3-ene-1-sulfonic acid.'' The LC–MS/MS residue analytical method is used to measure and evaluate the chemical fluensulfone. Contact: RD.

*PP 5F8396.* EPA–HQ–OPP–2015–0796. Gowan Company, P.O. Box 5569, Yuma, AZ, 85366, requests to amend the tolerance(s) in 40 CFR 180.448 for residues of the insecticide hexythiazox in or on alfalfa, forage from 15 parts per million (ppm) to 20 ppm; and alfalfa, hay from 30 ppm to 60 ppm. High performance liquid chromatography (HPLC) using mass spectrometric detection (LC–MS/MS) analytical method is used to measure and evaluate residues of hexythiazox and its metabolites containing the PT–1–3 moiety. Contact: RD.

*PP 5E8399.* EPA–HQ–OPP–2015–0658. IR–4 Project Headquarters, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes upon establishment of tolerances referenced above under ''New Tolerances'' to remove existing tolerances in 40 CFR 180.568 for residues of the herbicide, flumioxazin 2-[7-fluoro-3,4-dihydro3-oxo-4-(2-proponyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1Hisoindole-1,3(2H)-dione in or on the raw agricultural commodities: Cabbage at 0.02 ppm; cabbage, Chinese, napa at 0.02 ppm; fruit, pome group 11 at 0.02 ppm; fruit, stone, group 12 at 0.02 ppm; garlic at 0.02 ppm; grape at 0.02 ppm; nut, tree group 14 at 0.02 ppm; okra at 0.02 ppm; onion, bulb at 0.02 ppm; pistachio at 0.02 ppm; shallot bulb at 0.02 ppm; strawberry at 0.07 ppm and vegetable, fruiting group 8 at 0.02 ppm. Adequate enforcement methodology (gas chromatography/nitrogen-phosphorus detection (GC/NPD) method, Valent Method RM30–A–3) is available to enforce the tolerance expression. Contact: RD.

New Tolerance Exemptions

*PP IN-10848.* EPA–HQ–OPP–2015–0776. Jeneil Biosurfactant Company, 400 N. Dekora Woods Blvd. Saukville, WI 53080, requests to establish an exemption from the requirement of a tolerance for residues of methyl isobutyrate (CAS Reg. No. 547–63–7) when used as an inert ingredient (solvent) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

*PP IN-10850.* EPA–HQ–OPP–2015–0831. Jeneil Biosurfactant Company, 400 N. Dekora Woods Blvd. Saukville, WI 53080, requests to establish an exemption from the requirement of a tolerance for residues of isobutyl isobutyrate (CAS Reg. No. 97–85–8) when used as an inert ingredient (solvent) in pesticide formulations applied to growing crops and raw agricultural commodies after harvest under 40 CFR 180.910. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

*PP IN-10854.* EPA–HQ–OPP–2015–0655. SciReg Inc., 12733 Director's Loop, Woodbridge, VA 22192, on behalf of Taminco US Inc., a subsidiary of Eastman Chemical Company, Two Windsor Plaza, Suite 400, 7450 Windsor Drive, Allentown, PA 18195, requests to establish an exemption from the requirement of a tolerance for residues of 2-pyrrolidinone, 1-butyl- (CAS Reg. No. 3470–98–2) when used as an inert ingredient (solvent/cosolvent) in pesticide formulations applied to growing crops under 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

*PP IN-10889.* EPA–HQ–OPP–2015–0858. Baker Petrolite LLC, 12645 West Airport Boulevard, Sugar Land, TX 77478, requests to establish an exemption from the requirement of a tolerance for residues of alcohols, C>14, ethoxylated (CAS Reg. No. 251553–55–6) when used as an inert ingredient in pesticide formulations under 40 CFR 180.910, 40 CFR 180.920, 40 CFR 180.930, 40 CFR 180.940(a) and 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

*PP IN-10894.* EPA–HQ–OPP–2016–0038. Michelman, 9080 Shell Road, Cincinnati, OH 45236, requests to establish an exemption from the requirement of a tolerance for residues of ethylene acrylic acid copolymer with a minimum number average molecular

weight (in amu) of 5,500 (CAS Reg. No. 9010–77–9) when used as an inert ingredient in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. Contact: RD.

**Authority:** 21 U.S.C. 346a.

Dated: March 10, 2016.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–05952 Filed 3–15–16; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

**[MB Docket No. 16–42; CS Docket No. 97–80; FCC 16–18]**

### Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, we propose new rules to empower consumers to choose how they wish to access the multichannel video programming to which they subscribe, and promote innovation in the display, selection, and use of this programming and of other video programming available to consumers. We take steps to fulfill our obligation under section 629 of the Communications Act to assure a commercial market for devices that can access multichannel video programming and other services offered over multichannel video programming systems. We propose rules intended to allow consumer electronics manufacturers, innovators, and other developers to build devices or software solutions that can navigate the universe of multichannel video programming with a competitive user interface. We also seek comment on outstanding issues related to our CableCARD rules.

**DATES:** Submit comments on or before April 15, 2016. Submit reply comments on or before May 16, 2016. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before May 16, 2016.

**ADDRESSES:** In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicholas A. Fraser, Office of Management and Budget, via email to *Nicholas_A._Fraser@omb.eop.gov* or via fax at 202–395–5167.

**FOR FURTHER INFORMATION CONTACT:** For additional information on this proceeding, contact Brendan Murray, *Brendan.Murray@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–1573. Contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918 concerning PRA matters.

**SUPPLEMENTARY INFORMATION:** Congress adopted section 629 of the Communications Act in 1996, and since then each era of technology has brought unique challenges to achieving Section 629's goals. When Congress first directed the Commission to adopt regulations to assure a commercial market for devices that can access multichannel video programming, the manner in which MVPDs offered their services made it difficult to achieve the statutory purpose. Cable operators used widely varying security technologies, and the best standard available to the Commission was the hardware-based CableCARD standard—which the cable and consumer electronics industries jointly developed—that worked only with one-way cable services. In 2010, the Commission sought comment on a new approach that would work with two-way services, but still only a hardware solution would work because software-based security was not sophisticated enough to meet content companies' content protection demands. This concept, called ''AllVid,'' would have allowed electronics manufacturers to offer retail devices that could access multichannel video programming, but would have required all operators to put a new device in the home between the network and the retail or leased set-top box. Now, as MVPDs move to Internet Protocol (''IP'') to deliver their services and to move content throughout the home, those difficulties are gone. Today, MVPDs provide ''control channel'' data that contains (1) the channels and programs they carry, (2) whether a consumer has the right to access each of those channels and programs, and (3) the usage rights that a consumer has with respect to those channels and programs. Many MVPDs already use Internet Protocol (''IP'') to provide this control channel data. Moreover, most MVPDs have coalesced around a few standards and specifications for delivery of the video content itself, and many have progressed to sending content throughout the home network via IP. This standardization and increasing reliance on IP allows for software solutions that, with ground rules to ensure a necessary degree of convergence, will make it easier to finally fulfill the purpose of Section 629.

The regulatory and technological path to this proceeding reflects a long history. It begins with the Telecommunications Act of 1996, when Congress added Section 629 to the Communications Act. Section 629 directs the Commission to adopt regulations to assure the commercial availability of devices that consumers use to access multichannel video programming and other services offered over multichannel video programming networks. Section 629 goes on to state that these devices should be available from ''manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.'' It also prohibits the Commission from adopting regulations that would ''jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.'' In enacting the section, Congress pointed to the vigorous retail market for customer premises equipment used with the telephone network and sought to create a similarly vigorous market for devices used with services offered over MVPDs' networks.

The Commission first adopted rules to implement Section 629 in 1998, just as ''the enormous technological change resulting from the movement from analog to digital communications [was] underway.'' The Commission set fundamental ground rules for consumer-owned devices and access to services offered over multichannel video programming systems. The rules established (1) manufacturers' right to build, and consumers' right to attach, any non-harmful device to an MVPD network, (2) a requirement that MVPDs provide technical interface information so manufacturers, retailers, and subscribers could determine device compatibility, (3) a requirement that MVPDs make available a separate security element that would allow a set-top box built by an unaffiliated manufacturer to access encrypted multichannel video programming without jeopardizing security of programming or impeding the legal rights of MVPDs to prevent theft of service, and (4) the integration ban, which required MVPDs to commonly

rely on the separated security in the devices that they lease to subscribers. The Commission did not initially impose a specific technical standard to achieve these rules, but instead adopted rules that relied ''heavily on the representations of the various interests involved that they will agree on relevant specifications, interfaces, and standards in a timely fashion.''

In December 2002, the cable and consumer electronics industries adopted a Memorandum of Understanding regarding a one-way plug-and-play ''CableCARD'' compatibility standard for digital cable. In October 2003, the Commission adopted the CableCARD standard as part of the Commission's rules, and consumer electronics manufacturers brought unidirectional CableCARD-compatible devices to market less than a year later. At least six million (and by one report, over 15 million) CableCARD devices were built and shipped, but the nine largest incumbent cable operators have deployed only 618,000 CableCARDs for use in consumer-owned devices. These rules drove innovations that consumers value greatly today: High-definition digital video recording, competitive user interfaces that provided more program information to viewers, the ability to set recordings remotely, the incorporation of Internet content with cable content, and automatic commercial skipping on cable content. Throughout the mid-to-late 2000s, cable operators increasingly transitioned their systems to digital and introduced interactive video services such as video-on-demand and content delivery methods such as switched digital video. The Commission's CableCARD rules and the Memorandum of Understanding did not prescribe methods for retail devices to access those interactive services, and therefore retail CableCARD devices could not access cable video-on-demand services. Moreover, cable operators generally offered poor CableCARD support, which made it much more difficult for consumers to set up a retail device than a leased device.

In 2010, the Commission took steps to remedy problems with the CableCARD regime. The Commission adopted additional CableCARD-related rules to improve cable operator support for retail CableCARD devices. The Commission also sought comment on a successor technology in the form of a Commission-designed, standardized converter box that would be designed to allow ''any electronics manufacturer to offer smart video devices at retail that can be used with the services of any MVPD and without the need to coordinate or negotiate with MVPDs.'' The Commission sought comment on this AllVid concept in a Notice of Inquiry but ultimately decided not to propose rules to mandate it.

In late 2014, Congress passed STELAR. Section 106 of that law had two main purposes: First, it eliminated the integration ban as of December 4, 2015, and second, it directed the Chairman of the Commission to appoint an advisory committee of technical experts to recommend a system for downloadable security that could advance the goals of section 629. The Chairman appointed 19 members to the Downloadable Security Technical Advisory Committee (''DSTAC''), and the committee submitted its report to the Commission on August 28, 2015. The DSTAC Report gave an account of the increasing number of devices on which consumers are viewing video content, including laptops, tablets, phones, and other ''smart,'' Internet-connected devices. The DSTAC Report pointed to two main reasons for this shift: (1) Software-based applications have made it easier for content providers to tailor their services to run on different hardware, and (2) there are an increasing number of software-based content protection systems that copyright holders are comfortable relying on to protect their content. The Media Bureau released a Public Notice seeking comment on the DSTAC Report on August 30, 2015. The DSTAC Report and comments that we received in response to it underlie and inform our Notice of Proposed Rulemaking.

The DSTAC Report offered two proposals regarding the non-security elements and two proposals regarding the security elements of a system that could implement section 629. For the non-security elements, the DSTAC Report presented both an MVPD-supported proposal that is based on proprietary applications and would allow MVPDs to retain control of the consumer experience, and a consumer electronics-supported proposal that is based on standard protocols that would let a competing device or application offer a consumer experience other than the one the MVPD offers. With respect to security, the DSTAC Report presented both an MVPD-supported proposal based on digital rights management (similar to what Internet-based video services use to protect their video content), and a consumer electronics-supported proposal based on link protection (similar to how content is protected as it travels from a Blu-ray player to a television set).

In this Notice of Proposed Rulemaking, we propose rules that are intended to assure a competitive market for equipment, including software, that can access multichannel video programming. A recent news report on this topic summarized the issue succinctly: ''some consumer advocates wonder why, if you do want a set-top box, you can't just buy one as easily as you'd buy a cell phone or TV for that matter.'' Before MVPDs transitioned to digital service, it was easy for consumers to buy televisions that received cable service without the need for a set-top box. In 1996, Congress recognized that we were on the cusp of a digital world with diverging system architectures. To address this, Congress adopted Section 629, and the Commission implemented that section of the statute by separating the parts of cable system architectures that were not consistent among systems into a module called a CableCARD that cable operators could design to work with their system-specific technology. This module converted system-specific aspects into a standardized interface; this standardized interface allowed a manufacturer to build a single device that could work with cable systems nationwide, despite their divergent technologies. Today, the world is converging again, this time around IP to provide control channel data, in some cases also using IP for content delivery over MVPD systems, and in many cases using IP for content delivery throughout the home. Standards will allow us to develop, and MVPDs to follow, ground rules about compatibility that are technology-neutral: The rules will allow MVPDs to upgrade their networks freely and any changes that a navigation device needs to conform to those changes can be supplied via software download rather than upgrading consumers' hardware. The ground rules we propose in this Notice of Proposed Rulemaking are designed to let MVPD subscribers watch what they pay for wherever they want, however they want, and whenever they want, and pay less money to do so, making it as easy to buy an innovative means of accessing multichannel video programming (such as an app, smart TV, or set-top box) as it is to buy a cell phone or TV.

As discussed below, our proposed rules are based on three fundamental points. First, the market for navigation devices is not competitive. Second, the few successes that developed in the CableCARD regime demonstrate that competitive navigation—that is, competition in the user interface and complementary features—is essential to achieve the goals of Section 629. Third, entities that build competitive navigation devices, including

applications, need to be able to build those devices without seeking permission from MVPDs, because MVPDs offer products that directly compete with navigation devices and therefore have an incentive to withhold permission or constrain innovation, which would frustrate Section 629's goal of assuring a commercial market for navigation devices.

*The Need for Rules.* Today, consumers have few alternatives to leasing set-top boxes from their MVPDs, and the vast majority of MVPD subscribers lease boxes from their MVPD. In July 2015, Senators Ed Markey and Richard Blumenthal reported statistics that they gathered from a survey of large MVPDs: ''approximately 99 percent of customers rent[ ] their set-top box directly from their pay-TV provider, [and] the set-top box rental market may be worth more than $19.5 billion per year, with the average American household spending more than $231 per year on set-top box rental fees.'' There is evidence that increasingly consumers are able to access video service through proprietary MVPD applications as well. According to NCTA, consumers have downloaded MVPD Android and iOS applications more than 56 million times, more than 460 million IP-enabled devices support one or more MVPD applications, and 66 percent of them support applications from all of the top-10 MVPDs. These statistics show, however, that almost all consumers have one source for access to the multichannel video programming to which they subscribe: The leased set-top box, or the MVPD-provided application. Therefore, we tentatively conclude that the market for navigation devices is not competitive, and that we should adopt new regulations to further Section 629. We invite comment on this tentative conclusion.

Certain MVPD commenters argue that the market for devices is competitive and that we need not adopt any new regulations to achieve Section 629's directive. They argue that the popularity of streaming devices such as Amazon Fire TV, AppleTV, Chromecast, Roku, assorted video game systems, and mobile devices that can access over-the-top services such as Netflix, Amazon Instant Streaming, and Hulu, shows that Congress's goals in section 629 have been met. We disagree. With certain limited exceptions, it appears that those devices are not ''used by consumers to access multichannel video programming,'' and are even more rarely used as the sole means of accessing MVPDs' programming. We seek comment on this point. Which MVPDs allow their subscribers to use these devices as their sole means of accessing multichannel video programming? We seek specific numbers from MVPDs on the number of and percentage of their subscribers who use such devices as their sole means of accessing multichannel video programming without any MVPD-owned equipment in the subscriber's home. How do these numbers compare to other commercial markets for consumer electronics?

MVPDs may have several incentives for maintaining control over the user interface through which consumers access their multichannel video programming service, but for the reasons we provide below, we believe that the Act requires competitive navigation that would allow third parties to develop innovative ways to access multichannel video programming. We seek comment on those incentives. For example, how do MVPDs profit from their control of the user interface? Do MVPDs track consumer viewing habits, and if so, do they profit in any way as a result of that tracking (for example, by using the information to sell advertising or selling the information to ratings analytics companies)? What are the profit margins for selling that data? How long does a typical consumer lease a MVPD set-top box before it is replaced? What are MVPDs' profit margins on set-top boxes? Do MVPDs leverage their user interfaces to sell other services offered over multichannel video programming systems, *e.g.* home security? Do MVPDs offer integrated search across their multichannel video programming and other unaffiliated video services, and if not why not?

In addition, in today's world a retail navigation device developer must negotiate with MVPDs to get permission to provide access to the MVPD's multichannel video programming, on the MVPD's terms. These business-to-business arrangements are a step in the right direction for consumers because the arrangements have increased the universe of devices they can use to receive service. The arrangements have not assured a competitive retail market for devices from unaffiliated sources as required by section 629 because they do not always provide access to all of the programming that a subscriber pays to access, and may limit features like recording. In other words, these business-to-business arrangements—typically in the form of proprietary apps—do not offer consumers viable substitutes to a full-featured, leased set-top box. Moreover, these relationships are purely at the discretion of the MVPD and, to date, have only provided access to the MVPD's user interface rather than that of the competitive device.

Some argue that these business-to-business deals are essential to ensure that the few independent, diverse programmers that currently exist can continue to survive because they ensure that those programmers can rely on the channel placement and advertising agreements that they have contracted for with the MVPD. We disagree with this assertion, and believe that competition in interfaces, menus, search functions, and improved over-the-top integration will make it easier for consumers to find and watch minority and special interest programming. In addition, our goal is to preserve the contractual arrangements between programmers and MVPDs, while creating additional opportunities for programmers, who may not have an arrangement with an MVPD, to reach consumers. We seek comment on this analysis.

We also seek specific comment on the process that an MVPD uses to decide whether to allow such a device to access its services. Have retail navigation device developers asked MVPDs to develop applications for their devices and been denied? Have MVPDs asked navigation device developers to carry their applications and been denied? Do programmers prohibit MVPDs from displaying their programming on certain devices? If so, what are the terms of those prohibitions? Should the Commission ban such terms to assure the commercial availability of devices that can access multichannel video programming, and under what authority? Are ''premium features and functions'' of devices such as televisions and recording devices limited due to ''cable scrambling, encoding, or encryption technologies?'' If so, could we adopt the rules we propose below pursuant to our authority under Section 624A of the Act?

As noted above, it appears that consumers have downloaded proprietary MVPD applications many times; we seek comment on whether consumers actually use those applications to access multichannel video programming. Section 629 directs us to adopt regulations to assure the commercial availability of ''equipment used by consumers to access multichannel video programming.'' MVPDs argue that their proprietary applications are used by consumers to access multichannel video programming; to better evaluate this argument, we seek further comment on usage rates of those proprietary applications. What percentage of consumers use MVPD applications to view programming one month after

downloading an application? How many hours per month, on average, does a consumer use an MVPD application to view programming, compared to consumers' use of leased boxes? How many MVPDs make their full channel lineups available via applications? Do any MVPDs allow consumers to access multichannel video programming, beyond unencrypted signals, without leasing or purchasing some piece of MVPD equipment? How many consumers that lease a set-top box also use an MVPD application? How many consumers view multichannel video programming only via a proprietary MVPD application, without leasing a box? Are proprietary MVPD applications available on all platforms and devices? Or do MVPDs enter into agreements with a limited number of manufacturers or operating system vendors?

*Section 629 and DBS Providers.* In the First Plug and Play Report and Order, the Commission exempted DBS providers from our foundational separation of security requirement because ''customer ownership of satellite earth stations receivers and signal decoding equipment has been the norm in the DBS field.'' This meant that DBS was also exempt from most of the rules that the Commission adopted in the Second Plug and Play Order. Unfortunately, in the intervening years the market did not evolve as we expected; in fact, from a navigation device perspective, it appears that the market for devices that can access DBS multichannel video programming has devolved to one that relies almost exclusively on equipment leased from the DBS provider. Accordingly, to implement the requirements of section 629 fully, we tentatively conclude that any regulations we adopt should apply to DBS. We seek comment on this tentative conclusion. We also seek comment on the availability of DBS equipment at retail. Has the state of the marketplace changed since 1998, when the Commission had observed an ''evolving'' competitive market for DBS equipment and, if so, to what extent? In addition to our authority under section 629, we seek comment on our authority under section 335 to adopt any of the rules we propose below or any other rules related to competition in the market for devices that can access DBS multichannel video programming, which would serve the public interest. Finally, we recognize the ''weirdness of satellite'' that the DSTAC emphasized in this context because the DBS systems cannot assume that bidirectional communication is available in all cases, and accordingly we seek comment on differences in DBS delivery or system architecture that should inform our proposed rules set forth below.

*Authority.* We tentatively conclude that the Commission has legal authority to implement our proposed rules. Section 629 of the Act, entitled ''Competitive Availability of Navigation Devices,'' directs the Commission to ''adopt regulations to assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems, from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.'' We propose to interpret the terms ''manufacturers, retailers, and other vendors'' broadly to include all hardware manufacturers, software developers, application designers, system integrators, and other such entities that are not affiliated with any MVPD and who are involved in the development of navigation devices or whose products enable consumers to access multichannel video programming over any such device. We believe a broad interpretation is necessary to ensure that these third parties are provided the information they need from MVPDs to facilitate the commercial development of competing navigation technologies in order to fulfill the goals of section 629.

The Act does not define the terms ''navigation device'' or ''interactive communications equipment, and other equipment,'' but we believe that Congress intended the terms to be far broader than conventional cable boxes or other hardware alone; Section 629 is plainly written to cover any equipment used by consumers to access multichannel video programming and other services, and software features have long been essential elements of such equipment. Exercising our authority to interpret ambiguous terms in the Communications Act, we tentatively conclude that these terms include both the hardware and software (such as applications) employed in such devices that allow consumers to access multichannel video programming and other services offered over multichannel video programming systems. We believe this interpretation best serves the intent of Congress as reflected in the legislative history, which directs, among other things, that we ''should take cognizance of the current state of the marketplace.'' In today's marketplace, ''navigation devices''—*i.e.,* interactive communications equipment and other equipment—include both hardware and software technologies. Certain functions can be performed interchangeably by either hardware, software, or a combination of both. Congress recognized this in the STELAR, which called for a study of downloadable software approaches to security issues previously performed in hardware. To fully and effectively implement Section 629 as Congress intended, we propose to interpret these terms to cover both the hardware and software aspects of navigation equipment. This is consistent with our interpretation of other sections of the Act that use the term ''equipment'', which we have interpreted to include both hardware and software. The Commission derived its definition of the term ''navigation devices'' in our current rules from the text of section 629, and we propose to interpret that term consistent with both the language and intent of the statute, as described above.

We interpret the phrase ''manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor'' in section 629 to mean broadly ''entities independent of MVPDs,'' such that our rules must ensure the availability of Navigation Devices from entities that have no business relationship with any MVPD for purposes of providing the three Information Flows that we discuss below. We believe that this interpretation best aligns with Congressional intent, as reflected in the legislative history of the Telecommunications Act of 1996. Namely, the House Report states that the statute was intended to encourage the availability of equipment from a ''variety of sources'' and ''various distribution sources'' to assure that consumers can buy a variety of non-proprietary devices. Moreover, we do not believe that the goals of section 629 would be met if the commercial market consisted solely of Navigation Devices built by developers with a business-to-business relationship with an MVPD, because such an approach would not lead to Navigation Device developers being able to innovate independently of MVPDs. We seek comment on this interpretation. Does it take proper account of the fact that even some Navigation Device developers that rely on the three Information Flows to provide access to MVPD service may have other business relationships with MVPDs unrelated to the provision of navigation devices? Are there other interpretations that can assure a

competitive market as Congress intended?

We seek comment on this statutory analysis. Are there other sources of Commission authority to adopt the proposed rules? For example, we invite commenters to discuss the Commission's authority under Sections 624A and 335 of the Act and any other relevant statutory provisions. Alternatively, should we modify our definition of ''navigation devices'' to treat software on the device (such as an application) that consumers use to access multichannel video programming and other MVPD services as a ''navigation device,'' separate and apart from the hardware on which it is running? For example, we seek comment on whether we should add a sentence to our definition of ''navigation devices'' that states, ''This term includes software or hardware performing the functions traditionally performed in hardware navigation devices.'' Would such a modification be consistent with our statutory directive under section 629 to ''adopt regulations to assure the commercial availability . . . of converter boxes, interactive communications equipment, and other equipment'' used by consumers to access multichannel video programming and other services offered over MVPD systems? What implications would modification of our definition of ''navigation devices'' in this manner have on our current navigation devices rules? Would this definitional change impact Commission rules in other contexts? If so, commenters should identify the specific rule, how the definitional change would impact the rule, and whether further rule changes would be necessary to reflect the rule modification adopted in this proceeding. For example, would such a modification alter the accessibility obligations of device manufacturers and software developers and, if so, in what manner?

*Proposals.* As discussed above, we do not believe that the current marketplace provides the ''commercial availability'' of competitive navigation devices by manufacturers, retailers, and other vendors not affiliated with any MVPD that can access multichannel video programming within the meaning of section 629. Given our experience to date, we believe that Section 629 cannot be satisfied—that is, we cannot assure a commercial market for devices that can access multichannel video programming—unless companies unaffiliated with an MVPD are able to offer innovative user interfaces and functionality to consumers wishing to access that multichannel video programming. This interpretation is in line with our current rules, which led to the creativity and consumer benefits of the CableCARD regime. We also believe that the goals of section 629 will not be met absent Commission action, given MVPDs' incentive to limit competition. As we begin to craft rules that will meet our 629 obligations, there are seven objectives that seem paramount to our effort.

First, consumers should be able to choose how they access the multichannel video programming to which they subscribe (*e.g.,* through the MVPD-provided user interface on an MVPD-provided set-top box or app, through a set-top box offered by an unaffiliated vendor, or through an application or search interface offered by an unaffiliated vendor on a device such as a tablet or smart TV). We propose a rule to define these ''Navigable Services'' as an MVPD's multichannel video programming (including both linear and on-demand programming), every format and resolution of that programming that the MVPD sends to its own devices and applications, and Emergency Alert System (EAS) messages, because we tentatively conclude that these elements are what comprise ''multichannel video programming'' as that term appears in section 629. We seek comment on this definition and whether there is information beyond the multichannel video programming and EAS messages that are essential parts of ''multichannel video programming and other services offered over multichannel video programming systems'' that a navigation system needs to access and that we should include in the definition. For example, if an MVPD offers a ''cloud recording'' service that allows consumers to record programs and store them remotely, should that cloud recording service be a ''Navigable Service''? We seek comment on how to define ''MVPD service.''

Second, we recognize that the few successful CableCARD devices all have something in common: They provide user interfaces that compete with the user interfaces MVPD-provided set-top boxes render. Therefore, MVPDs and unaffiliated vendors must be able to differentiate themselves in order to effectively compete based on the user interface and complementary features they offer users (*e.g.,* integrated search across MVPD content and over-the-top content, suggested content, integration with home entertainment systems, caller ID, and future innovations).

Third, unaffiliated vendors must be able to build competitive navigation devices, including applications, without first obtaining approval from MVPDs or organizations they control. Senators Markey and Blumenthal found that MVPDs take in approximately $19.5 billion per year in set-top box lease fees, so MVPDs have a strong financial incentive to use an approval process to prevent development of a competitive commercial market and continue to require almost all of their subscribers to lease set-top boxes.

Fourth, unaffiliated vendors must implement content protection to ensure that the security of MVPD services is not jeopardized, and must respect licensing terms regarding copyright, entitlement, and robustness. This will ensure parity between MVPD-provided and competitive navigation devices.

Fifth, our rules should be technology neutral, permitting both software (*e.g.,* cloud delivery) and hardware solutions, and not impede innovation. This will ensure that consumers will not be forced to use outdated, power-hungry hardware to receive multichannel video programming services.

Sixth, our rules should allow consumers to use the same device with different MVPDs throughout the country. Device portability will encourage MVPD competition because consumers will be able to change their video service providers without purchasing new equipment.

Finally, our rules should not prescribe a particular solution that may impede the MVPD industry's technological progress. We seek comment on these seven objectives, their appropriateness, and in particular their relative importance.

Based on our tentative conclusion that the market for navigation devices is not competitive, with the above objectives in mind, we propose rules that will assure a competitive market for devices that can access multichannel video programming without jeopardizing security of the programming or an MVPD's ability to prevent theft of service, as section 629 requires. Like the authors of the DSTAC Report, we split our discussion of these proposals into sections regarding the non-security and security elements of multichannel video programming services.

The rules we propose are intended to address a fundamental feature of the current market for multichannel video programming services, namely the ''wide diversity in delivery networks, conditional access systems, bi-directional communication paths, and other technology choices across MVPDs (and even within MVPDs of a similar type).'' In 1998, the Commission concluded that it could address this technological diversity in one of two

ways, either via complex devices, or via translation of those diverse network technologies into a standardized format. This analysis stands seventeen years after it was adopted. We do not wish to impose a single, rigid, government-imposed technical standard on the parties, but we understand that it would be impossible to build widely used equipment without some standardization. Therefore, as explained further below, we propose to allow MVPDs to choose the specific standards they wish to use to make their services available via competitive navigation devices or solutions, so long as those standards are in a published, transparent format that conforms to specifications set by an open standards body. We also tentatively conclude that we should require MVPDs to comply with the rules we propose two years after adoption. We seek comment on this tentative conclusion.

*Non-Security Elements: Service Discovery, Entitlement, and Content Delivery.* We propose an approach to non-security elements that balances the interests expressed by the members of the DSTAC and commenters who filed in response to the DSTAC Report. Under this approach, we will require MVPDs to provide Service Discovery, Entitlement, and Content Delivery information (the ''Information Flows'') in standardized formats that the MVPD chooses. Our proposal is based on the tentative conclusion that the Information Flows are necessary to ensure that developers that are not affiliated with an MVPD can develop navigation devices, including software, that can access multichannel video programming in a way that will assure a commercial market. We believe that this proposed requirement is the least burdensome way to assure commercial availability of navigation devices (the specifications necessary to provide these Information Flows appear to exist today) and is consistent with our prior rules. Moreover, this approach is technology neutral—the Commission would not dictate the MVPD's decision whether to rely on hardware or software to make the Information Flows available. Therefore, the proposed approach would provide each MVPD with flexibility to choose the standard that best aligns with its system architecture. It would also give unaffiliated entities access to the Information Flows in a published, transparent, and standardized format so that those entities would understand what information is available to them. We believe that this is the best approach because the proposal does not require the Commission to prescribe or even approve the standards so long as the Information Flows are available. A benefit of this approach is that affected industries will be able to evolve as technology improves.

Under our proposed rule, we would require each MVPD to provide Service Discovery Data, Entitlement Data, and Content Delivery Data for its ''Navigable Services'' in published, transparent formats that conform to specifications set by open standards bodies. Under this proposal, we would require MVPDs to provide these Information Flows in a manner that does not restrict competitive user interfaces and features. We seek comment below on this proposed rule and on our proposed definitions of the terms (1) Service Discovery Data, (2) Entitlement Data, (3) Content Delivery Data, and (4) Open Standards Body.

We base these proposed rules on three main points from the DSTAC Report related to non-security elements that we find compelling. First, we agree with the Competitive Navigation advocates that developers need the Information Flows in a standardized format to encourage development of competitive, technology-neutral solutions for competitive navigation. We also agree with the Proprietary Applications advocates, however, that providing MVPDs with flexibility, where it will not impair the competitive market, will encourage and support innovation. Significantly, consistent with a major point of agreement in the DSTAC Report, these proposed rules do not require MVPDs to ''commonly rely'' on the Information Flows for their own navigation devices, so they will not need to replace the devices that they currently provide their subscribers. We seek comment below on our proposed definitions of these three Information Flows. In particular, we seek comment on how detailed our definitions should be; that is, will standards-setting bodies define the details of what information should be in the Information Flows, sufficient to assure a commercial market for navigation systems and meet our regulatory goals? Should we define this with the same amount of detail proposed in the DSTAC Report? Are the definitions we propose appropriate for all MVPDs, or does the diversity in network architectures justify different definitions for traditional cable, satellite, and IP-based services?

We propose to define Service Discovery Data as information about available Navigable Services and any instructions necessary to request a Navigable Service. We tentatively conclude that the Service Discovery Data must include, at a minimum, channel information (if any), program title, rating/parental control information, program start and stop times (or program length, for on-demand programming), and an ''Entertainment Identifier Register ID'' so that competitive navigation devices can accurately convey to consumers the programming that is available. We seek comment on whether this is the minimum amount of information that would allow a competitive navigation device developer to build a competitive system. Should this data also include information about the resolution of the program, PSIP data, and whether the program has accessibility features such as closed captions and video description? Should this data include the program description information that the MVPD sends to its own navigation devices? For example, is it necessary for the data to include descriptive information about the advertising embedded within the program? Our tentative view is that this level is detail is not necessary. Should it include capabilities of the MVPD's Navigable Services? For instance, the DSTAC Report refers to ''stream management'' as important information that conveys the number of video streams that a particular system can handle based on system bandwidth, tuner resources, or fraud prevention. One approach is that the MVPD could provide unaffiliated devices with information about the maximum number of simultaneous video streams that can be watched or recorded via the Service Discovery Data flow. We seek comment on this approach.

We propose to define Entitlement Data as information about (1) which Navigable Services a subscriber has the rights to access and (2) the rights the subscriber has to use those Navigable Services. This reflects our assumption that Entitlement Data will include, at a minimum, (1) copy control information and (2) whether the content may be passed through outputs, and if so, any information pertaining to passing through outputs such as further content protection and resolution, (3) information about rights to stream the content out-of-home, (4) the resolutions that are available on various devices, and (5) recording expiration date information, if any. What additional rights information should be included in Entitlement Data? We also propose to require that this data reflect identical rights that a consumer has on Navigation Devices that the MVPD sells or leases to its subscribers. Consumers must be able to receive and use all of

content that they pay for no matter the device or application they choose, so long as that device or application protects content sufficiently. We seek comment on whether our proposed definition is flexible enough to adequately address future business models. Will consumers' rights to ''access'' content vary from their rights to ''use'' the content? For example, what if a consumer subscribes to a 4K feed of a particular channel, but the device only has content protection that is approved by the content owner to protect the high-definition feed? Will our proposed definition address that situation? How should we treat Navigable Services that can be recorded and stored remotely (*i.e.,* ''cloud recording'' services)? Would our requirement that Entitlement Data be identical for competitive navigation devices and MVPD-provided navigation devices ensure that a subscriber could record content on a competitive navigation device if the MVPD allows subscribers to record and store that content remotely?

We propose to define Content Delivery Data as data that contains the Navigable Service and any information necessary to make the Navigable Service accessible to persons with disabilities under our rules. We seek comment on this definition. Does content delivery include services other than multichannel video programming and accessibility information? For example, the DSTAC Report stated that some MVPDs provide applications that include news headlines, weather information, sports scores, and social networking. We tentatively conclude that such information is unnecessary to include in the definition of Content Delivery Data because that information is freely available from other sources on a variety of devices, whereas multichannel video programming is not. The provision of such applications may allow MVPDs and unaffiliated companies to distinguish themselves in a competitive market. In addition to the applications listed in the DSTAC Report, NCTA states that MVPDs offer services that allow subscribers ''to switch between multiple sports games or events or camera angles, view[] video-on-demand with full interactive 'extras,' shopping by remote, or see[] the last channels they tuned.'' Is there anything in our proposed definition that would foreclose the possibility that a competitive navigation device could offer these services? We seek comment on this tentative conclusion.

As discussed above, we propose to require MVPDs to provide the Information Flows in published, transparent formats that conform to specifications set by ''Open Standards Bodies.'' We seek comment on our proposed definition of Open Standards Body: A standards body (1) whose membership is open to consumer electronics, multichannel video programming distributors, content companies, application developers, and consumer interest organizations, (2) that has a fair balance of interested members, (3) that has a published set of procedures to assure due process, (4) that has a published appeals process, and (5) that strives to set consensus standards. We seek comment on whether these are the appropriate characteristics. Are there others we should consider? We believe that there is at least one body that meets this definition but invite commenters to provide examples of such bodies. We also believe that the characteristics listed in the definition would arm the Commission with an established test to judge whether an MVPD's method of delivering the three Information Flows is sufficient (in combination with the other elements of the proposal discussed in this item) to assure a retail market. The five characteristics that define an Open Standards Body would ensure that navigation system developers have input into the standards-setting process, give them confidence that their devices will be able to access multichannel video programming, and prevent them from needing to build a glut of ''capacities to function with a variety of types of different systems with disparate characteristics.'' We seek comment on this proposed approach.

We seek comment on whether our proposal addresses the critiques of the Competitive Navigation approach that are set forth in the DSTAC Report, comments filed in response to that report, and recent ex partes. A consistent argument against the Competitive Navigation approach has been its emphasis on a required set of standards. The Commission has also been wary of stifling ''growth, innovation, and technical developments'' through regulations to implement section 629. We therefore seek comment on whether our proposed approach, which does not mandate specific standards, balances these critiques against the need for some standardization. Would this appropriately implement Congress's clear direction in section 629 to ''adopt regulations to assure the commercial availability'' of navigation devices ''in consultation with appropriate industry standard-setting organizations''? If not, how can we achieve that Congressional directive?

NCTA claims that the Competitive Navigation approach would take years of lengthy standards development to implement. Competitive Navigation advocates, however, filed a set of specifications for Service Discovery Data, Entitlement Data, and Content Delivery Data, largely based on DLNA VidiPath, that they claim could achieve the Competitive Navigation proposal today. They also claim that ''any necessary standardization, if pursued in good faith, should take no more than a single year.'' We seek comment on these views. The Competitive Navigation advocates submitted evidence that DLNA has a toolkit of specifications available. Given this evidence, we propose to require MVPDs to comply with the rules two years after adoption. We seek comment on whether the standards-setting process, if pursued in good faith, could allow MVPDs to meet that proposed implementation deadline. We seek specificity on what more work needs to be done for an Open Standards Body to develop standards for Service Discovery Data, Entitlement Data, and Content Delivery Data. Given the current toolkits of specifications for Service Discovery Data, Entitlement Data, and Content Delivery Data, is it possible for us to adopt a ''fallback'' or ''safe harbor'' set of specifications? If so, should they be those proposed by the Competitive Navigation advocates, or others? We also seek comment on any other mechanisms we can adopt to ensure that MVPDs and other interested parties cooperate in prompt development of standards.

The DSTAC Report includes an ''Implementation Analysis'' prepared by opponents of the Competitive Navigation approach, arguing that it does not fully establish a method for replicating, in a competitive navigation device, all of the services that an MVPD might offer. Our proposal's grant of flexibility to MVPDs gives them the opportunity to seek and adopt standards in Open Standards Bodies that will allow such replication. We seek comment on this issue.

Some commenters argue that the proposal constitutes compelled speech, or interference with the manner of speech of MVPDs, and thus imperils the First Amendment rights of these speakers. The Commission does not believe that the proposed rules infringe MVPDs' First Amendment rights. The proposal to require MVPDs to provide Content Delivery Data would simply require MVPDs to provide content of their own choosing to subscribers to whom they have voluntarily agreed to

provide such content. The rules would not interfere in any way with the MVPD's choice of content or require MVPDs to provide such content to anyone to whom they have not voluntarily entered into a subscription agreement. Rather, the rules would simply allow the subscriber to access the programming that the MVPD has agreed to provide to it on any compliant Navigation Device. Thus, it does not seem that this aspect of the proposed rules infringes MVPDs' First Amendment rights. The proposal to require MVPDs to provide Service Discovery Data and Entitlement Data would require MVPDs to disclose accurate factual information concerning the Navigable Service and subscribers' rights to access it. Service Discovery Data is simply information about the Navigable Service, while Entitlement Data is information about the subscriber's rights to use the Navigable Service, designed to protect the service from unauthorized access. We believe that these proposed disclosure requirements would withstand scrutiny under the First Amendment. In general, government regulation of commercial speech will be found compatible with the First Amendment if it meets the criteria laid out in *Central Hudson Gas & Electric Corp.* v. *Public Service Commission,* 447 U.S. 557, 566 (1980): (1) There is a substantial government interest; (2) the regulation directly advances the substantial government interest; and (3) the proposed regulation is not more extensive than necessary to serve that interest. In *Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626, 651 (1985), the Supreme Court adopted a more relaxed standard to evaluate compelled disclosure of ''purely factual and uncontroversial'' information. Under the standard set forth in Zauderer, compelled disclosure of ''purely factual and uncontroversial'' information is permissible if ''reasonably related to the State's interest in preventing deception of consumers.'' The District of Columbia Circuit recently held in *American Meat Institute* v. *U.S. Department of Agriculture,* 760 F.3d 18 (D.C. Cir. 2014) (en banc), that government interests other than correcting deception can be invoked to sustain a disclosure requirement under Zauderer. Here, the proposed rules would require the disclosure of purely factual and uncontroversial information concerning the MVPD's service, which we believe would be sustained under the Zauderer and Circuit Court precedents because the disclosures are reasonably related to advancing the government interest in fostering competition in the market for devices used by consumers to access video programming. We have tentatively concluded that disclosure of this information is necessary to ensure that developers who are not affiliated with an MVPD can develop navigation devices that can access multichannel video programming services, so as to foster the commercial market in such devices envisioned by Congress. This is a policy that Congress directed the Commission to advance through the adoption of rules, and we propose to fulfill that statutory obligation in a manner that does not impermissibly infringe on MVPDs' First Amendment rights. We seek comment on this analysis.

Finally, some commenters argue that the Competitive Navigation approach would require MVPDs to deploy ''a New Operator-Supplied Box'' to their subscribers. Other commenters disagree with this assertion, and state that the solution could be implemented in the cloud at the MVPD's discretion, thereby avoiding the need for new or additional equipment. We believe that our proposal does not require most MVPDs to develop or deploy new equipment, nor would it require subscribers to obtain additional or new equipment. In fact, our proposal may make it easier for MVPDs to offer cloud-based services because it gives each MVPD the flexibility to choose the standards that best achieve its goals. We seek comment on this belief. Would our proposal necessitate any changes to the MVPD's network, or would it give the MVPD the discretion to decide whether to modify its system architecture, as we intend?

*Proprietary Applications.* The DSTAC's Proprietary Applications approach proposed six different methods to deliver MVPD services that would require consumers to use the MVPD's proprietary user interface. As discussed above, we have significant doubt that such an approach could assure a commercial market for navigation devices as Section 629 requires. However, we seek comment on the DSTAC's Proprietary Applications approach and whether the Proprietary Applications approach could satisfy section 629.

We also seek comment on whether our proposed rules could achieve the benefits that the DSTAC Report's Proprietary Applications approach endeavors to achieve. One of the purported benefits of the Proprietary Applications approach is that it would provide MVPDs ''diversity and flexibility.'' Our proposal attempts to give MVPDs a diversity of choices and flexibility in making their Navigable Services available through competitive navigation devices, by allowing them to choose from any standard to offer the Information Flows, so long as the Information Flows are provided in a published, transparent format developed by Open Standards Bodies. Does this provide flexibility to MVPDs, while still sufficiently limiting the universe of standards such that a device could be built for a nationwide market? We seek comment on how much it would cost to build a single device that is compatible with all of the approaches listed by the Proprietary Applications advocates in the DSTAC Report. If a device were compatible with all of these Proprietary Applications approaches, would it be compatible with and able to receive all multichannel video programming services? How would this square with our statutory mandates under Sections 624A (with respect to cable operators) and 629 of the Act?

Section 629 directs us to adopt regulations to assure a market for devices ''from manufacturers, retailers, and other vendors not affiliated with any multichannel video programming distributor.'' If device compatibility relies on MVPDs developing ''device specific apps,'' how could we assure entities that are not affiliated with the MVPD that their devices will be able to access multichannel video programming services? How would device manufacturers and consumers ensure that support for the application is not withdrawn by the MVPD without consultation with the device manufacturer and consumers? Do proprietary applications impose costs or certification processes that could, if left unchecked, thwart the mandates of Section 629? As an alternative to our proposal, could and should we require MVPDs to develop applications within a specific timeframe for each device manufacturer that requests such an application, and to support that application indefinitely? Section 629 also directs the Commission to adopt regulations ''in consultation with appropriate industry standard-setting organizations.'' Does this suggest that the Proprietary Applications approach proposed in the DSTAC Report, which is not entirely standards-based, is not what Congress had in mind? Are applications, as they have been deployed, ancillary to leased devices, and therefore unlikely lead to retail competition with leased devices? Are the DLNA VidiPath, RVU, DISH Virtual Joey, and Sling Media Technology Client applications ''two-device'' solutions that would require consumers to attach MVPD-provided equipment to

a separate piece of consumer-owned hardware? What standards, protocols, or specifications exist that would allow MVPDs to offer those services without any MVPD-specific equipment inside a consumer's home, or from the cloud? Could MVPDs use those standards, protocols, or specifications if we adopt our proposal? We also seek comment on any other element of the Proprietary Applications approach.

*Proposal Regarding Security Elements.* We propose that MVPDs be required to support a content protection system that is licensable on reasonable and nondiscriminatory terms, and has a ''Trust Authority'' that is not substantially controlled by an MVPD or by the MVPD industry. We believe this approach best balances the benefits of flexibility in content protection choices by MVPDs with the need of manufacturers to choose from a limited universe of independently controlled content protection systems. Below we describe the two alternative proposals set forth by DSTAC Working Group 3, and detail the concerns raised about each by commenters. We then discuss why we believe neither approach on its own would be sufficient to meet the Commission's goals in this proceeding, and propose a ''via media'' that could allow for a competitive market for innovative retail navigation devices while also affording MVPDs significant flexibility.

*DSTAC Proposals.* The DSTAC's Working Group 3, which focused on security, had significant points of agreement. Most fundamentally, the group agreed that downloaded security components need to remain in the control of the MVPD, but that consumer devices could not be built to simultaneously support every proprietary content protection system. Just as in the non-security context, however, DSTAC Working Group 3 had fundamental disagreements. As summarized in the DSTAC Report, Working Group 3 proposed two alternative approaches. The first is the ''HTML5'' approach, sometimes described as the ''DRM'' approach, which ''consists of MVPD/OVDs supplying media streams over HTTPS [the secure version of the protocol used to transfer data between a browser and Web site] and CE/CPE devices accessing and decrypting those media streams by supplying devices that implement the HTML5, EME, MSE and Web Crypto APIs [software permitting secure handling of the media streams by the devices].'' The most vocal advocates of the HTML5 approach are MVPDs and content providers. The second approach is the ''Media Server,'' in which ''[n]etwork security and conditional access are performed in the cloud, and the security between the cloud and retail navigation devices is a well-defined, widely used link protection mechanism such as DTCP.'' The strongest advocates of the Media Server approach are consumer electronics manufacturers and consumer-facing online service providers, as well as consumer advocates. Content protection approaches similar to both proposals are in widespread use today, in other content delivery contexts. Although there are differences in how they currently manifest, the key distinction is the way in which they allow MVPDs to control access to content—their ''conditional access'' systems.

The HTML5 approach allows an MVPD to rely on any digital rights management (DRM) system that it chooses to manage its content. DRM, in this context, refers to a system of content protection that is based on permissions granted from a centralized server that the content provider (in this case, the MVPD) controls. DRM prevents subscribers from using the programming they are entitled to access in unauthorized ways. If a subscriber wishes to watch a particular program, the consumer's device contacts the rights server. If the subscriber is entitled to view, record, or otherwise utilize the content, then the rights server sends a message of approval, and the device displays the content. If the subscriber is not entitled to perform that task with the content, then the rights server sends a message of disapproval, and the device does not perform the task. Traditionally, rights servers for video are not located in consumers' homes, so they do not require additional equipment in the home. Devices like smart TVs and streaming devices that are able to play programming protected by DRM must be built to conform to each DRM, however, so not every device is equipped to handle each type of DRM employed by MVPDs and other video distributors today.

Under the Media Server approach, conditional access is managed before programming enters consumer devices, and the programming is protected when moving to consumer devices by a standardized link protection system. Link protection, in this context, is an encrypted connection between a source and a receiver. The system is built on the assumption that any device that has a certificate that deems it trustworthy, granted by a trusted authority at the time of manufacture and not subsequently revoked by the Trust Authority, will treat content as instructed by copy control information embedded in data that is transmitted with content. Like DRM, link protection prevents subscribers from using the programming to which they subscribe in unauthorized ways. This technology is how a Blu-ray player sends video to a television set when physically connected—there is no additional verification step necessary, because the television has a certificate that the Blu-ray player trusts, and the television has that certificate because it was tested by the organization that controls the bestowal of certificates at manufacture to make sure that it is a secure device. The Digital Transmission Licensing Administrator (DTLA), which was founded by Intel Corporation, Hitachi, Ltd., Panasonic Corporation, Sony Corporation, and Toshiba Corporation, is an example of an organization that hands out those certificates. All of the five major Hollywood studios have approved DTLA's link-protection technology (DTCP) for protecting content as it travels from source to receiver. Traditionally, link protection has been designed to protect content within the home as it travels from one device (for example, a Blu-ray player) to another (for example, a TV set).

Criticism of the DSTAC Proposals. Since publication of the DSTAC Report, commenters have raised significant and compelling concerns about universally imposing either approach in the way described by its advocates. Criticism of the HTML5 approach has come from a spectrum of commenters outside the MVPD community, but has centered on concern that MVPDs could abuse their ability to fully control the conditional access system necessary to access their content. For example, the Consumer Video Choice Coalition argues that this approach would keep control in the hands of MVPDs that ''have a history'' of using their leverage over existing application deployment to prevent ''consumers from viewing content they have paid for on the device of their choice.'' The DRM licensor could be the MVPD itself, if it chose to offer only a proprietary DRM solution, obviously posing a challenge to any device manufacturer attempting to compete.

Critics of the Media Server approach have emphasized the security difficulties potentially posed by a standardized link protection system. For example, some commenters have stated that the current version of DTCP, the industry standard, is inadequate to protect 4K and ultra-high definition content. Commenters have also argued that the technical limitations on the current version of DTCP would require MVPD-provided equipment be in the home. DTLA has filed comments

responding to both of these criticisms, stating that the soon-to-be-finalized version of DTCP will be secure enough to protect the highest value content, and flexible enough to protect content delivered from the cloud. NCTA, Adobe, and ARRIS argue that, however good the link protection system, if it were industry-wide it would be a single, static point of attack that hackers could exploit, and it would be insufficiently flexible to respond to threats as they develop. NCTA argues that ''[t]oday, device manufacturers and video services can choose from a competitive marketplace of content protection technologies to stay ahead of security threats.'' In contrast, they claim, the Media Server proposal (specifically, as described in filings after the issuance of the DSTAC Report) would ''lock[] out the whole competitive market for DRM and content protection.''

The record reflects significant consensus about the importance of flexibility, though clear disagreements exist about what that should look like. Some of the strongest critiques are those that could apply equally to any approach imposed on all MVPDs and competitive navigation device manufacturers. The Commission has often been wary of mandating the adoption of specific technologies, rather than functional goals. Indeed, a number of commenters specifically warn against ''tech mandates'' in this space. Although that particular phrasing is more often heard from supporters of the HTML5 proposal, the warnings reflect a broader concern about the importance of flexibility. Public Knowledge argues that the Media Server proposal is superior because it is ''versatile and flexible,'' compared to the HTML5 proposal, which is ''too rigid technologically.'' Amazon asks us to ''approach this issue from the standpoint of giving service providers technological flexibility.'' Some commenters argue that the Commission should take no action given the lack of consensus on this issue. A stance of total inaction, however, would be an abdication of our responsibility under section 629. Without clear guidance from the Commission on the question of content protection, a truly competitive retail market for alternatives to MVPD set-top boxes is unlikely to develop.

We are persuaded that the HTML5 proposal is not consistent with our goals in this proceeding. By leaving total control of security decisions to MVPDs, we would perpetuate a market in which competitors are compelled to seek permission from an MVPD in order to build devices that will work on its system. So long as MVPDs are themselves providing and profiting from navigation equipment and services, retail devices will be available only when they benefit an MVPD, not when they benefit consumers, and a truly competitive market will remain out of reach. Section 629, however, requires us to ensure that our rules do not imperil the security of the content MVPDs are carrying. At the same time, we also are not persuaded that we should require the Media Server proposal. Mandating a single shared content protection standard for every piece of MVPD content, as the Media Server proponents suggest, would create too much potential for vulnerability. It would impose no requirement (and thus, provide no guarantee) that the developer of that single shared standard develop a new, more robust version in the event of a hack.

*Security Proposal.* Based on the record, we believe there is a middle path on the issue of content protection that can allow for a competitive market for innovative retail navigation devices, including software, that also affords MVPDs significant flexibility to protect their content, evolve their content protection, and respond to security concerns. Verimatrix asked the Commission not to ''mandate either or even both [DSTAC proposals] as 'the' standard solution.'' They argued that both should be available as part of a ''toolkit'' of approaches available to MVPDs, a toolkit that could in fact include other approaches with the passage of time. We agree. We therefore propose that MVPDs retain the freedom to choose the content protection systems they support to secure their programming, so long as they enable competitive Navigation Devices. In order to do so, at least one content protection system they deploy, and to which they make available the three Information Flows in their entirety, must be ''Compliant''—licensable on reasonable and non-discriminatory terms, and must not be controlled by MVPDs.

We believe this approach will give MVPDs the flexibility they need to avoid creating a ''single point of attack'' for hackers, and the freedom to set their own pace on eliminating system-specific content security equipment in subscribers' homes, in response to the demands of the market. At the same time, we believe it will assure competitors and those considering entering the market that they can build to what is likely to be a limited number of content protection standards licensable on reasonable, non-discriminatory terms, and expect their navigation devices to work across MVPDs. They will not need to seek approval, review, or testing from the MVPDs themselves, who may have an incentive to delay or impede retail navigation devices' market entry because their leased navigation devices will remain in direct competition with the retail market for the foreseeable future. We seek comment on these assumptions.

Accordingly, we propose that MVPDs must support at least one ''compliant'' conditional access system or link protection technology, although they may use others at the same time. A Compliant Security System must be licensable on reasonable, nondiscriminatory terms, and have a Trust Authority that is not substantially controlled by any MVPD or group of MVPDs. An MVPD must make available the three Information Flows in their entirety to devices using one of the Compliant Security Systems chosen by the MVPD. Such a system might include, for example, future iterations of DTCP or certain DRM systems. Commenters state that these conditional access systems could be refined to permit the full range of activity contemplated by the DSTAC, and cloud-based link protection that would minimize or eliminate the need for MVPD-provided equipment on the customer's premises. We seek comment on this proposal, including whether we need to modify our existing definition of ''conditional access'' in any way.

We invite comment on some specific questions surrounding our proposal. As noted above, DTLA has stated that a pending DTCP update could fully satisfy the requirements of this proposal and the needs of MVPDs. Are there other content protection systems, particularly specific DRMs currently on the market, that are likely to be able to comply with the requirements of this approach? We recognize that this approach is likely to result in the need for competitors to support more than one Compliant Security System in their navigation devices. We believe the resulting number of Compliant Security Systems would still allow Navigation Device developers to offer competitive options, but we seek comment on this understanding. Is the term ''Trust Authority'' and our definition—''[an] entity that issues certificates and keys used by a Navigation Device to access Navigable Services that are secured by a given Compliant Security System''—sufficiently clear? Are there more accurate or descriptive terms? Should the entity that issues certificates be the same as the one that issues keys? Should the entity that licenses the Compliant Security System also be the

Trust Authority for that system? Are the proposed restrictions on the Trust Authority of a conditional access system enough to ensure its independence from MVPDs? What criteria shall we use to determine whether a Trust Authority is not ''substantially controlled'' by an MVPD or by the MVPD industry?

Are there any other critical elements necessary for this proposal to both protect MVPD content and ensure a market for competitors? Will the lack of uniformity that may result from this proposal create an undue burden on competitive entities? Could an MVPD support at least one Compliant Security System but use a non-compliant content protection system on their own Navigation Devices in a manner that favors their own Navigation Devices (*e.g.,* by selecting a Compliant Security System that is computationally burdensome for competitive devices)? Should our rules take into account differences in device, viewing location (in-home and out-of-home), and picture quality, or will our proposed ''parity'' requirement, discussed below, resolve any issues in these areas? We also seek comment on whether we should instead adopt one of the DSTAC proposals, or another alternative, as the universal standard, and how such a standard could achieve our goals of secure openness in this proceeding. If another alternative is proposed, the proponent should provide sufficient detail to compare it to the proposals set out here. We also seek comment on any other aspect of security relevant to our goals in this proceeding that we should take under consideration.

*Parity.* We propose to require that, in implementing the security and non-security elements discussed above, MVPDs provide parity of access to content to all Navigation Devices. This will ensure that competitors have the same flexibility as MVPDs when developing and deploying devices, including applications, without restricting the ability of MVPDs to provide different subsets of content in different ways to devices in different situations. Parity will also ensure that consumers maintain full access to content they subscribe to consistent with the access prescribed in the licensing agreements between MVPDs and programmers. In order to achieve parity, we propose three requirements. First, if an MVPD makes its programming available without requiring its own equipment, such as to a tablet or smart TV application, it must make the three Information Flows available to competitive Navigation Devices without the need for MVPD-specific equipment. Second, at least one Compliant Security System chosen by the MVPD must enable access to all the programming, with all the same Entitlement Data that it carries on its equipment, and the Entitlement Data must not discriminate on the basis of the affiliation of the Navigation Device. Third, on any device on which an MVPD makes available an application to access its programming, it must support at least one Compliant Security System that offers access to the same Navigable Services with the same rights to use those Navigable Services as the MVPD affords to its own application. We discuss these proposals below.

The first proposed requirement is that, if an MVPD makes available an application that allows access to its programming without the technological need for additional MVPD-specific equipment, then it shall make Service Discovery Data, Entitlement Data, and Content Delivery Data available to competitive Navigation Devices without the need for MVPD-specific equipment. For example, if an MVPD makes available an iOS or Android application that allows access to its programming, it must provide the three Information Flows to all competitive Navigation Devices without requiring the use of additional MVPD-specific equipment. The ability of competitive Navigation Devices to access content without additional equipment is a concern that has been raised repeatedly in the DSTAC proceeding. We believe that our regulations would not assure a commercial market for Navigation Devices if unaffiliated manufacturers, retailers, and other vendors need to rely on MVPD-provided equipment to receive multichannel video programming and affiliated entities do not. We seek comment on that assumption. We base this proposal on the presumption that if an MVPD can securely provide the information necessary for its proprietary application to access its programming without any additional equipment, then the MVPD should be able to provide that information to non-affiliated Navigation Devices similarly without additional equipment. We seek comment on this presumption. This proposal complements the next, in that while the entirety of the Information Flows must be available to all competitive Navigation Devices in this scenario, the specifics of how each device may use the Navigable Services depend on the relevant Entitlement Data.

We recognize that DBS providers specifically will be required to have equipment of some kind in the home to deliver the three Information Flows over their one-way network, even if they also provide programming to devices connected to the Internet via other networks. How should this fact be addressed by any rule that we adopt? Are there content protection issues that are unique to DBS providers? Are there technical issues that a Navigation Device developer would need to address when developing a solution for a DBS system? We seek comment on whether we need to create a DBS exception to our proposed rule regarding proprietary applications that deliver MVPD content without the use of additional MVPD-specific equipment. We intend for this proposal to result in MVPDs serving the vast majority of non-DBS subscribers providing the Information Flows without the presence of additional MVPD-specific equipment. What technology or standards available now or in the near future will allow this ''boxless'' provision? What impact will this have on MVPD systems? Will this approach require any changes for current subscribers who do not choose to seek out a competitive Navigation Device? Given the importance of flexibility to the creation of a retail market, is this proposal correctly tailored? Would it be possible to ensure nondiscriminatory provision of the Information Flows, without requiring additional MVPD-specific equipment in the home, in another way? We seek comment on this proposal.

The second proposed requirement limits an MVPD's ability to discriminate in providing the Navigable Services to competitive Navigation Devices. We propose that at least one Compliant Security System chosen by the MVPD enables access to all resolutions and formats of its Navigable Services with the same Entitlement Data to use those Navigable Services as the MVPD affords Navigation Devices that it leases, sells, or otherwise provides to its subscribers. In addition, we propose that Entitlement Data does not discriminate on the basis of the affiliation of the Navigation Device. Our proposed rule requires MVPDs to make the Information Flows fully available to any Navigation Device using the Compliant Security System they have chosen to support. Even today, however, MVPDs that provide their service to subscribers via proprietary applications on certain equipment such as mobile devices often provide only a subset of their multichannel video programming, reserving the full service for set-top boxes or other in-home viewing options. We understand that these business decisions are made for a variety of reasons, including security and contracts with content providers. We do

not believe that this practice poses a threat to the competitive market for Navigation Devices so long as it is applied in a nondiscriminatory fashion and does not interfere with the ability of competitive Navigation Device makers to develop competitive user interfaces and features. We seek comment on this view.

Our intent is that each MVPD make available complete access to all purchased programming, on all channels, at all resolutions, on at least one Compliant Security System that it chooses to support. Thus, Navigation Devices accessing the three Information Flows via that Compliant Security System would have the same complete access as an MVPD's leased or provided set-top box in the home. As noted above, though, we recognize that MVPDs may make distinctions regarding the content delivered based on the use case of a device. We understand that use cases are generally differentiated based on screen size and in- or out-of-home viewing, and strength of content protection used. We seek comment on whether there are any other meaningful distinctions among use cases. We further understand that Entitlement Data enforces these distinctions in programming today, and we propose to permit MVPDs to continue to rely on Entitlement Data to draw those distinctions, so long as competitive Navigation Devices are subject to only the same restrictions as MVPD Navigation Devices. We seek comment on this proposed requirement. Does a prohibition on discrimination based on whether the Navigation Device developed is affiliated with the MVPD assure equitable treatment for similarly situated Navigation Devices? That is, will our proposed rule ensure that a competitive Navigation Device is able to access the same content with the same usage rights as a Navigation Device that the MVPD provides?

The final proposed parity requirement is that, on any device on which an MVPD makes available an application to access its programming, it must support at least one Compliant Security System that offers access to the same Navigable Services with the same rights to use those Navigable Services as the MVPD affords to its own application. Our intent here is to ensure parity of access for competitive Navigation Device developers. Our proposed rules do not require MVPDs to choose Compliant Security Systems that would allow access from any device; they instead must choose one or more Compliant Security Systems to which devices can be built. It may be possible for an MVPD to abuse this flexibility, however, and choose only Compliant Security Systems that are not available on a device on which the MVPD makes available its own application to access its programming, thereby eliminating competition for access to MVPD programming via that device. The proposed rule will ensure that a competitive application can access MVPD programming on devices on which an MVPD makes available its own application, thus further ensuring a competitive market for devices including applications. We seek comment on this proposal.

We seek comment on whether the three parity requirements described above, in conjunction with the other features of our proposal, will achieve the goal of ensuring a competitive retail market for Navigation Devices as contemplated by section 629. We particularly invite commenters to weigh in on the expected efficacy of these proposals, and their necessity in meeting the mandate of section 629. We are not proposing to impose a common reliance requirement; rather, we are striving to ensure equitable provision of content to competitive Navigation Devices, to the extent necessary to achieve a competitive retail market. We seek comment on this approach.

*Licensing and Certification.* We believe that licensing and certification will play important roles under our proposed approach. MVPDs, MPAA, and companies that supply equipment to MVPDs argue that the Competitive Navigation approach could violate licensing agreements between MVPDs, content companies, and channel guide information providers. Based on our review of the DSTAC Report, the record, and the contract that CableLabs uses to license technology necessary to build a CableCARD device (DFAST), we have identified three major subject matters that pertain to licensing and certification. As set forth below, we seek comment on how licensing and certification can address (1) robustness and compliance, which ensure that content is protected as intended, (2) prevention of theft of service and harm to MVPD networks, which ensures that devices do not allow the theft of MVPD service or physically or electronically harm networks, and (3) important consumer protections in the Act and the Commission's rules. We then invite comment on alternative approaches we could take to address these issues.

*Compliance and Robustness.* We seek comment on whether licensing can ensure adherence to copy control and other rights information (''compliance'') and adequate content protection (''robustness''). Section 629(b) states that ''[t]he Commission shall not prescribe regulations under subsection (a) of this section which would jeopardize security of multichannel video programming and other services offered over multichannel video programming systems, or impede the legal rights of a provider of such services to prevent theft of service.'' We interpret this section of the Act to require that we ensure that our regulations do not impede robustness and compliance. To achieve this statutory mandate, our regulations must ensure that Navigation Devices (1) have content protection that protects content from theft, piracy, and hacking, (2) cannot technically disrupt, impede or impair the delivery of services to an MVPD subscriber, both of which we consider to be under the umbrella of robustness (*i.e.,* that they will adhere to robustness rules), and (3) honors the limits on the rights (including copy control limits) the subscriber has to use Navigable Services communicated in the Entitlement Information Flow (*i.e.,* that they adhere to compliance rules). Through robustness and compliance terms, we seek to ensure that negotiated licensing terms imposed by content providers on MVPDs are passed through to Navigation Devices. Accordingly, our proposal requires MVPDs to choose Compliant Security Systems that validate only Navigation Devices that are sufficiently robust to protect content and honor the Entitlement Data that the MVPD sends to the Navigation Device. This is consistent with our understanding based on the DSTAC Report that, in other contexts, downloadable security systems usually include robustness and compliance terms as part of design audits, self-verification, or legal agreements, and that an untrustworthy actor will not be able to receive a certificate for its Navigation Devices to verify compliance. We seek comment on this proposed approach to address compliance and robustness. We also seek comment on whether we need to define the term ''robustness and compliance rules'' in our proposed definition of Compliant Security System, or if that term has a common, understood meaning, as reflected in the DSTAC Report. Should these terms include, at a minimum, what is described in the DFAST license? Should these terms contemplate protection of licensing terms between user guide information providers and MVPDs, and thus require unaffiliated Navigation Device developers to purchase their own detailed program guide information? Are there alternatives to

our proposed approach that would ensure robustness and compliance? Are there other terms from the DFAST license that we should cover in this regard? In addition to section 629, are there other sources of statutory authority for imposing these compliance and robustness requirements, such as sections 335(a) and 624A of the Act? What impact, if any, does the D.C. Circuit's decision in *EchoStar Satellite L.L.C.* v. *FCC* have on the Commission's ability to adopt compliance and robustness requirements?

*Protection of MVPD Networks from Harm and Theft.* We also believe that a device testing and certification process is important to protect MVPDs' networks from physical or electronic harm and the potential for theft of service from devices that attach directly to the networks. We seek comment on the extent to which unaffiliated devices will attach directly to MVPD networks. If devices will connect directly to the MVPD network, is our existing rule 76.1203 sufficient to assure that those devices do not cause physical or electronic harm to the network? We do not believe that each MVPD should have its own testing and certification processes. Under the CableCARD regime, devices our rules allowed testing to be performed by a qualified test facility, which is defined as ''a testing laboratory representing cable television system operators serving a majority of the cable television subscribers in the United States or an appropriately qualified independent laboratory with adequate equipment and competent personnel knowledgeable with respect to the'' CableCARD standards. We seek comment on whether that approach protected cable networks from physical and electronic harm and from theft of service, and whether it had any effect on the commercial availability of CableCARD devices. We also seek comment on which entities have or may develop testing and certification processes. What kind of testing should be required? We note, for example, there is a seven-step certification process to ensure that DLNA-certified devices do not have defects that would harm networks. Is this type of testing sufficient? We seek comment on this proposal and any alternative approaches, such as self-certification.

*Consumer Protection.* It is essential that any rules we adopt to meet the goals of section 629 do not undermine other important public policy goals underlying the Communications Act, which are achieved by means of requirements imposed on MVPDs. Specifically, certain commenters highlighted concerns that competitive Navigation Device developers (i) would not keep subscribers' viewing habits private, as MVPDs are required to do, (ii) would violate advertising limits during programming for children, and (iii) would build devices that do not display emergency alerts or closed captioning or enable parental controls as MVPDs are required to do. We are encouraged by the fact that retail navigation devices, such as TiVos, have been deployed in the market for over a decade without allegations of a loss of consumer privacy, violations of advertising limits during programming for children, or problems with emergency alerts and accessibility. Nonetheless, because these consumer protections are so important, we propose to require that MVPDs authenticate and provide the three Information Flows only to Navigation Devices that have been certified by the developer to meet certain public interest requirements. We tentatively conclude that this certification must state that the developer will adhere to privacy protections, pass through EAS messages, and adhere to children's programming advertising limits. This proposal would mean that MVPDs are not required to enable the Information Flows unless they receive this certification, and also that they are prohibited from providing the Navigable Services to a Navigation Device that does not have such a certification. MVPDs cannot withhold the three Information Flows if they have received such certification and do not have a good faith reason to doubt its validity. This will ensure that the public policy goals underlying these requirements are met regardless of which device a consumer chooses to access multichannel video programming. We seek comment on this proposal and invite alternative proposals within our jurisdiction that would ensure that these important consumer protections remain in effect while we promote a competitive navigation market. Should the proposed certification address any other issues, including compliance with the Commission's accessibility rules and parental controls, or should we leave these matters to the market? We also seek comment on whether the retail market will be competitive enough to make any such regulation unnecessary (that is, the competitive market will assure that the protections that consumers desire are adequately protected).

We seek comment on the best way to implement such a certification process. Should this be a self-certification process, or are there viable alternatives to self-certification? For example, should there be an independent entity that validates the competitor's certification? Should we develop a standardized form? Who would be responsible for maintaining a record of the certification? Could Open Standards Bodies or some other third-party entity require certification as part of their regimes and maintain those records? Alternatively, should the Commission maintain a repository of certifications? In addition, if there are lapses in compliance with any certification, what would be the appropriate enforcement mechanism?

With respect to all MVPDs, we believe that Section 629 of the Act provides authority to impose these restrictions, because consumers may be dissuaded from opting for a competitive navigation solution if they are not confident that their interests will be protected to the same extent as in an MVPD-provided solution. With respect to DBS operators, we also believe section 335(a)—which directs the Commission to ''impose, on providers of direct broadcast satellite service, public interest or other requirements for providing video programming''—grants us authority to ensure that these goals are met regardless of whether the DBS multichannel video programming is accessed by means of a DBS-provided device. We also seek comment on whether the sources of statutory authority for imposing on MVPDs privacy requirements, advertising limits on children's programming, emergency alerting requirements, closed captioning requirements, video description requirements, parental control requirements, or other consumer protection requirements also authorize the Commission to require that MVPDs provide the three Information Flows only to Navigation Devices that have been certified by the developer to meet certain public interest requirements. This will ensure that the new Navigation Device rules will not undercut our rules imposing those public interest requirements. We seek comment on these views and invite commenters to suggest any other sources of authority.

We seek comment on how MVPDs could ensure that they do not provide the Information Flows to uncertified devices. Could the MVPD use device authentication to ensure that they do not send the three Information Flows to uncertified Navigation Devices? Could the Entitlement Data direct a device not to display the Content Data unless the Navigation Device was built by a developer who is certified? Are there

other methods MVPDs could use to ensure that they send the Information Flows only to Navigation Devices that will honor these important consumer protection obligations? Similarly, how can MVPDs ensure, as both a technical and practical matter, that the Information Flows are no longer provided if there are any lapses in a competitor's compliance with these obligations?

We seek comment on how this requirement will affect Navigation Device developers. We do not expect it will be difficult for developers to certify to these consumer protections. For example, such content as EAS alerts will be included in the Information Flows that MVPDs make available, and we do not expect enabling receipt of this content to be burdensome. Similarly, as to ensuring the privacy of subscriber information, given the national market for consumer technology, they must already ensure that their products and services meet the privacy standards of the strictest state regulatory regime. Moreover, the global economy means that many developers must comply with the European Union privacy regulations, which are much more stringent that the requirements placed on MVPDs under sections 631 and 338 of the Communications Act.

Although we propose that competitive device manufacturers certify compliance with sections 631 and 338, we seek comment on the extent to which those manufacturers that collect personally identifiable information from consumers using their devices are currently subject to state privacy laws and the scope of any such laws. We note, for example, that California's Online Privacy Protection Act applies to an entity that owns an online service that collects and maintains personally identifiable information from consumers residing in California who use the online service if the online service is used for commercial purposes. Would this statute apply to competitive device manufacturers to the extent that they use the Internet to provide programming guide, scheduling, and recording information to consumers? Are there similar state privacy laws covering consumers residing in each of the other states? To what extent do state privacy laws require that manufacturers have privacy policies? MVPDs are obligated to provide privacy protections under sections 631 and 338 of the Act. Do state privacy laws require manufacturers to provide a comparable level of consumer protection? For example, the privacy protections established by sections 631 and 338 are enforceable by both the Commission and by private rights of action. Do any state laws provide for both administrative and private rights of action and/or damages in the event of a privacy violation? TiVo asserts that it is subject to enforcement by the FTC and state regulators for any failures to abide by its comprehensive privacy policy. We note that the FTC has taken legal action under its broad Section 5 ''unfair and deceptive acts'' authority against companies that violate their posted consumer privacy policies. We seek comment on whether state laws governing unfair and deceptive acts have similarly been used against companies that violate their consumer privacy policies and whether these laws are applicable to competitive device manufacturers. Furthermore, the Video Privacy Protection Act, with limited exceptions, generally prohibits companies that provide video online from disclosing the viewing history and other personally identifiable information of a consumer without the consumer's prior written consent. Does this statute impose any obligations on competitive device manufacturers to protect personally identifiable information collected from consumers? Are there any other state or federal laws that would help to ensure that competitive device manufacturers protect consumer privacy?

*Licensing Alternatives.* As an alternative to the licensing and certification approaches we lay out above, should we instead require industry parties to develop a standardized license and certification regime, similar to the DFAST license, which has appeared to work at balancing consumer protection issues and allowing retail Navigation Device developers to innovate? Who would be responsible for managing that licensing system? Should our Navigation Device rules instead impose these terms by regulation, either initially or if industry parties cannot reach agreement? Does the Commission have authority to impose such terms via regulation? Has competitive navigation under the CableCARD regime led to any license agreement violations, privacy violations, or other violations of consumer protection laws? If so, what were the specifics of those violations, and how were they resolved?

We do not currently have evidence that regulations are needed to address concerns raised by MVPDs and content providers that competitive navigation solutions will disrupt elements of service presentation (such as agreed-upon channel lineups and neighborhoods), replace or alter advertising, or improperly manipulate content. We have not seen evidence of any such problems in the CableCARD regime, and do not expect that the new approach we propose above will allow such behavior. Accordingly, we believe these concerns are speculative, and while we believe at this time it is unnecessary for us to propose any rules to address these issues, we seek comment on this view. We also seek comment on the extent to which copyright law may protect against these concerns, and note that nothing in our proposal will change or affect content creators' rights or remedies under copyright law. In the event that commenters submit evidence indicating that regulations are needed, we seek comment on whether we have the authority and enforcement mechanisms to address such concerns.

Small MVPDs. We seek comment on how any rules that we adopt could affect small MVPDs, and whether we should impose different rules or implementation deadlines for small MVPDs. We tentatively conclude that all analog cable systems should be exempt from the rules we propose today, just as they were exempt from the original separation of security rules. We also seek specific comment on the American Cable Association's proposal to exempt MVPDs serving one million or fewer subscribers from any rules we adopt. Is there a size-neutral way that we could ensure that our rules are not overly burdensome to MVPDs? The American Cable Association also asserts that many of its members are not prepared to transition soon to delivery of their services in Internet Protocol, but we note that our proposed rules do not require MVPDs to use Internet Protocol to deliver the three Information Flows or Compliant Security System. For example, although we do not advocate reliance on CableCARD as a long-term solution, we note that the CableCARD standard largely appears to align with our proposed rules. Could the CableCARD regime remain a viable option for achieving the goals of Section 629 for those systems that continue to use QAM technology? Are there any changes to the CableCARD rules that should be made in light of more than a decade of experience with the regime or to accommodate changes in the MVPD industry since the rules were adopted? Do MVPDs who have not transitioned to IP delivery of control channel information nonetheless provide IP-based applications to their customers or use IP to send content to devices throughout a home network? If so, should such MVPDs be required to comply with the rules requiring parity

for other Navigation Device developers via the Information Flows?

*Billing Transparency.* We seek comment on how best to align our existing rule on separate billing and subsidies for devices with the text of the Act, the current state of the marketplace, and our goal of facilitating a competitive marketplace for navigation devices. Section 629 states that our regulations ''shall not prohibit [MVPDs] from also offering [navigation devices] to consumers, if the system operator's charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any such service.'' We note that, although Section 629(a) of the Act states that the Commission ''shall not prohibit'' any MVPD from offering navigation devices to consumers if the equipment charges are separately stated and not subsidized by service charges, it does not appear to affirmatively require the Commission to require separate statement or to prohibit cross-subsidies. In the Commission's 1998 Report and Order, which implemented section 629, the Commission rejected the argument that section 629's requirements are ''absolute'' and that the section ''expressly prevents all MVPDs from subsidizing equipment cost with service charges.'' The Commission found that in a competitive market ''there is minimal concern with below cost pricing because revenues do not emanate from monopoly profits. The subsidy provides a means to expand products and services, and the market provides a self-correcting resolution of the subsidy.'' The Commission thus concluded that ''[e]xisting equipment rate rules applicable to cable television systems not facing effective competition address Section 629(a)'s requirement that charges to consumers for such devices and equipment are separately stated and not subsidized by charges for any other service.'' Accordingly, the Commission applied the separate billing and anti-subsidy requirements set forth in Section 76.1206 of our rules only to rate-regulated cable operators. In 2010, the Commission adopted ''CableCARD support'' rules, which included pricing transparency requirements and required uniform pricing for CableCARDs ''regardless of whether the CableCARD is used in a leased set-top box or a navigation device purchased at retail.''

Developments since the 1998 Report and Order raise a question whether the applicability of the Act's rate regulation provisions should continue to determine the applicability of our separate billing and anti-subsidy rules. At the time of that order, only a small minority of cable systems had been determined to be subject to ''effective competition'' as defined in the rate regulation provisions of the Act and thus exempted from rate regulation. Since that time, the Commission has made many findings that the statutory test for effective competition was met and updated its effective competition rules to reflect the current MVPD marketplace. We are no longer convinced that the statutory test for the applicability of rate regulation properly addresses our objective of promoting a competitive market for navigation devices as directed by Section 629. We base this proposed change in policy on our belief that customers may likely consider the costs of lease against purchase when considering whether to purchase a competitively provided device, and must know what it costs to lease a device in order to make an informed decision. Accordingly, we seek comment on whether we should modify our billing and/or anti-subsidy requirements set forth in section 76.1206.

In particular, under the circumstances that exist today, should we revise our rules to require all MVPDs to state separately a charge for leased navigation devices and to reduce their charges by that amount to customers who provide their own devices, regardless of whether the statutory test for the applicability of rate regulation is met? Is such a requirement a necessary or appropriate complement to the rules we propose today to facilitate the offering of competitive navigation devices? We tentatively conclude that we should adopt such a requirement with respect to all navigation devices, including modems, routers, and set top boxes, and we invite comment on that tentative conclusion.

If we adopt a requirement that all MVPDs state separately a charge for leased navigation devices, we invite comment on whether we should also impose a prohibition on cross-subsidization of device charges with service fees. Section 629 discusses separate statement and prohibition of cross-subsidy in the same sentence; but we read the statute to permit us to make an individual determination whether to impose one requirement or the other, or both (or neither). Do present market circumstances warrant adoption of an anti-subsidization rule? Observers often suggest that the charges currently imposed for leased devices are typically excessive, rather than cross-subsidized. A requirement of separate statement, by itself, should help to enable competition in the marketplace to ameliorate excessive pricing of leased devices. Is it therefore unnecessary at this time for us to adopt an expanded rule against cross-subsidization? Or would such a rule provide a useful prophylactic against future attempts to cross-subsidize? Would it suffice to require that a nonzero price be identified for any leased device? We seek comment on these issues. Commenters supporting adoption of an expanded anti-cross-subsidization rule should address the Commission's previous determination that ''[a]pplying the subsidy prohibition to all MVPDs would lead to distortions in the market, stifling innovation and undermining consumer choice.''

If we decide to adopt an updated anti-subsidy rule, how should we determine whether a device fee is cross-subsidized? For example, would the factors set forth in section 76.1205(b)(5) for determining the price that is ''reasonably allocable'' to a device lease fee be applicable for this purpose? How should we consider the possibility that an MVPD would ascribe a zero or near-zero price to a navigation device, and what implications might there be for further Commission responsibilities and actions? Are there other ways in which we can promote a competitive marketplace through requirements applicable to equipment that MVPDs lease, sell, or otherwise provide to their subscribers? For example, Anne Arundel and Montgomery Counties, Maryland in their reply comments propose that our rules (1) prohibit service charges for viewing on more than one device, (2) prohibit service charge penalties for consumer-owned devices, (3) prohibit multi-year contracts based on the use of a consumer-owned device, (4) ban ''additional outlet'' fees, (5) prohibit requirements that consumers lease equipment, and (6) give consumers the ability to purchase equipment outright. Commenters should include a discussion of the Commission's authority to adopt any regulations proposed.

*CableCARD Support and Reporting.* In this section, we seek comment on whether the CableCARD consumer support rules set forth in section 76.1205(b) of the Commission's rules continue to serve a useful purpose and should be retained following the D.C. Circuit's 2013 decision in *EchoStar Satellite L.L.C.* v. *FCC,* which vacated two 2003 Commission Orders adopting the CableCARD standard as the method that must be used by digital cable operators in implementing the separation of security requirement for navigation devices. We tentatively conclude that these rules continue to serve a useful purpose and propose to retain them in our rules. We seek

comment on this tentative conclusion. Alternatively, if commenters contend that the CableCARD consumer support rules should be eliminated or modified in light of EchoStar, commenters should explain the basis for their contention. To the extent that we conclude that the CableCARD consumer support rules continue to serve a useful purpose, we seek comment on whether to eliminate the requirement that the six largest cable operators submit status reports to the Commission every 90 days on CableCARD deployment and support.

In 2005, the Commission adopted a requirement that the six largest cable operators submit status reports to the Commission every 90 days on CableCARD deployment and support. The Commission adopted this reporting requirement to ensure that cable operators meet their obligations to deploy and support CableCARDs. In an effort to ''improve consumers' experience with retail navigation devices,'' the Commission in 2010 imposed specific CableCARD consumer support requirements on cable operators. Specifically, these CableCARD consumer support rules: (1) Require cable operators to support the reception of switched digital video services on retail devices to ensure that subscribers are able to access the services for which they pay regardless of whether they lease or purchase their devices; (2) prohibit price discrimination against retail devices to support a competitive marketplace for retail devices; (3) require cable operators to allow self-installation of CableCARDs where device manufacturers offer device-specific installation instructions to make the installation experience for retail devices comparable to the experience for leased devices; (4) require cable operators to provide multi-stream CableCARDs by default to ensure that cable operators are providing their subscribers with current CableCARD technology; and (5) clarify that CableCARD device certification rules are limited to certain technical features to make it easier for device manufacturers to get their products to market.

In 2013, the D.C. Circuit in EchoStar vacated the two 2003 Orders adopting the CableCARD standard as the method that must be used by all MVPDs in implementing the separation of security requirement for navigation devices. The D.C. Circuit concluded that the Commission lacked the authority under section 629 to impose encoding rules, which put a ceiling on the copy protections that MVPDs can impose, on satellite carriers. The Commission argued that those rules were not severable from the rest of the rules adopted in the 2003 Orders (including the rule that imposes the CableCARD standard), and therefore the D.C. Circuit vacated both of the orders. Subsequently, questions have been raised as to what effect, if any, the EchoStar decision has on the continued validity of the CableCARD consumer support requirements in Section 76.1205(b) of the Commission's rules.

We seek comment on whether the CableCARD consumer support rules set forth in Section 76.1205(b) continue to serve a useful purpose after the D.C. Circuit's 2013 decision in EchoStar. As discussed above, the EchoStar decision vacated the two 2003 Orders that adopted rules mandating that MVPDs use the CableCARD standard to support the separation of security requirement. The EchoStar decision did not, however, vacate or even address the consumer support rules for cable operators that choose to continue to rely on the CableCARD standard in order to comply with the separated security requirement, which remains in effect. Accordingly, we believe that the consumer support rules set forth in section 76.1205(b) continue to serve a useful purpose and should be retained. We seek comment on this belief. Are the consumer support rules still necessary to support a competitive market for retail navigation devices?

Additionally, we seek comment on whether to eliminate the CableCARD reporting requirement applicable to the six largest cable operators. Specifically, we seek comment on whether the reporting requirement is still necessary in light of the CableCARD consumer support requirements, as well as the recent repeal of the integration ban. As explained above, the reporting requirement was intended to ensure that cable operators satisfy their obligations to deploy and support CableCARDs. Are the consumer support requirements sufficient to ensure that cable operators meet these obligations? If so, is there any reason to retain the reporting requirement or should it be eliminated?

*Initial Regulatory Flexibility Act Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

*Need for and Objectives of the Proposed Rules.* In the Notice, the Commission seeks comment on proposed rules relating to the Commission's obligation under Section 629 of the Communications Act to assure a commercial market for equipment that can access multichannel video programming and other services offered over multichannel video programming systems. The NPRM tentatively concludes that new rules about multichannel video programming distributor's (MVPD's) provision of content are needed to further the goals of Section 629. It proposes such new rules, relating to the information that MVPDs must provide to allow competitive user interfaces, the security flexibility necessary to protect content, and the parity requirements necessary to ensure a level playing field between MVPD-leased equipment and competitive methods that consumers might use to access MVPD service instead of leasing MVPD equipment. The Notice also asks about MVPD fees for devices and the current status of the Commission's CableCARD rules, the existing rules arising from Section 629.

*Legal Basis.* The authority for the action proposed in this rulemaking is contained in sections 1, 4, 303, 303A, 335, 403, 624, 624A, 629, 631, 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 303, 303a, 335, 403, 544, 544a, 549, 551, 606, and 613.

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

*Wired Telecommunications Carriers.* The North American Industry Classification System (''NAICS'') defines

''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for wireline firms for the broad economic census category of ''Wired Telecommunications Carriers.'' Under this category, a wireline business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

*Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers, which category is defined above. The SBA has developed a small business size standard for this category, which is: All such businesses having 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for the entire year. Of this total, 3,144 firms had fewer than 1,000 employees, and 44 firms had 1,000 or more employees. Therefore, under this size standard, we estimate that the majority of businesses can be considered small entities.

*Cable Companies and Systems.* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data shows that there are currently 660 cable operators. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rate regulation rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,629 cable systems nationwide. Of this total, 4,057 cable systems have less than 20,000 subscribers, and 572 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

*Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' There are approximately 54 million cable video subscribers in the United States today. Accordingly, an operator serving fewer than 540,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

*Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, Wired Telecommunications Carriers, which was developed for small wireline businesses. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 3,188 firms that operated for that entire year. Of this total, 2,940 firms had fewer than 100 employees, and 248 firms had 100 or more employees. Therefore, under this size standard, the majority of such businesses can be considered small entities. However, the data we have available as a basis for estimating the number of such small entities were gathered under a superseded SBA small business size standard formerly titled ''Cable and Other Program Distribution.'' As of 2002, the SBA defined a small Cable and Other Program Distribution provider as one with $12.5 million or less in annual receipts. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network. Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined under the superseded SBA size standard would have the financial wherewithal to become a DBS service provider.

*Description of Projected Reporting, Recordkeeping and Other Compliance Requirements.* The Notice proposes the following new or revised reporting or recordkeeping requirements. It proposes that MVPDs offer three flows of information using any published, transparent format that conforms to specifications set by open standards bodies, to permit the development of competitive navigation devices with competitive user interfaces. It proposes that the flows of information not be made available to a device absent verification that the device will honor copying and recording limits, privacy, Emergency Alert System messages, the Accessibility Rules in Part 79 of the Commission's Rules, parental control information, and children's programming advertising limits.

It further proposes that each MVPD use at least one content protection system that is licensed on a reasonable and non-discriminatory basis by an organization that is not affiliated with MVPDs; that at least one such content protection system make available the entirety of the MVPD's service; and that the MVPD ensure that, on any device for which it provides an application, such a content protection system is available to competitors wishing to provide the same level of service. It also proposes a bar on Entitlement data discrimination because of the affiliation of otherwise proper devices. The Notice proposes to require each MVPD that offers its own application on unaffiliated devices without the need for MVPD-specific equipment to also offer the three information flows to unaffiliated applications without the need for MVPD-specific equipment.

Finally, the Notice proposes to require MVPDs to separately state the fees charged to lease devices on consumers' bills, and, in a possible reduction of reporting requirements, seeks comment on discontinuing a requirement that the six largest cable operators report to the Commission about their support for CableCARD.

*Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Notice proposes rules intended to assure a commercial market for competitive Navigation Devices. The Commission's has a statutory obligation to do so, and has concluded that it cannot do so if competitive Navigation Devices are tied to specific MVPDs. As a result, the compliance requirements must be the same for all MVPDs, large and small. The rules have been proposed in terms to minimize economic impact on small entities. The proposed rules allow flexibility for MVPDs while still assuring device manufacturers they can build to a manageable number of standards, and assuring consumers that they only need a single device. That flexibility arises from the fact that the proposed rules establish performance standards, not design standards. Although the compliance requirements must be the same in order to comply with our statutory mandate, the requirements themselves are clear and simple. Because they would be able, under the proposed rules, to rely on open standards for information flows and RAND licensable security, small MVPDs would not have to engage in complex compliance efforts. The only reporting requirements are related to fees for device leases, which cannot be further simplified for small entities. Finally, although the rules do not contemplate exemptions for small entities, the proposed rule requiring ''boxless' provision of the three information flows applies only to MVPDs with the technological sophistication to offer ''boxless'' programming to their own devices. Thus, smaller MVPDs that are not providing this service will not be required to implement ''boxless'' information flows by operation of the proposed rule.

*Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals.* None.

*Authority.* This Notice of Proposed Rulemaking is issued pursuant to authority contained in Sections 4(i), 4(j), 303(r), 325, 403, 616, 628, 629, 634 and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, 403, 536, 548, 549, 554, and 613.

*Ex Parte Rules.* The proceeding initiated by this Notice of Proposed Rulemaking shall be treated as ''permit-but-disclose'' proceedings in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the 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 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.

*Filing Requirements.* Pursuant to sections 1.415 and 1.419 of the Commission's rules,[1] interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'').[2]

*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 St. 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.

*Availability of Documents.* Comments and reply comments 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.

*People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large

[1] *See id.* §§ 1.415, 1.419.

[2] *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

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).

*Additional Information.* For additional information on this proceeding, contact Brendan Murray of the Media Bureau, Policy Division, (202) 418–1573 or Lyle Elder of the Media Bureau, Policy Division, (202) 418–2365.

*Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, see 5 U.S.C. 604, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this document. The IRFA is set forth in Appendix B. Written public comments are requested in the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in response to this *Notice of Proposed Rulemaking* as set forth on the first page of this document, and have a separate and distinct heading designating them as responses to the IRFA.

*Initial Paperwork Reduction Act Analysis.* This Notice of Proposed Rulemaking seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

*Ordering Clauses.* Accordingly, *it is ordered,* pursuant to the authority contained in Sections 4(i), 4(j), 303, 303A, 335, 403, 624, 624A, 629, 631, 706, and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 303a, 335, 403, 544, 544a, 549, 551, 606, and 613, that this Notice of Proposed Rulemaking and Memorandum Opinion and Order *is adopted.*

*It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking and Memorandum Opinion and Order including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 76**

Administrative practice and procedure; Cable television; Equal employment opportunity; Political candidates; Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 76 as follows:

* * * * *

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for part 76 continues to read as follows:

**Authority:** 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Amend § 76.1200 by revising paragraphs (a) through (e) and adding new paragraphs (f) through (m)to read as follows:

**§ 76.1200 Definitions.**

(a) *Affiliate.* A person or entity that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, as defined in the notes accompanying § 76.501.

(b) *Certificate.* A document that certifies that a Navigation Device will honor privacy, Emergency Alert System messages, the Accessibility Rules in part 79 of this Chapter, parental control information, and children's programming advertising limits.

(c) *Compliant Security System.* A conditional access system or link protection technology that: (1) Is licensable on reasonable and nondiscriminatory terms; (2) relies on a Trust Authority not substantially controlled by any multichannel video programming distributor or group of multichannel video programming distributors; and (3) is licensable on terms that require licensees to comply with robustness and compliance rules.

(d) *Conditional access.* The mechanisms that provide for selective access and denial of specific services and make use of signal security that can prevent a signal from being received except by authorized users.

(e) *Content Delivery Data.* Data that contains the Navigable Service and any information necessary to make the Navigable Service accessible to persons with disabilities under part 79 of this Title.

(f) *Entitlement Data.* Information about (1) which Navigable Services a subscriber has the rights to access and (2) the rights the subscriber has to use those Navigable Services. Entitlement data shall reflect identical rights that a consumer has on Navigation Devices that the multichannel video programming distributor sells or leases to its subscribers.

(g) *Multichannel video programming distributor.* A person such as, but not limited to, a cable operator, a BRS/EBS provider, a direct broadcast satellite service, or a television receive-only satellite program distributor, who owns or operates a multichannel video programming system.

(h) *Multichannel video programming system.* A distribution system that makes available for purchase, by customers or subscribers, multiple channels of video programming other than an open video system as defined by § 76.1500(a). Such systems include, but are not limited to, cable television systems, BRS/EBS systems, direct broadcast satellite systems, other systems for providing direct-to-home multichannel video programming via satellite, and satellite master antenna systems.

(i) *Navigable Service.* A multichannel video programmer's video programming and Emergency Alert System messages (see 47 CFR part 11).

(j) *Navigation Devices.* Devices such as converter boxes, interactive communications equipment, and other equipment used by consumers to access multichannel video programming and other services offered over multichannel video programming systems.

(k) *Open Standards Body.* A standards body (1) whose membership is open to consumer electronics, multichannel video programming distributors, content companies, application developers, and consumer interest organizations, (2) that has a fair balance of interested members, (3) that has a published set of procedures to assure due process, (4) that has a published appeals process, and (5) that strives to set consensus standards.

(l) *Service Discovery Data.* Information about available Navigable Services and any instructions necessary to request a Navigable Service.

(m) *Trust Authority.* An entity that issues certificates and keys used by a

Navigation Device to access Navigable Services that are secured by a given Compliant Security System.

■ 3. Revise § 76.1206 to read as follows:

**§ 76.1206. Equipment sale or lease charge subsidy prohibition.**

After January 1, 2017, multichannel video programming distributors shall state the price for Navigation Devices separately on consumer bills.

■ 4. Add § 76.1211 to read as follows:

**§ 76.1211. Information Necessary to Assure a Commercial Market for Navigation Devices.**

(a) Each multichannel video programming distributor shall make available to each Navigation Device that has a Certificate the Service Discovery Data, Entitlement Data, and Content Delivery Data for all Navigable Services in published, transparent formats that conform to specifications set by Open Standards Bodies in a manner that does not restrict competitive user interfaces and features.

(b) If a multichannel video programming distributor makes available an application that allows access to multichannel video programming without the technological need for additional multichannel video programming distributor-specific equipment, then it shall make Service Discovery Data, Entitlement Data, and Content Delivery Data available to competitive Navigation Devices without the need for multichannel video programming distributor-specific equipment.

(c) Each multichannel video programming distributor shall support at least one Compliant Security System.

(1) At least one supported Compliant Security System shall enable access to all resolutions and formats of the multichannel video programming distributor's Navigable Services with the same Entitlement Data to use those Navigable Services as the multichannel video programming distributor affords Navigation Devices that it leases, sells, or otherwise provides to its subscribers.

(2) Entitlement Data shall not discriminate on the basis of the affiliation of the Navigation Device.

(d) On any device on which a multichannel video programming distributor makes available an application to access multichannel video programming, the multichannel video programming distributor must support at least one Compliant Security System that offers access to the same Navigable Services with the same rights to use those Navigable Services as the multichannel video programming distributor affords to its own application.

[FR Doc. 2016–05763 Filed 3–15–16; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Parts 383 and 384

**[Docket No. FMCSA–2016–0051]**

**RIN 2126–AB68**

## Commercial Driver's License Requirements of the Moving Ahead for Progress in the 21st Century Act and the Military Commercial Driver's License Act of 2012

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM), request for comments.

**SUMMARY:** FMCSA proposes amendments to its Commercial Driver's License (CDL) regulations that would ease the transition of military personnel into civilian careers in the truck and bus industry by simplifying the process of getting a commercial learner's permit (CLP) or CDL. This rulemaking would extend the time period for applying for a skills test waiver from 90 days to 1 year after leaving a military position requiring the operation of a commercial motor vehicle (CMV). This rulemaking also would allow States to accept applications and administer the written and skills tests for a CLP or CDL from active duty military personnel who are stationed in that State. States that choose to accept such applications would be required to transmit the test results electronically to the State of domicile of the military personnel. The State of domicile would be required to issue the CDL or CLP on the basis of those results.

**DATES:** Comments on this notice must be received on or before May 16, 2016.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA–2016–0051 using any of the following methods:

- *Federal eRulemaking Portal: 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., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

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 for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

**FOR FURTHER INFORMATION CONTACT:** Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by email at *Selden.fritschner@dot.gov,* or by telephone at 202–366–0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

Section 32308 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, July 6, 2012] required FMCSA to undertake a study to assess Federal and State regulatory, economic, and administrative challenges in obtaining CDLs faced by members and former members of the Armed Forces, who operated qualifying motor vehicles during their service. As a result of this study, FMCSA provided a report to Congress titled ''Program to Assist Veterans to Acquire Commercial Driver's Licenses'' (November 2013) (available in the docket for this rulemaking). The report contained six recommended actions, and elements of this report comprise the main parts of this rulemaking. These actions are:

(1) Revise 49 CFR 383.77(b)(1) governing the Military Skills Test Waiver to extend the time period to apply for a waiver from 90 days to 1 year following separation from military service

(2) Revise 49 CFR 383.77(b)(3) to add the option to qualify for a CDL based on training and experience in an MOC [Military Occupational Specialty] dedicated to military CMV operation

(3) Revise the definitions of CDL and CLP in 49 CFR 383.5 and 49 CFR 384.212 and related provisions governing the domicile requirement, in order to implement the statutory waiver enacted by The Military Commercial Driver's License Act of 2012 . . .

This NPRM would ease the current burdens on military personnel applying for CLPs and CDLs issued by a State Driver Licensing Agency (SDLA) in accordance with 49 CFR parts 383 and

384 in two ways. First, it would extend the time in which former military personnel are allowed to apply for a skills test waiver from the 90 days currently allowed by 49 CFR 383.77 to 1 year. On July 8, 2014, FMCSA issued a temporary exemption under 49 CFR part 381 that extended the skills test waiver to 1 year [79 FR 38659].[1] The change proposed by this rulemaking would make the 1-year waiver period permanent. Second, this NPRM would allow States to accept applications and administer all necessary tests for a CLP or CDL from active duty service members stationed in that State who are operating in a Military Occupational Specialty as full-time CMV drivers. States that choose to exercise this option would be required to transmit the application and test results electronically to the service member's State of domicile. This would enable service members to complete their licensing requirements without incurring the time and expense of returning home. The State of domicile would be required to issue the CLP or CDL in accordance with otherwise applicable procedures.

## II. Public Participation and Request for Comments

### *A. Submitting Comments*

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2016–0051), 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. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2016–0051, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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 this rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

### *B. Viewing Comments and Documents*

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2016–0051, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

### *C. Privacy Act*

All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide. Anyone may search the electronic form of 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 complete Privacy Act Statement in the **Federal Register** (FR) notice published on January 17, 2008 (73 FR 3316) or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

## III. Legal Basis

This rulemaking rests on the authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified at 49 U.S.C. chapter 313 and implemented by 49 CFR parts 382, 383, and 384. It responds to section 5104(b) of the Fixing America's Surface Transportation (FAST) Act [Pub. L. 114–94, 129 Stat. 1312, December 4, 2015], which requires FMCSA to implement the recommendations included in the report submitted pursuant to section 32308 of MAP–21, discussed above. Section 5104(c) of the FAST Act also requires FMCSA to implement the Military Commercial Driver's License Act of 2012 [49 U.S.C. 31311(a)(12)(C)]. As explained later in the preamble, this proposed rule would give military personnel all of the benefits of the Military CDL Act, while avoiding certain adverse implications of that statute.

The CMVSA provides broadly that ''[t]he Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle'' (49 U.S.C. 31305(a)). Those regulations shall ensure that ''(1) an individual issued a commercial driver's license [CDL] [must] pass written and driving tests for the operation of a commercial motor vehicle [CMV] that comply with the minimum standards prescribed by the Secretary under section 31305(a) of this title'' (49 U.S.C. 31308(1)). To avoid the withholding of certain Federal-aid funds, States must adopt a testing program ''consistent with the minimum standards prescribed by the Secretary of Transportation under section 31305(a) of this title'' (49 U.S.C. 31311(a)(1)).

Potential CMV drivers often obtain CDL training outside of their State of domicile. Driver training schools typically provide their students with a ''representative'' vehicle to use for the required skills test (see 49 U.S.C. 31305(a)(2)), as well as a valid CDL holder to accompany the applicant to the test site. Until 2012, however, the CMVSA provided that a CDL could be issued only by the driver's State of domicile (49 U.S.C. 31311(a)(12)(A)). The cost to out-of-State applicants returning to their home State, renting a ''representative'' vehicle, and finding a CDL holder to accompany the applicant could be substantial in terms of both personal time and financial expense. Therefore, on the basis of the authority cited in the previous paragraph, FMCSA's final rule on ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (76 FR 26854, May 9, 2011) required States where a driver is domiciled to accept the result of skills tests administered by a different State (49 CFR 383.79).

For military personnel, their legal residence or ''domicile'' is the State they consider their permanent home, where they pay taxes, vote, and get a driver's license. Military personnel are often stationed in a different State. The Military CDL Act allows a State to issue CDLs to certain military personnel not domiciled in the State, if their temporary or permanent duty stations are located in that State (49 U.S.C. 31312(a)(12)(C)). However, this procedure creates problems for service members trying to maintain legal domicile in another State. Because

[1] Available in the docket for this rulemaking.

drivers' licenses are often treated as proof of domicile, obtaining a CDL from the State where they are stationed could result in the loss of domicile and corresponding benefits (*e.g.,* tax breaks) in what they consider their ''home'' State. FMCSA, therefore, proposes to utilize the CMVSA's broader authority to allow the State where military personnel are stationed to accept CLP or CDL applications and to administer written and skills tests for the CDL. The proposed rule would require a State that adopted this procedure to transmit the application and test results electronically to the State of domicile, which in turn would be required to issue the CLP or CDL. This would maintain the link between the issuing State and the driver's State of domicile which is mandated by the CMVSA [49 U.S.C. 31311(a)(12)] and was observed until the Military CDL Act authorized a different but problematical procedure.

## IV. Discussion of Proposal

### *A. Section 383.5: New Definition of ''Military Services''*

FMCSA would amend § 383.5 by adding a definition of ''military services'' to the list of definitions in that section. A definition for ''military services'' is needed in order to interpret the new requirements in part 383 in this rulemaking.

### *B. Section 383.77: Allowing States To Extend Their Acceptance of the Skills Test Waiver From 90 days to 1 year For separated Military Personnel*

This NPRM would amend § 383.77(b)(1) to allow States to accept Skills Test Waiver applications from military personnel for up to 1 year after they were regularly employed as military CMV drivers. FMCSA believes that this would give former military personnel a better opportunity to obtain a CDL in a way that will not negatively affect safety.

Currently, former military personnel who were regularly employed in the preceding 90 days in a military position requiring the operation of a CMV may apply for a skills test waiver if they meet certain conditions. To date, more than 10,000 separated military personnel have taken advantage of the Skills Test Waiver. In the November 2013 report to Congress, ''Program to Assist Veterans to Acquire Commercial Driver's Licenses,'' FMCSA concluded that lengthening that period would ease the transition of service members and veterans [2] to civilian life. FMCSA recommended a revision to the Military Skills Test Waiver in 49 CFR 383.77(b)(1) to extend the period of availability from 90 days to 1 year.

The Virginia Department of Motor Vehicles (DMV) subsequently requested an exemption from § 383.77(b)(1) to allow a 1-year waiver period for military personnel (available in docket FMCSA–2014–0096). On April 7, 2014, FMCSA published a **Federal Register** notice announcing the request (79 FR 19170). Five comments were received; all supported the application. In addition, another SDLA, The State of New York, Department of Motor Vehicles, supported ''broader application of this exemption to all jurisdictions.'' All commenters supported the Virginia request, saying that extending the period to apply for a waiver from 90 days to 1 year would enable more military personnel to obtain CDLs. Additionally, in a letter to FMCSA dated April 10, 2014, the America Association of Motor Vehicle Administrators, which represents the State and Provincial officials in the United States and Canada who administer and enforce motor vehicle laws, requested that FMCSA consider a blanket exemption for all U.S. jurisdictions.

In a notice published on July 8, 2014 (79 FR 38645), FMCSA determined that the exemption requested by the Virginia DMV would maintain a level of safety equivalent to, or greater than, the level that would be achieved without the exemption, as required by 49 CFR 381.305(a). The Agency, therefore, approved the exemption and made it available to all SDLAs. However, the exemption did not change the language of § 383.77(b)(1) and the exemption remains effective for only 2 years. The current exemption expires July 7, 2016.

### *C. Section 383.79: Allow the State Where the Person Is Stationed and the State of Domicile To Coordinate CLP/CDL Testing and CDL Issuance*

This proposal makes existing paragraphs (a) and (b) into paragraphs (a)(1) and (2) and adds new paragraphs (b)(1) and (2). New paragraphs (a)(1) and (2) re-codify but do not add new material to those sections currently in the CFR. New paragraphs (b)(1) and (2) add new provisions that outline the provisions for active-duty personnel to obtain CLPs and CDLs.

Many active-duty military personnel would like to obtain CDLs while still in the military services, but are often stationed outside their State of domicile. This NPRM would allow a State to accept applications and administer CDL knowledge and skills tests for military personnel stationed there. That State would then be required to transmit the application and test results to the driver's State of domicile, which would be required to accept these documents and issue the CLP or CDL. For example, an airman might be stationed at Andrews Air Force Base in Maryland and live in Alexandria, Virginia. He currently holds a base driver's license in his home state of record: Kentucky. His application for a CLP would be made through the Maryland Motor Vehicle Administration (Maryland SDLA), because that is the State where he is stationed. Assuming the Maryland SDLA agreed to accept an application from a non-domiciled driver, it would forward the appropriate paperwork and test results to the Kentucky Department of Transportation (Kentucky SDLA), which would issue him a CLP or CDL.

FMCSA believes this NPRM would simplify the task of obtaining a CDL without jeopardizing (1) any benefits associated with a service member's official State of domicile, or (2) the single-domicile/single issuer concept that has been essential to the CDL program since the beginning. Additionally, it would reduce travel time and other costs associated with traveling to the State of domicile for testing. The motor carrier industry would also benefit from a larger supply of licensed CMV drivers.

A recent FMCSA rulemaking required the standardization of CLP and CDL testing and issuance: Commercial Driver's License Testing and Commercial Learner's Permit Standards (May 9, 2011, 76 FR 26854, and amended March 25, 2013, 78 FR 17875). This proposal uses existing procedures to make it easier for active duty military personnel to get both CLPs and CDLs. Military personnel would apply for a CLP in the State where they are stationed. After the driver passes the knowledge test, the local SDLA would electronically transmit the driver's test score to the State of domicile for issuance of a CLP. After the driver passes the skills test where he or she is stationed, the same SDLA would electronically transmit his/her test score to the State of domicile for issuance of a CDL. FMCSA believes this approach is an appropriate alternative to literal application of the Military CDL Act of 2012. That Act allowed a State where military personnel are stationed to issue CDLs, thus creating ambiguity about the driver's actual State of domicile: The State that issued the CDL or the State where the driver wished to maintain

[2] Veteran: A person who served on active duty in the Army, Navy, Air Force, or Coast Guard and who was discharged or released therefrom under conditions other than dishonorable.

his/her permanent residence. The Military CDL Act was designed to reduce unnecessary bureaucratic burdens on active-duty military personnel and veterans, and this rulemaking addresses that requirement. This NPRM also permits CMV drivers in the armed forces to apply for CLPs and CDLs without running the risk of inadvertently changing their State of domicile—an unavoidable problem with the Military CDL Act.

Because CLP and CDL test requirements are uniform nationally, the State where an applicant is stationed and the State of domicile administer the same knowledge and skills tests. A State of domicile, therefore, can accept knowledge and skills test results from another State and issue the CLP and then the CDL without concern that different States may have different licensing standards.

The procedure for transmitting skills test results among States is already in place as a result of the May 2011 final rule on Commercial Driver's License Testing and Commercial Learner's Permit Standards. This new provision would not require a major technological change for the States to send and receive test result information. Some minor software modifications and updates would be required to allow transmission of the knowledge test results (as only skills test results are presently transmitted via these systems).

FMCSA analyzed this proposal and believes that it is safety-neutral. Because the CDL provisions are now standardized across all SDLAs, all drivers will be subject to the same knowledge and skills tests.

Section 5401(a) of the FAST Act added to 49 U.S.C. 31305 a new paragraph (d), which requires FMCSA to (1) exempt certain ex-military personnel from the CDL skills test if they had military experience driving CMV-like vehicles; (2) extend the skills test waiver to one year; and (3) credit the CMV training military drivers receive in the armed forces toward applicable CDL training and knowledge requirements. This rule would address the first and second of these requirements in considerable detail; the third, however, will require subsequent rulemaking.

Section 5302 of the FAST Act requires FMCSA to give priority to statutorily required rules before beginning other rulemakings, unless it determines that there is a significant need for the other rulemaking and so notifies Congress. This NPRM is required by the provisions of section 5401. Even in the absence of those mandates, however, FMCSA believes the need to improve opportunities for military personnel returning to civilian life justifies the publication of this NPRM.

*D. Section 384.301: Compliance Date for SDLAs*

FMCSA would amend 49 CFR 384.301 by adding a new paragraph (j), specifying a 3-year compliance date for States. FMCSA has always given the States 3 years after the effective date of any new CDL rule to come into substantial compliance with its requirements. This allows the States time to pass necessary legislation and modify information systems, including the Commercial Driver's License Information System (CDLIS), to comply with the new requirements.

## V. Regulatory Analyses

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

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993) as supplemented by E.O. 13563 and DOT policies and procedures, FMCSA must determine whether a regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive order. The order defines ''significant regulatory action'' as one likely to result in a rule that may:

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

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

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

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

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. This rulemaking would not result in an annual effect on the economy of $100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. This NPRM would amend existing procedures and practices governing administrative licensing actions.

Costs and Benefits

FMCSA evaluated potential costs and benefits associated with this rulemaking and the Agency does not expect the proposed changes to impose any new or increased costs. However, FMCSA estimates that these changes could result in a cost savings between $462,000 and $1,062,600 per year. The following sections provide an overview of this analysis.

Section 383.77

The rulemaking would extend the time to apply for a skills test waiver from 90 days to 1 year for former service members. This action would codify an existing exemption published on July 8, 2014 (79 FR 38645). That notice granted immediate relief from 49 CFR 383.77(b)(1) to military service members separating from active duty. The exemption did not change the CFR language and is effective for only 2 years, although it could be extended.

As the rulemaking would codify an existing practice, FMCSA does not expect this revision to have any economic impact. However, the Agency believes that permanently granting military personnel more time to apply for a CDL after separation from service would be beneficial to both service members and prospective employers by creating more employment opportunities.

Section 383.79(b)

This proposal would allow States to submit the results of both the skills and knowledge tests of military applicants to the driver's State of domicile for issuance of the CLP and CDL. This information would be transmitted using the same electronic system that was previously established for the skills test. The proposed rule would require all States to use either the CSTIMS—Commercial Skills Test Information Management System—or ROOSTR—Report Out-Of-State Test Results, however, both of these systems are currently managed by the American Association of Motor Vehicle Administrators (AAMVA) at no cost to the States. While some software modifications and updates may be required to allow transmission of the knowledge test results (as only skills test results are presently transmitted via these systems), FMCSA expects that the cost of any updates to allow for the transmission of this additional information would be very minor. In addition, FMCSA has determined that three States are not currently using either one of these systems. However, FMCSA does not expect those States

would incur costs to adopt one of these systems, as the costs for adoption are currently covered under an FMCSA grant program. There may be future costs associated with the management and maintenance of these systems, but FMCSA does not have an estimate of these costs and specifically requests comment on potential costs that may be incurred by the operation or adoption of either of these systems.

FMCSA expects this provision to result in a cost savings for drivers. Specifically, this provision would allow States where active-duty military personnel are stationed to accept CLP or CDL applications and administer knowledge and skills tests for those personnel. The rule would require any such State to transmit electronic copies of the application and test results for military personnel to the driver's State of domicile, which in turn would be required to issue a CLP or CDL on the basis of that information. This would save military personnel the travel costs to return to their State of domicile. For example, if the driver were stationed in Virginia but his/her State of domicile was Texas, the rule would allow Texas to issue the driver a CLP and CDL based on successful testing conducted in Virginia. The driver would be saved the travel costs of returning to Texas, renting or borrowing a CMV for the test drive, and finding CDL holder to accompany the applicant to the testing site.

To estimate how many drivers might take advantage of this provision, FMCSA started with the number who have used the military skills test waiver. Between May 2011 and February 2015, more than 10,100 skills test waivers were granted for military drivers, or an average of approximately 2,460 per year.[3] For purposes of this analysis, FMCSA assumed that number would remain constant in future years. To estimate the number of drivers who may be stationed in a State other than their State of domicile and who, thus, could potentially take advantage of this provision, FMCSA used an estimate of the number of drivers who attend training outside their State of domicile from the Regulatory Evaluation conducted for the 2011 ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' Final Rule.[4] According to this evaluation, approximately 25 percent of drivers obtained training outside their State of domicile. It is likely that more than 25 percent of military personnel are stationed outside their State of domicile. However, for purposes of this analysis FMCSA used the 25 percent estimate to calculate the population of drivers who may take advantage of this provision. Based on these assumptions, this provision affects approximately 660 drivers each year.

FMCSA does not have information on the States where these drivers are domiciled or stationed. To estimate the potential costs savings, FMCSA used the scenario of a driver who is stationed in Virginia but domiciled in Texas. To present a low- and high-end estimate of the potential cost savings, FMCSA evaluated two scenarios in which the driver travels between Norfolk, Virginia, and Houston, Texas. In the first scenario, the driver takes a commercial flight. FMCSA estimates that a typical roundtrip flight between Norfolk and Houston costs approximately $700.[5] In the second scenario, the driver drives a private vehicle between these locations. The current private vehicle mileage rate from the General Services Administration (GSA) is $0.575 per mile[6] and the distance between Norfolk and Houston is approximately 2800 miles, roundtrip. FMCSA estimates that it would cost the driver approximately $1,610 to drive between Virginia and Texas for CDL testing.

To estimate the potential cost savings, FMCSA multiplied the round trip flight price by the annual affected driver population to calculate the lower-bound estimate, and multiplied the mileage cost by the annual affected driver population to calculate the upper-bound estimate. Table 1 provides an overview of the expected annual cost savings, as well as the discounted total over the next 10 years. Based on the estimated participation rates, the total savings would be between $462,000 and $1,062,600 per year. In addition, the driver might incur lodging and rental costs depending on the location of the testing; however, these potential cost savings were not included in this analysis.

TABLE 1—ESTIMATED ANNUAL AND 10-YEAR COST SAVINGS FOR OUT OF STATE DRIVERS

| Scenario | Population per year | Cost savings per driver | Total savings per year | 10-year total (3% discount rate) | 10-year total (7% discount rate) |
|---|---|---|---|---|---|
| Lower-Bound (flight) | 660 drivers | $700 | $462,000 | $4,059,182 | $3,472,037 |
| Upper-Bound (car travel) | 660 drivers | 1,610 | 1,062,600 | 9,336,119 | 7,985,686 |

In addition to the cost savings described above, there may be other non-quantified benefits associated with these provisions. For example, this proposal also allows military personnel to enter the job market more quickly and ease the transition after separation from service. This rulemaking may also increase the availability of drivers qualified to work for motor carriers, since military personnel would be able to complete their testing and licensing during their separation process. Finally, reducing unemployment for former military personnel may also reduce the amount of unemployment compensation paid by the Department of Defense to former service members.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and 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. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that

[3] Estimated based on information from an assessment of SDLAs, conducted by FMCSA in February 2015.

[4] Final Rule Regulatory Evaluation. *Commercial Driver's License Testing and Commercial Learner's Permit Standards.* 76 FR 26853. May 9, 2011. Docket No. FMCSA–2007–27659. *https://www.federalregister.gov/articles/2011/05/09/2011-10510/commercial-drivers-license-testing-and-commercial-learners-permit-standards.*

[5] The flight price $700 was estimated using the General Service Administration *Airline City Pairs Search Tool* for flights between Norfolk, Virginia and Houston, Texas. *http://cpsearch.fas.gsa.gov/.*

[6] U.S. General Services Administration. Privately Owned Vehicle (POV) Mileage Reimbursement Rates, as of January 1, 2015. *http://www.gsa.gov/portal/content/100715.*

agencies strive to lessen any adverse effects on these businesses.

Under the standards of the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857) (SBREFA), this proposed rule would not impose a significant economic impact on a substantial number of small entities because the revisions would either codify an existing practice or allow States to provide more flexibility for military personnel seeking to obtain a CDL. FMCSA does not expect the changes to impose any new or increased costs on small entities. Consequently, I certify that this action would not have a significant economic impact on a substantial number of small entities.

*C. Unfunded Mandates Reform Act of 1995*

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, taken together, or by the private sector of $155 million (which is the value of $100 million in 1995 after adjusting for inflation to 2014 dollars) in any 1 year, and if so, to take steps to minimize these unfunded mandates. This rulemaking would not result in an additional net expenditure by State, local and Tribal governments, in the aggregate or by the private sector, of $155 million or more in any 1 year, nor would it affect small governments.

*D. Executive Order 12988 (Civil Justice Reform)*

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

*E. Executive Order 13045 (Protection of Children)*

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies, when issuing ''economically significant'' rules the agency has reason to believe concern an environmental health or safety risk that may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this proposed rule is economically insignificant. Therefore, no analysis of the impacts on children is required.

*F. Executive Order 12630 (Taking of Private Property)*

This proposed rule does not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

*G. Executive Order 13132 (Federalism)*

This rulemaking does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

*H. Executive Order 12372 (Intergovernmental Review)*

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this proposed rule.

*I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This proposed rule does not have tribal implications under E.O. 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.

*J. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that this proposed rule would not result in changes to the current information collection requirements.

*K. National Environmental Policy Act and Clean Air Act*

FMCSA analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraph 6.b. The Categorical Exclusion (CE) in paragraph 6.b. covers regulations which are editorial or procedural, such as those updating addresses or establishing application procedures, and procedures for acting on petitions for waivers, exemptions and reconsiderations, including technical or other minor amendments to existing FMCSA regulations.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

*L. Executive Order 12898 (Environmental Justice)*

Under E.O. 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA has determined that this proposed rule would have no environmental justice effects, nor would it have any collective environmental impact.

*M. Executive Order 13211 (Energy Effects)*

FMCSA determined that the proposed rule would not significantly affect energy supply, distribution, or use. Therefore, no Statement of Energy Effects is required. FMCSA analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it would not be a ''significant energy action'' under that E.O. because this rulemaking is economically insignificant and it is not likely to have an adverse effect on the supply, distribution, or use of energy.

*N. E-Government Act of 2002*

The E-Government Act of 2002, Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. This rulemaking would not collect any personal information.

*O. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies adopting Government technical standards to consider whether voluntary consensus standards are available. This Act also requires Agencies to ''use technical standards that are developed or adopted by voluntary consensus standards bodies'' to carry out policy objectives determined by the agencies, unless the standards are ''inconsistent with applicable law or otherwise impractical.'' If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. This proposed rule would not involve the adoption of any technical standards.

*P. Privacy Impact Assessment*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. In accordance with this Act, a privacy impact analysis is warranted to address any privacy implications contemplated in the rulemaking. The Agency submitted a Privacy Threshold Assessment analyzing the privacy implications to the Department of Transportation, Office of the Secretary's Privacy Office to determine whether a PIA is required.

The DOT Chief Privacy Officer has evaluated the risks and effects that this rulemaking might have on collecting, storing, and sharing PII and has examined protections and alternative information handling processes in order to mitigate potential privacy risks. There are no privacy risks and effects associated with this proposed rule.

**List of Subjects**

*49 CFR 383*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

*49 CFR Part 384*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter 3, parts 383 and 384 to read as follows:

## PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 is revised to read as follows:

**Authority:** Authority: 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

■ 2. Amend § 383.5 by adding the definition of ''Military services'' in alphabetical order to read as follows:

**§ 383.5 Definitions.**

* * * * *

*Military services* means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, and their associated reserve, National Guard, and Auxiliary units.

* * * * *

■ 3. Amend § 383.77 by revising paragraph (b)(1) to read as follows:

**§ 383.77 Substitute for driving skills tests for drivers with military CMV experience.**

* * * * *

(b) * * *

(1) Is regularly employed or was regularly employed within the last year in a military position requiring operation of a CMV;

* * * * *

■ 4. Revise § 383.79 to read as follows:

**§ 383.79 Testing of out-of-State applicants and military personnel.**

(a) *Applicant.* (1) A State may administer its skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another U.S. jurisdiction (*i.e.,* his/her State of domicile). A State that administers such a test must transmit the test result electronically directly from the testing State to the licensing State in an efficient and secure manner.

(2) The State of domicile of a CDL applicant must accept the results of a skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73.

(b) *Military personnel.* (1) A State where active duty military personnel who are operating in a Military Occupational Specialty as full-time commercial motor vehicle drivers are stationed, but not domiciled, may accept an application for a CLP or CDL from such personnel and administer to them its knowledge and skills tests, in accordance with subparts F, G, and H of this part. Such completed application and test results must be transmitted electronically directly from the testing State to the State of domicile of such personnel in an efficient and secure manner.

(2) The State of domicile of a CLP or CDL applicant on active military duty must accept the completed application form and results of knowledge and skills tests administered to the applicant by the State where he or she is currently stationed, as authorized by paragraph (b)(1) of this section, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's application and testing requirements under § 383.71, and the State's test administration requirements under § 383.73, and issue the applicant a CLP or CDL.

## PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

■ 5. The authority citation for part 384 continues to read as follows:

**Authority:** 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

■ 6. Amend § 384.301 by adding paragraph (j) to read as follows:

**§ 384.301 Substantial compliance general requirements.**

* * * * *

(j) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of [EFFECTIVE DATE OF FINAL RULE] as soon as practical, but, unless otherwise specifically provided in this part, not later than [3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].

Issued under authority delegated in 49 CFR 1.87 on: March 9, 2016.

**T.F. Scott Darling, III,**

*Acting Administrator.*

[FR Doc. 2016–05913 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[4500030115]**

## Endangered and Threatened Wildlife and Plants; 90-Day Findings on 29 Petitions

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition findings and initiation of status reviews.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on various petitions to list, reclassify, or delist fish, wildlife, or plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that 13 petitions do not present substantial scientific or commercial information indicating that the petitioned actions may be warranted, and we are not initiating status reviews in response to these petitions. We refer to these as ''not-substantial'' petition findings. We also find that 16 petitions present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we plan to initiate a review of the status of these species to determine if the petitioned actions are warranted. To ensure that these status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these species. Based on the status reviews, we will issue 12-month findings on the petitions, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** When we conduct status reviews, we will consider all information that we have received. To ensure that we will have adequate time to consider submitted information during the status reviews, we request that we receive information no later than May 16, 2016. For information submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below), this would mean submitting the information electronically by 11:59 p.m. Eastern Time on that date.

**ADDRESSES:** *Not-substantial petition findings:* The not-substantial petition findings announced in this document are available on *http://www.regulations.gov* under the appropriate docket number (see Table 1 in **SUPPLEMENTARY INFORMATION**), or on the Service's Web site at *http://ecos.fws.gov.* Supporting information in preparing these findings is available for public inspection, by appointment, during normal business hours by contacting the appropriate person, as specified under Table 3 in **SUPPLEMENTARY INFORMATION**. If you have new information concerning the status of, or threats to, any of these species or their habitats, please submit that information to the person listed under Table 3 in **SUPPLEMENTARY INFORMATION**.

*Status reviews:* You may submit information on species for which a status review is being initiated by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter the appropriate docket number (see Table 2 in **SUPPLEMENTARY INFORMATION**). You may submit information by clicking on ''Comment Now!'' If your information will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard* copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [Insert appropriate docket number; see Table 2 in **SUPPLEMENTARY INFORMATION**]; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Request for Information for Status Reviews for more information).

**FOR FURTHER INFORMATION CONTACT:** See Table 3 in **SUPPLEMENTARY INFORMATION** for specific people to contact for each species.

**SUPPLEMENTARY INFORMATION:**

## Not Substantial Findings

The not-substantial petition findings announced in this document are listed in Table 1 below, and are available on *http://www.regulations.gov* under the appropriate docket number, or on the Service's Web site at *http://ecos.fws.gov.*

TABLE 1—LIST OF NOT-SUBSTANTIAL FINDINGS

| Common name | Docket No. | URL to docket in Regulations.gov |
|---|---|---|
| Acuna cactus—delist | FWS–R2–ES–2016–0025 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0025.* |
| Arizona night lizard | FWS–R2–ES–2015–0075 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2015-0075.* |
| Arizona wetsalts tiger beetle | FWS–R2–ES–2016–0027 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0027.* |
| Bezy's night lizard | FWS–R2–ES–2015–0076 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2015-0076.* |
| Cheoah Bald salamander | FWS–R4–ES–2015–0081 | *http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2015-0081.* |
| Cow Knob salamander | FWS–R5–ES–2015–0084 | *http://www.regulations.gov/#!docketDetail;D=FWS-R5-ES-2015-0084.* |
| MacDougal's yellowtops | FWS–R2–ES–2016–0033 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0033.* |
| Monito skink | FWS–R4–ES–2016–0034 | *http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2016-0034.* |
| Navasota ladies-tresses—delist | FWS–R2–ES–2016–0035 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0035.* |
| Patagonia eyed silkmoth | FWS–R2–ES–2016–0036 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0036.* |
| Reticulate collared lizard | FWS–R2–ES–2015–0109 | *http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2015-0109.* |
| South Mountain gray-cheeked salamander. | FWS–R4–ES–2015–0117 | *http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2015-0117.* |
| Southern dusky salamander | FWS–R4–ES–2016–0038 | *http://www.regulations.gov/#!docketDetail;D=FWS-R4-ES-2016-0038.* |

**Substantial Findings**

*List of Substantial Findings*

The list of substantial findings is given below in Table 2.

TABLE 2—LIST OF SUBSTANTIAL FINDINGS FOR WHICH A STATUS REVIEW IS BEING INITIATED.

| Common name | Docket No. | URL to docket in Regulations.gov |
|---|---|---|
| African elephant—reclassify | FWS–HQ–ES–2016–0010 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0010.* |
| American burying beetle—delist | FWS–R2–ES–2016–0011 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0011.* |
| Chinese pangolin | FWS–HQ–ES–2016–0012 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0012.* |
| Deseret milkvetch—delist | FWS–R6–ES–2016–0013 | *http://www.regulations.gov/#!docketDetail;D=FWS-R6-ES-2016-0013.* |
| Giant ground pangolin | FWS–HQ–ES–2016–0014 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0014.* |
| Indian pangolin | FWS–HQ–ES–2016–0015 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0015.* |
| Leoncita false-foxglove | FWS–R2–ES–2016–0016 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0016.* |
| Long-tailed pangolin | FWS–HQ–ES–2016–0017 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0017.* |
| Philippine pangolin | FWS–HQ–ES–2016–0018 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0018.* |
| Rio Grande chub | FWS–R2–ES–2016–0019 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0019.* |
| Rio Grande sucker | FWS–R2–ES–2016–0020 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0020.* |
| Southwestern willow flycatcher—delist. | FWS–R2–ES–2016–0039 | *http://www.regulations.gov/#!docketDetail;D=FWS-R2-ES-2016-0039.* |
| Sunda pangolin | FWS–HQ–ES–2016–0021 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0021.* |
| Tree pangolin | FWS–HQ–ES–2016–0022 | *http://www.regulations.gov/#!docketDetail;D=FWS-HQ-ES-2016-0022.* |
| Western bumble bee | FWS–R6–ES–2016–0023 | *http://www.regulations.gov/#!docketDetail;D=FWS-R6-ES-2016-0023.* |
| Yellow-banded bumble bee | FWS–R5–ES–2016–0024 | *http://www.regulations.gov/#!docketDetail;D=FWS-R5-ES-2016-0024.* |

*Request for Information for Status Reviews*

When we make a finding that a petition presents substantial information indicating that listing, reclassification, or delisting a species may be warranted, we are required to review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on these species from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns; and

(d) Historical and current population levels, and current and projected trends.

(2) The five factors that are the basis for making a listing, reclassification, or delisting determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), including past and ongoing conservation measures that could decrease the extent to which one or more of the factors affect the species, its habitat, or both. The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); or

(e) Other natural or manmade factors affecting its continued existence (Factor E).

(3) The potential effects of climate change on the species and its habitat, and the extent to which it affects the habitat or range of the species.

If, after the status review, we determine that listing is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) for domestic (U.S.) species under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information for the species listed in Table 2 (to be submitted as provided for in the **ADDRESSES** section) on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species''; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat falls within the definition of ''critical habitat'' at section 3(5) of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning these status reviews by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

**Contacts**

Contact information is provided below in Table 3 for both substantial and not-substantial findings.

TABLE 3—CONTACTS

| Common name | Contact person |
|---|---|
| Acuna cactus | Brady McGee, 505–248–6657; *Brady_McGee@fws.gov.* |
| African elephant | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| American burying beetle | Brady McGee, 505–248–6657; *Brady_McGee@fws.gov.* |
| Arizona night lizard | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Arizona wetsalts tiger beetle | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Bezy's night lizard | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Cheoah Bald salamander | Sue Cameron, 828–258–3939; *Susan_Cameron@fws.gov.* |
| Chinese pangolin | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| Cow Knob salamander | Krishna Gifford, 413–253–8619; *Krishna_Gifford@fws.gov.* |
| Deseret milkvetch | Larry Crist, 801–975–3330 x126; *Larry_Crist@fws.gov.* |
| Giant ground pangolin | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| Indian pangolin | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| Leoncita false-foxglove | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Long-tailed pangolin | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| MacDougal's yellowtops | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Monito skink | Andreas Moshogianis, 404–679–7119; *Andreas_Moshogianis@fws.gov.* |
| Navasota ladies-tresses | Brady McGee, 505–248–6657; *Brady_McGee@fws.gov.* |
| Patagonia eyed silkmoth | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Philippine pangolin | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| Reticulate collared lizard | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Rio Grande chub | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| Rio Grande sucker | Michelle Shaughnessy, 505–248–6920; *Michelle_Shaughnessy@fws.gov.* |
| South Mountain gray-cheeked salamander | Sue Cameron, 828–258–3939; *Susan_Cameron@fws.gov.* |
| Southern dusky salamander | Andreas Moshogianis, 404–679–7119; *Andreas_Moshogianis@fws.gov.* |
| Southwestern willow flycatcher | Brady McGee, 505–248–6657; *Brady_McGee@fws.gov.* |
| Sunda pangolin | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| Tree pangolin | Jessica Evans, 703–358–2141; *Jessica_Evans@fws.gov.* |
| Western bumble bee | Mark Sattelberg, 307–772–2374; *Mark_Sattelberg@fws.gov.* |
| Yellow-banded bumble bee | Krishna Gifford, 413–253–8619; *Krishna_Gifford@fws.gov.* |

If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**Background**

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our regulations in the Code of Federal Regulations (CFR) establish that the standard for substantial scientific or commercial information with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that a petition presents substantial scientific or commercial information, we are required to promptly commence a review of the status of the species, and we will subsequently summarize the status review in our 12-month finding.

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 a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (see Request for Information for Status Reviews, above).

In considering whether conditions described within one or more of the factors might constitute threats, we must look beyond the exposure of the species to those conditions to evaluate whether the species may respond to the conditions in a way that causes actual impacts to the species. If there is exposure to a condition and the species responds negatively, the condition qualifies as a stressor and, during the subsequent status review, we attempt to determine how significant the stressor is. If the stressor is sufficiently significant that it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act, the stressor constitutes a threat to the species. Thus, the identification of conditions that could affect a species negatively may not be sufficient to compel a finding that the information in the petition and our files is substantial. The information must include evidence sufficient to suggest that these conditions may be operative threats that act on the species to a sufficient degree that the species may meet the definition of an endangered or threatened species under the Act.

**Evaluation of a Petition To Remove the Acuna Cactus From the List of Endangered and Threatened Wildlife**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0025 under the Supporting Documents section.

*Species and Range*

Acuna cactus (*Echinomastus erectocentrus* var. *acunensis*): Arizona; Mexico

*Petition History*

On October 21, 2014, we received a petition dated October 8, 2014, from Freeport-McMoRan Minerals Corporation requesting the acuna cactus be delisted under the Act due to invalid taxonomy, larger range than previously known, and lack of adequate monitoring and survey data resulting in overstated decline in populations. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a December 18, 2014, letter to the petitioner, we responded that we received the petition. This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action (delisting) may be warranted for the acuna cactus (*Echinomastus erectocentrus* var. *acunensis*). Because the petition does not present substantial information indicating that delisting the acuna cactus may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0025 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of Two Petitions To Reclassify the African Elephant From a Threatened Species to an Endangered Species Under the Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0010 under the Supporting Documents section.

*Species and Range*

African elephant (*Loxodonta africana*): Angola; Benin; Botswana; Burkina Faso; Cameroon; Central African Republic; Chad; Congo; Democratic Republic of the Congo; Côte d'Ivoire; Equatorial Guinea; Eritrea; Ethiopia; Gabon; Ghana; Guinea; Guinea-Bissau; Kenya; Liberia; Malawi; Mali; Mozambique; Namibia; Niger; Nigeria; Rwanda; Senegal; Sierra Leone; Somalia; South Africa; South Sudan; Swaziland; Tanzania; Togo; Uganda; Zambia; Zimbabwe

*Petitions History*

On February 12, 2015, we received an electronic petition dated February 11, 2015, from the International Fund for Animal Welfare, Humane Society International, Humane Society of the United States, and Fund for Animals requesting that the African elephant (*Loxodonta africana*) be reclassified from threatened status to endangered status under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a June 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On June 10, 2015, we received a second petition dated June 10, 2015, from the Center for Biological Diversity (CBD) requesting that the listed African elephant be reclassified from a single species (*Loxodonta africana*) into two separate species, forest elephants (*Loxodonta cyclotis*) and savannah elephants (*Loxodonta africana*); the petition also requested to have both species reclassified as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a June 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions requested the same action for the same species, this finding will address both petitions. Additionally, although CBD requested that the listed African elephant be reclassified from a single species (*Loxodonta africana*) into two separate species, the forest elephants (*Loxodonta cyclotis*) and the savannah elephants (*Loxodonta africana*), a taxonomic change is beyond the scope of our initial 90-day finding, and we will instead consider whether such a change is warranted as part of our status review and 12-month finding for the species.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the African elephant (*Loxodonta africana*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To Remove the American Burying Beetle From the List of Endangered and Threatened Wildlife**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0011 under the Supporting Documents section.

*Species and Range*

American burying beetle (*Nicrophorus americanus):* Arkansas, Kansas, Massachusetts, Missouri, Nebraska, Oklahoma, Rhode Island, South Dakota, and Texas

*Petition History*

On August 18, 2015, we received a petition dated August 18, 2015, via electronic mail from American Stewards of Liberty, the Independent Petroleum Association of America, the Texas Public Policy Foundation, and Dr. Steven W. Carothers (petitioners) requesting that the American burying beetle be delisted under the Act due to error in information such that the existence or magnitude of threats to the species, or both, do not support a conclusion that the species is at risk of extinction now or in the foreseeable future. The petition clearly identified itself as a petition and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action (delisting) may be warranted for the American burying beetle (*Nicrophorus americanus*), based on a lack of threats under any of the five listing factors. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the Arizona Night Lizard as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2015–0075 under the Supporting Documents section.

*Species and Range*

Arizona night lizard (*Xantusia arizonae*): Arizona

*Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from CBD requesting that 53 species of reptiles and amphibians, including the Arizona night lizard, be listed under the Act as endangered or threatened and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the Arizona night lizard.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Arizona night lizard (*Xantusia arizonae*). Because the petition does not present substantial information indicating that listing the Arizona night lizard may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2015–0075 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To List the Arizona Wetsalts Tiger Beetle as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0027 under the Supporting Documents section.

*Species and Range*

Arizona wetsalts tiger beetle (*Cicindela haemorrhagica arizonae*): Arizona and Utah. This is a subspecies of the wetsalts tiger beetle (*Cicindela haemorrhagica*).

*Petition History*

On May 1, 2015, we received a petition dated May 1, 2015, from CBD requesting that the Arizona wetsalts tiger beetle be listed as threatened or endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a June 4, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act. This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Arizona wetsalts tiger beetle (*Cicindela haemorrhagica arizonae*). Because the petition does not present substantial information indicating that listing the Arizona wetsalts tiger beetle may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0027 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To List Bezy's Night Lizard as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2015–0076 under the Supporting Documents section.

*Species and Range*

Bezy's night lizard (*Xantusia bezyi*): Arizona

*Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from CBD requesting that 53 species of reptiles and amphibians, including Bezy's night lizard, be listed under the Act as endangered or threatened and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses Bezy's night lizard.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for Bezy's night lizard (*Xantusia bezyi*). Because the petition does not present substantial information indicating that listing Bezy's night lizard may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2015–0076 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To List the Cheoah Bald Salamander as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2015–0081 under the Supporting Documents section.

*Species and Range*

Cheoah Bald salamander (*Plethodon cheoah*): North Carolina

*Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from CBD requesting that 53 species of reptiles and amphibians, including the Cheoah Bald salamander, be listed under the Act as endangered or threatened and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the Cheoah Bald salamander.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present

substantial scientific or commercial information indicating that the petitioned action may be warranted for the Cheoah Bald salamander (*Plethodon cheoah*). Because the petition does not present substantial information indicating that listing the Cheoah Bald salamander may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2015–0081 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of Two Petitions To List the Chinese Pangolin Under the Endangered Species Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0012 under the Supporting Documents section.

*Species and Range*

Chinese pangolin (*Manis pentadactyla*): Himalayan foothills, northern India; southern Bhutan; northeastern Bangladesh; northern Lao PDR; southern China; Taiwan; Hong Kong SAR; northern Viet Nam; northwest Thailand; and northern and western Myanmar

*Petitions History*

On July 15, 2015, we electronically received a petition from Born Free USA (BFUSA), CBD, Humane Society International (HSI), The Humane Society of the United States (HSUS), and the International Fund for Animal Welfare (IFAW), requesting that we list seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On July 15, 2015, we electronically received a second petition from CBD, IFAW, HSUS, and BFUSA requesting that the Service list the same seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as an endangered species under the similarity of appearance provisions of the Act (section 4(e)), based upon the petitioners' claim of these species' similarity of appearance to the currently listed Temminck's ground pangolin (*Manis temminckii*). The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions address the seven unlisted species of pangolin, we are combining the petitioned actions (listing each species as either threatened or endangered either based on the five factors under section 4(a)(1) of the Act or due to a similarity of appearance under section 4(e) of the Act) into a single 90-day finding for each species. The requested action for listing based on similarity of appearance (section 4(e)) will be considered under Factor E of each finding.

This finding addresses the Chinese pangolin (*Manis pentadactyla*).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Chinese pangolin (*Manis pentadactyla*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the Cow Knob Salamander as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0084 under the Supporting Documents section.

*Species and Range*

Cow Knob (or white-spotted) salamander (*Plethodon punctatus*): Virginia, West Virginia

*Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from CBD requesting that 53 species of reptiles and amphibians, including the Cow Knob (or white-spotted) salamander, be listed under the Act as endangered or threatened and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the Cow Knob salamander.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Cow Knob (or white-spotted) salamander (*Plethodon punctatus*). Because the petition does not present substantial information indicating that listing the Cow Knob salamander may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2015–0084 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To Remove the Deseret Milkvetch From the List of Endangered and Threatened Wildlife**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0013 under the Supporting Documents section.

*Species and Range*

Deseret milkvetch (*Astragalus desereticus*): Utah

*Petition History*

We received a petition dated October 6, 2015, from Western Area Power Administration requesting that Deseret milkvetch (currently listed as threatened), be delisted under the Act due to new information. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action (delisting) may be warranted for the Deseret milkvetch (*Astragalus desereticus*), based on a lack of threats under any of the five listing factors. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of Two Petitions To List the Giant Ground Pangolin Under the Endangered Species Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0014 under the Supporting Documents section.

*Species and Range*

Giant ground pangolin (*Manis gigantean*): Cameroon; Central African Republic; Congo; Congo, The Democratic Republic of the; Côte d'Ivoire; Equatorial Guinea (Bioko, Equatorial Guinea (mainland)); Gabon; Ghana; Guinea; Guinea-Bissau; Liberia; Senegal; Sierra Leone; Tanzania, United Republic of; Uganda

*Petitions History*

On July 15, 2015, we electronically received a petition from BFUSA, CBD, HSI, HSUS, and IFAW requesting that we list seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On July 15, 2015, we electronically received a second petition from CBD, IFAW, HSI, HSUS, and BFUSA requesting that the Service list the same seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as an endangered species under the similarity of appearance provisions of the Act (section 4(e)), based upon the petitioners' claim of these species' similarity of appearance to the currently listed Temminck's ground pangolin (*Manis temminckii*). The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions address the seven unlisted species of pangolin, we are combining the petitioned actions (listing each species as either threatened or endangered either based on the five factors under section 4(a)(1) of the Act or due to a similarity of appearance under section 4(e) of the Act) into a single 90-day finding for each species. The requested action for listing based on similarity of appearance (section 4(e)) will be considered under Factor E of each finding.

This finding addresses the giant ground pangolin (*Manis gigantean*).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the giant ground pangolin (*Manis gigantean*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other the factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of Two Petitions To List the Indian Pangolin Under the Endangered Species Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0015 under the Supporting Documents section.

*Species and Range*

Indian pangolin (*Manis crassicaudata*): Bangladesh; India; Nepal; Pakistan; Sri Lanka

*Petitions History*

On July 15, 2015, we electronically received a petition from BFUSA, CBD, HSI, HSUS, and IFAW requesting that we list seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On July 15, 2015, we electronically received a second petition from CBD, IFAW, HSI, HSUS, and BFUSA requesting that the Service list the same seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground

pangolin (*M. giganteanon*), and the long-tailed pangolin (*M. tetradactyla*)) as an endangered species under the similarity of appearance provisions of the Act (section 4(e)), based upon the petitioners' claim of the species' similarity of appearance to the currently listed Temminck's ground pangolin (*Manis temminckii*). The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions address the seven unlisted species of pangolin, we are combining the petitioned actions (listing each species as either threatened or endangered either based on the five factors under section 4(a)(1) of the Act or due to a similarity of appearance under section 4(e) of the Act) into a single 90-day finding for each species. The requested action for listing based on similarity of appearance (section 4(e)) will be considered under Factor E of each finding.

This finding addresses the Indian pangolin (*Manis crassicaudata*).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Indian pangolin (*Manis crassicaudata*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the Leoncita False-Foxglove as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0016 under the Supporting Documents section.

*Species and Range*

Leoncita false-foxglove (*Agalinis calycina*): New Mexico, Texas; Mexico

*Petition History*

On September 19, 2012, we received a petition dated September 6, 2012, from The Native Plant Society of New Mexico requesting that Leoncita false-foxglove be listed as endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a July 1, 2013, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act. This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Leoncita false-foxglove (*Agalinis calycina*) may be warranted, based on Factors A, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of Two Petitions To List the Long-tailed Pangolin Under the Endangered Species Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0017 under the Supporting Documents section.

*Species and Range*

Long-tailed pangolin (*Manis tetradactyla*): Cameroon; Central African Republic; Congo; Congo, The Democratic Republic of the; Côte d'Ivoire; Equatorial Guinea (Equatorial Guinea (mainland)); Gabon; Ghana; Liberia; Nigeria; Sierra Leone

*Petitions History*

On July 15, 2015, we electronically received a petition from BFUSA, CBD, HSI, HSUS, and IFAW requesting that we list seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. giganteanon*), and the long-tailed pangolin (*M. tetradactyla*)) as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On July 15, 2015, we electronically received a second petition from CBD, IFAW, HSI, HSUS, and BFUSA requesting that the Service list the same seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. giganteanon*), and the long-tailed pangolin (*M. tetradactyla*)) as an endangered species under the similarity of appearance provisions of the Act (section 4(e)), based upon the petitioners' claim of the species' similarity of appearance to the currently listed Temminck's ground pangolin (*Manis temminckii*). The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioners, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions address the seven unlisted species of pangolin, we are combining the petitioned actions (listing each species as either threatened or endangered either based on the five factors under section 4(a)(1) of the Act or due to a similarity of appearance under section 4(e) of the Act) into a single 90-day finding for each species. The requested action for listing based on similarity of appearance (section 4(e)) will be considered under Factor E of each finding.

This finding addresses the long-tailed pangolin (*Manis tetradactyla*).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the long-tailed pangolin (*Manis tetradactyla*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List MacDougal's Yellowtops as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0033 under the Supporting Documents section.

*Species and Range*

MacDougal's Yellowtops (*Flaveria macdougalii*): Arizona

*Petition History*

On May 1, 2015, we received a petition dated May 1, 2015, from CBD, Tara Easter, and Robin Silver requesting that MacDougal's yellowtops (*Flaveria macdougalii*) be emergency listed as threatened or endangered and critical habitat be designated for the species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). Because the Act does not provide for petitions to emergency list, we are considering it as a petition to list MacDougal's yellowtops. However, we did consider the immediacy of possible threats to the species and whether emergency listing may be necessary at this time. In a June 4, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act. This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for MacDougal's yellowtops (*Flaveria macdougalii*). Because the petition does not present substantial information indicating that listing MacDougal's yellowtops may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0033 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To List the Monito Skink as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2016–0034 under the Supporting Documents section.

*Species and Range*

Monito skink (*Spondylurus monitae*): Puerto Rico

*Petition History*

On February 11, 2014, we received a petition dated February 11, 2014, from CBD requesting that the Culebra skink (*Spondylurus culebrae*), Mona Skink (*Spondylurus monae*), Monito Skink (*Spondylurus Monitoe*), Lesser Virgin Islands Skink (*Spondylurus semitaeniatus*), Virgin Islands Bronze Skink (*Spondylurus sloanii),* Puerto Rican Skink (*Spondylurus nitidus*), Greater Saint Croix Skink (*Spondylurus magnacruzae*), Greater Virgin Islands Skink (*Spondylurus spilonotus*), and Lesser Saint Croix Skink (*Capitellum parvicruzae*) be listed as endangered and critical habitat be designated for these species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). We acknowledged receipt of this petition via email on February 12, 2014. This finding addresses one of the nine species identified in the petition: the Monito skink. The Culebra skink, Greater Saint Croix skink, Mona skink, Puerto Rican skink, Virgin Islands bronze skink, Greater Virgin Islands skink, and Lesser Saint Croix skink were addressed in a separate finding, which was published in the **Federal Register** on January 12, 2016 (81 FR 1368). We will address the Lesser Virgin Islands skink in a separate evaluation. This finding addresses the Monito skink.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Monito skink (*Spondylurus monitae*). Because the petition does not present substantial information indicating that listing the Monito skink may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2016–0034 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To Remove Navasota Ladies-Tresses From the List of Endangered and Threatened Wildlife**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0035 under the Supporting Documents section.

*Species and Range*

Navasota ladies-tresses (*Spiranthes parksii*): Texas

*Petition History*

On May 26, 2015, we received a petition dated May 26, 2015, by electronic mail, from American Stewards of Liberty and Dr. Steve W. Carothers requesting that Navasota ladies-tresses be delisted under the Act due to error in information. The petition clearly identified itself as a petition and included the requisite identification information for the petitioner, as required by 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the

petitioned action (delisting) may be warranted for Navasota ladies-tresses (*Spiranthes parksii*). Because the petition does not present substantial information indicating that delisting Navasota ladies-tresses may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0035 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To List the Patagonia Eyed Silkmoth as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0036 under the Supporting Documents section.

*Species and Range*

Patagonia eyed silkmoth (*Automeris patagoniensis*): Arizona; Mexico

*Petition History*

On June 29, 2015, we received a petition dated June 17, 2015, from Defenders of Wildlife and Patagonia Area Resource Alliance requesting that the Patagonia eyed silkmoth be listed as threatened or endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Patagonia eyed silkmoth (*Automeris patagoniensis*). Because the petition does not present substantial information indicating that listing the Patagonia eyed silkmoth may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0036 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of Two Petitions To List the Philippine Pangolin Under the Endangered Species Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0018 under the Supporting Documents section.

*Species and Range*

Philippine pangolin (*Manis culionensis*): Philippines

*Petitions History*

On July 15, 2015, we electronically received a petition from BFUSA, CBD, HSI, HSUS, and IFAW requesting that we list seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On July 15, 2015, we electronically received a second petition from CBD, IFAW, HSI, HSUS, and BFUSA requesting that the Service list the same seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as an endangered species under the similarity of appearance provisions of the Act (section 4(e)), based upon the petitioners' claim of the species' similarity of appearance to the currently listed Temminck's ground pangolin (*Manis temminckii*). The petition clearly identified itself as such and included the requisite identification information for the petitioners, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioners, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions address the seven unlisted species of pangolin, we are combining the petitioned actions (listing each species as either threatened or endangered either based on the five factors under section 4(a)(1) of the Act or due to a similarity of appearance under section 4(e) of the Act) into a single 90-day finding for each species. The requested action for listing based on similarity of appearance (section 4(e)) will be considered under Factor E of each finding.

This finding addresses the Philippine pangolin (*Manis culionensis*).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Philippine pangolin (*Manis culionensis*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the Reticulate Collared Lizard as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2015–0109 under the Supporting Documents section.

*Species and Range*

Reticulate Collared Lizard (*Crotaphytus reticulatus*): Texas; Mexico

*Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from CBD requesting that 53 species of reptiles and amphibians, including the reticulate collared lizard, be listed under the Act as threatened or endangered species and critical habitat

be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the reticulate collared lizard (*Crotaphytus reticulatus*). Because the petition does not present substantial information indicating that listing the reticulate collared lizard may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2015–0109 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To List the Rio Grande Chub as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0019 under the Supporting Documents section.

*Species and Range*

Rio Grande chub (*Gila pandora*): New Mexico, Texas.

*Petition History*

On September 30, 2013, we received a petition dated September 27, 2013, from Wild Earth Guardians requesting that the Rio Grande chub be listed as threatened or endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Rio Grande chub (*Gila pandora*) may be warranted, based on Factors A, C, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the Rio Grande Sucker as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0020 under the Supporting Documents section.

*Species and Range*

Rio Grande sucker (*Catostomus plebeius*): Colorado, New Mexico; Mexico.

*Petition History*

On October 3, 2014, we received a petition dated September 29, 2014, from WildEarth Guardians requesting that Rio Grande sucker (also known as the Rio Grande mountain-sucker, or matelote del bravo) be listed as threatened or endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Rio Grande sucker (*Catostomus plebeius*) may be warranted, based on Factors A, C, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either ''endangered species'' under section 3(6) of the Act or ''threatened species'' under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the South Mountain Gray-Cheeked Salamander as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2015–0117 under the Supporting Documents section.

*Species and Range*

South Mountain gray-cheeked salamander (*Plethodon meridianus*): North Carolina.

*Petition History*

On July 11, 2012, we received a petition dated July 11, 2012, from CBD requesting that 53 species of reptiles and amphibians, including the South Mountain gray-cheeked salamander, be listed under the Act as endangered or threatened and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the South Mountain gray-cheeked salamander.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the South Mountain gray-cheeked salamander (*Plethodon meridianus*). Because the petition does not present substantial information indicating that listing the South Mountain gray-cheeked salamander may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2015–0117 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To List the Southern Dusky Salamander as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2016–0038 under the Supporting Documents section.

*Species and Range*

Southern dusky salamander (*Desmognathus auriculatus*): Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Texas, Virginia.

*Petition History*

On April 2, 2015, we received a petition from the Coastal Plains Institute and Land Conservancy requesting that southern dusky salamander be listed as threatened under the Act. The petition clearly identified itself as such and included the requisite identification information required at 50 CFR 424.14(a); however, it did not contain copies of supporting documents. We acknowledged receipt of the petition via email on April 22, 2015. Additional materials were received on June 10, 2015. This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted for the Southern dusky salamander (*Desmognathus auriculatus*). Because the petition does not present substantial information indicating that listing the Southern dusky salamander may be warranted, we are not initiating a status review of this species in response to this petition. The basis and scientific support for this finding can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2016–0038 under the Supporting Documents section. However, we ask that the public submit to us any new information that becomes available concerning the status of, or threats to, this species or its habitat at any time (see Table 3 in **SUPPLEMENTARY INFORMATION**).

**Evaluation of a Petition To Remove the Southwestern Willow Flycatcher From the List of Endangered and Threatened Wildlife**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2016–0039 under the Supporting Documents section.

*Species and Range*

Southwestern willow flycatcher (*Empidonax traillii extimus*): California, Arizona, New Mexico, Colorado, Utah, and Nevada, Texas; winters in Central and South America.

*Petition History*

On August, 20, 2015, we received a petition dated August 19, 2015, from The Pacific Legal Foundation (representing The Center for Environmental Science, Accuracy, and Reliability; Building Industry Legal Defense Fund; California Building Industry Association; California Cattlemen's Association; New Mexico Business Coalition, New Mexico Cattle Growers Association; New Mexico Farm and Livestock Bureau; and New Mexico Wool Growers Inc.), requesting that the southwestern willow flycatcher (*Empidonax traillii extimus*) be delisted due to error in information under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that the petitioned action (delisting) may be warranted for the Southwestern willow flycatcher (*Empidonax traillii extimus*), based on information related to taxonomic status. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of Two Petitions To List the Sunda Pangolin Under the Endangered Species Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0021 under the Supporting Documents section.

*Species and Range*

Sunda pangolin (*Manis javanica*): Brunei Darussalam; Cambodia; Indonesia; Lao People's Democratic Republic; Malaysia; Myanmar; Singapore; Thailand; Viet Nam.

*Petitions History*

On July 15, 2015, we electronically received a petition from BFUSA, CBD, HSI, HSUS, and IFAW requesting that we list seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On July 15, 2015, we electronically received a second petition from CBD, IFAW, HSI, HSUS, and BFUSA requesting that the Service list the same seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as an endangered species under the similarity of appearance provisions of the Act (section 4(e)), based upon the petitioners' claim of the species' similarity of appearance to the currently listed Temminck's ground pangolin (*Manis temminckii*). The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions address the seven unlisted species of pangolin, we are combining the petitioned actions (listing each species as either threatened or endangered either based on the five factors under section 4(a)(1) of the Act or due to a similarity of appearance under section 4(e) of the Act) into a

single 90-day finding for each species. The requested action for listing based on similarity of appearance (section 4(e)) will be considered under Factor E of each finding.

This finding addresses the Sunda pangolin (*Manis javanica*).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the Sunda pangolin (*Manis javanica*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of Two Petitions To List the Tree Pangolin Under the Endangered Species Act**

Additional information regarding our review of these petitions can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2016–0022 under the Supporting Documents section.

*Species and Range*

Tree pangolin (*Manis tricuspis*): Angola (Angola); Benin; Cameroon; Central African Republic; Congo; Congo, The Democratic Republic of the; Côte d'Ivoire; Equatorial Guinea (Bioko, Equatorial Guinea (mainland)); Gabon; Ghana; Guinea; Guinea-Bissau; Kenya; Liberia; Nigeria; Rwanda; Sierra Leone; South Sudan; Tanzania, United Republic of; Togo; Uganda; Zambia.

*Petitions History*

On July 15, 2015, we electronically received a petition from BFUSA, CBD, HSI, HSUS, and IFAW requesting that we list seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as endangered species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

On July 15, 2015, we electronically received a second petition from CBD, IFAW, HSI, HSUS, and BFUSA requesting that the Service list the same seven species of pangolin (Chinese pangolin (*Manis pentadactyla*), Sunda pangolin (*M. javanica*), Philippine pangolin (*M. culionensis*), Indian pangolin (*M. crassicaudata*), tree pangolin (*M. tricuspis*), giant ground pangolin (*M. gigantean*), and the long-tailed pangolin (*M. tetradactyla*)) as an endangered species under the similarity of appearance provisions of the Act (section 4(e)), based upon the petitioners' claim of the species' similarity of appearance to the currently listed Temminck's ground pangolin (*Manis temminckii*). The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In an August 17, 2015, letter to the petitioner, we responded that we had reviewed the information presented in the petition and did not find that the petition warranted an emergency listing under section 4(b)(7) of the Act.

As both petitions address the seven unlisted species of pangolin, we are combining the petitioned actions (listing each species as either threatened or endangered either based on the five factors under section 4(a)(1) of the Act or due to a similarity of appearance under section 4(e) of the Act) into a single 90-day finding for each species. The requested action for listing based on similarity of appearance (section 4(e)) will be considered under Factor E of each finding.

This finding addresses the tree pangolin (*Manis tricuspis*).

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the tree pangolin (*Manis tricuspis*) may be warranted based on Factors A, B, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the Western Bumble Bee as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R6–ES–2016–0023 under the Supporting Documents section.

*Species and Range*

Western bumble bee (*Bombus occidentalis*): Alaska, Arizona, California, Colorado, Idaho, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Washington, Wyoming, Utah; Canada: Alberta, British Columbia, Saskatchewan, Yukon Territory.

*Petition History*

On September 21, 2015, we received a petition dated September 15, 2015, from Defenders of Wildlife requesting that the western bumble bee be listed as threatened or endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the western bumble bee (*Bombus occidentalis*) may be warranted, based on Factors C, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for the western bumble bee, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this

finding (see Request for Information for Status Reviews, above).

**Evaluation of a Petition To List the Yellow-Banded Bumble Bee as an Endangered or Threatened Species Under the Act**

Additional information regarding our review of this petition can be found as an appendix at *http://www.regulations.gov* under Docket No. FWS–R5–ES–2016–0024 under the Supporting Documents section.

*Species and Range*

Yellow-banded bumble bee (*Bombus terricola*): Connecticut, Kentucky, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, West Virginia, Wisconsin; Canada: Alberta, British Columbia, Manitoba, Newfoundland, Nova Scotia, Ontario, Quebec, Saskatchewan.

*Petition History*

On September 15, 2015, we received a petition dated September 15, 2015, from Defenders of Wildlife requesting that the yellow-banded bumble bee (*Bombus terricola*) be listed as threatened or endangered and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). This finding addresses the petition.

*Finding*

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating that listing the yellow-banded bumble bee (*Bombus terricola*) may be warranted, based on Factors A, C, D, and E. However, during our status review, we will thoroughly evaluate all potential threats to the species, including the extent to which any protections or other conservation efforts have reduced those threats. Thus, for this species, the Service requests any information relevant to whether the species falls within the definition of either an endangered species under section 3(6) of the Act or a threatened species under section 3(20), including information on the five listing factors under section 4(a)(1) and any other factors identified in this finding (see Request for Information for Status Reviews, above).

**Conclusion**

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the acuna cacus, Arizona night lizard, Arizona wetsalts tiger beetle, Bezy's night lizard, Cheoah Bald salamander, Cow Knob salamander, MacDougal's yellowtops, Monito skink, Navasota ladies-tresses, Patagonia eyed silkmoth, reticulate collared lizard, South Mountain gray-cheeked salamander, and southern dusky salamander do not present substantial scientific or commercial information indicating that the requested actions may be warranted. Therefore, we are not initiating status reviews for these species.

The petitions summarized above for the African elephant, American burying beetle, Chinese pangolin, deseret milkvetch, giant ground pangolin, Indian pangolin, Leoncita false-foxglove, long-tailed pangolin, Philippine pangolin, Rio Grande chub, Rio Grande sucker, Sunda pangolin, tree pangolin, southwestern willow flycatcher, western bumble bee, and yellow-banded bumble bee present substantial scientific or commercial information indicating that the requested actions may be warranted.

Because we have found that these petitions present substantial information indicating that the petitioned actions may be warranted, we are initiating status reviews to determine whether these actions under the Act are warranted. At the conclusion of each status review, we will issue a finding, in accordance with section 4(b)(3)(B) of the Act, as to whether or not the Service finds that the petitioned action is warranted.

It is important to note that the standard for a 90-day finding differs from the Act's standard that applies to a status review to determine whether a petitioned action is warranted. In making a 90-day finding, we consider only the information in the petition and in our files, and we evaluate merely whether that information constitutes ''substantial information'' indicating that the petitioned action ''may be warranted.'' In a 12-month finding, we must complete a thorough status review of the species and evaluate the ''best scientific and commercial data available'' to determine whether a petitioned action ''is warranted.'' Because the Act's standards for 90-day and 12-month findings are different, a substantial 90-day finding does not mean that the 12-month finding will result in a ''warranted'' finding.

**References Cited**

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the appropriate lead field offices (contact the person listed under Table 3 in **SUPPLEMENTARY INFORMATION**).

**Authors**

The primary authors of this notice are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

**Authority**

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: February 24, 2016.

**Stephen Guertin,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2016–05699 Filed 3–15–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 150902808–6155–01]**

**RIN 0648–BF04**

## Fisheries of the Northeastern United States; Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to implement Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. Amendment 17 management measures were developed by the Mid-Atlantic Fishery Management Council to: Add cost recovery provisions for the Individual Transferable Quota component of the fishery; modify how biological reference points are incorporated into the fishery management plan; and remove the plan's optimum yield range. These changes are intended to make the management plan consistent with requirements of the Magnuson-Stevens Act, and to improve the management of these fisheries.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–

NMFS–2015–0057, by any of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0057,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Surfclam/Ocean Quahog Amendment 17.''

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

Copies of Amendment 17, including the draft Environmental Assessment, preliminary Regulatory Impact Review, and economic analysis, are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The EA/RIR is also accessible via the Internet at: *www.greateratlantic.fisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Douglas Potts, Fishery Policy Analyst, 978–281–9341.

**SUPPLEMENTARY INFORMATION:**

## Background

This action proposes regulations to implement Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council developed this amendment to establish a program to recover the costs of managing the surfclam and ocean quahog individual transferable quota (ITQ) fisheries, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP.

### Cost Recovery

The Magnuson-Stevens Act requires each limited access privilege program, such as the surfclam/ocean quahog ITQ program, to include measures to recover the costs of management, data collection and analysis, and enforcement activities involved with the program. This action proposes to implement a cost recovery program for the surfclam and ocean quahog ITQ fisheries modeled on the Council's existing cost recovery program for the Tilefish Individual Fishing Quota (IFQ) Program.

Under the proposed program, any surfclam or ocean quahog ITQ permit holder (also referred to in this preamble as ''allocation holders'') who has quota share (*i.e.,* receives an initial allocation of cage tags each year) would be responsible for paying a fee at the end of the year. The fee would be based on the number of the ITQ permit holder's cage tags that were ultimately used to land clams that year. In the first quarter of each year, the Greater Atlantic Regional Fisheries Office (GARFO) would announce the fee percentage and the associated per-tag fee for that year, and distribute this announcement widely. Although annual fee information would not be published in the **Federal Register**, distribution of the GARFO announcement would include posting it on the GARFO Web site and sending it to each ITQ permit holder with quota share. The fee percentage would be based on the total recoverable costs from the prior fiscal year, adjusted for any prior over- or under-collection, divided by the total ex-vessel value of the fishery. The resulting percentage cannot exceed the 3-percent statutory maximum. Then NMFS would calculate a per-tag fee based on the total number of cage tags used to land surfclams or ocean quahogs in the previous year. This tag fee would be separate from, and in addition to, the price allocation holders currently pay to the tag vendor to obtain the physical cage tags each year.

This process includes an inherent assumption that a similar number of cage tags will be used each year. While the fishery has been largely stable over time, many factors (*e.g.,* weather events, market demand, etc.) may result in the use of more or fewer tags in any given year. As a result, we fully anticipate that, in some years, we will collect more or less money than is necessary to recover our costs. Refunding over-collections and issuing supplemental bills to make up for shortfalls would increase the cost of administering the fishery, which would increase the amount charged in bills the following year. To avoid these additional costs, we would apply any over- or under-collection to our calculation of recoverable costs and per-tag fees for the following year. Our communications with the ITQ permit holders each year will make clear that any prior over- or under-collection adjustments will be incorporated into the following year's cost-recovery billing.

The Council produced an analysis as part of Amendment 17 using 2013 landings and ex-vessel value and assuming a 0.2-percent fee, which represents approximately $100,000 of recoverable costs. This analysis showed that fees would have been $0.56 per surfclam cage tag and $0.27 per ocean quahog cage tag. A scenario using the statutory maximum 3 percent showed the fees could have been as high as $8.36 per surfclam tag and $4.10 per ocean quahog tag. However, reaching that 3-percent maximum would require recoverable costs to be over $1.5 million, far higher than any reasonable estimate for the management costs for these fisheries. Annual recoverable costs for the first 5 years of our other Greater Atlantic Region IFQ fisheries have averaged approximately $21,000 for the Tilefish IFQ Program, and $113,000 for the Limited Access General Category Scallop IFQ Program. Based on the management requirements of these programs, we anticipate total costs for the surfclam and ocean quahog ITQ program would be somewhere between the costs of these other programs.

If allocation holders transfer some or all of their cage tags or quota share after the start of the fishing year, they would still be liable for any cost recovery fee based on landings of their initial allocation. Here is an example of how this might work for an allocation holder: Carol has a surfclam ITQ permit with a quota share ratio of 0.02, meaning she is allocated 2 percent of the total surfclam ITQ quota each year. If in a given year the quota is 1 million bushels (53.2 million L), Carol's allocation would be 20,000 bushels (1.6 million L), or 625 cage tags (*i.e.,* 20,000 (1.6 million L) bushels divided by 32 bushels (1,700 L) per cage). In the first quarter of the year, NMFS announces that the fee will be $0.50 per tag. Over the course of the year, Carol uses 200 cages to harvest surfclams, and leases 400 cage tags to Bob. Bob in turn uses 100 cage tags and leases the 300 remaining tags to Joe who uses 150. Because each cage tag has a unique number, we can identify which tags originated from Carol's allocation no matter how many times they were leased. Of the original 625 tag allocation

a total of 450 tags were used; 200 by Carol, 100 by Bob, 150 by Joe, and 175 tags were never used. At the end of the fishing year, Carol would receive a cost recovery bill for $225.00 based on the $0.50 tag fee multiplied by the 450 tags that were used to land surfclams.

We have already begun tracking recoverable costs in these fisheries. To the extent possible, we are tracking the recoverable costs of the surfclam and ocean quahog fisheries separately, although some costs are shared (*e.g.,* routine maintenance of our database for tracking allocations and cage tags). Under these proposed regulations, at the start of the 2017 calendar year, we would use the total recoverable costs from the 2016 fiscal year (October 1, 2015, through September 30, 2016) and the total value of the fisheries in the 2016 calendar year, to calculate fee percentages for both surfclam and ocean quahogs. We would then use the total number of tags used during the 2016 fishing year to determine a per-tag fee for the 2017 fishing year.

In early 2018 (most likely February or March) we would issue the first cost recovery bills based on how many cage tags were used in 2017 and the 2017 per-tag fee. At the same time, we would announce the fee percentage and per-tag fees for the 2018 fishing year. If the total amount to be collected is higher or lower than the total recoverable costs used to calculate the 2017 per-tag fee (*i.e.,* the fiscal year 2016 recoverable costs), we would adjust the fiscal year 2017 recoverable costs accordingly when calculating the 2018 per-tag fee. This anticipated timeline is detailed in Table 1.

TABLE 1—SURFCLAM AND OCEAN QUAHOG PROPOSED COST RECOVERY IMPLEMENTATION TIMELINE

| Date | Anticipated action |
|---|---|
| October 2015 | NMFS begins tracking recoverable costs for surfclam and ocean quahog ITQ fisheries. |
| March 2017 | NMFS announces the 2017 cost recovery per-tag fee, based on recoverable costs in fiscal year 2016 and the total number of cage tags used in calendar year 2016. |
| March 2018 | NMFS issues a 2017 bill to each ITQ shareholder based on the previously announced per-tag fee and how many of the shareholder's 2017 cage tags were ultimately used to land clams. |
| March 2018 | Concurrent with issuing bills for 2017, NMFS announces the 2018 cost recovery per-tag fee, based on costs in fiscal year 2017 (adjusted for any anticipated over- or under-collection) and the total number of cage tags used in calendar year 2017. |
| Subsequent years | Each year, NMFS would issue bills for the previous fishing year and announce the cost recovery per-tag fee for the current fishing year. |

Cost recovery bills would be due within 30 days of the date of the bill, and would be paid using the Greater Atlantic Regional Fisheries Office's fishing industry Web site: Fish Online (*www.greateratlantic.fisheries.noaa.gov/apps/login/login*). Fish Online is a secure Web site and NMFS provides a username and password for individuals to access their accounts. Members of the fishing industry may use the site to check details about their fishing permit and landings. The Web page has been used since 2010 to collect cost recovery payments for the Tilefish IFQ and Limited Access General Category Scallop IFQ fisheries. Cost recovery bills may be paid with a credit card or with an account number and routing number from a bank account, often referred to as an Automated Clearing House or ACH payment. Once bills are issued, ITQ shareholders would be able to log onto Fish Online and access the Cost Recovery section. Payments made through Fish Online are processed using the U.S. Treasury Department's Pay.gov tool, and no bank account or credit card information is retained by NMFS. We would not be able to accept partial payments or advance payments before bills are issued. We do not anticipate that other payment methods would be accepted, as the proposed payment system has been effective for other cost recovery programs. However, other payment methods may be authorized if the Regional Administrator determines that electronic payment is not practicable.

The proposed regulations include procedures in case an ITQ permit holder should fail to pay their cost recovery bill. If a bill is not paid by the due date, NMFS would issue a demand letter, formally referred to as an initial administrative determination. This letter would describe the past-due fee, describe any applicable interest or penalties that may apply, stipulate a 30-day deadline to either pay the amount due or submit a formal appeal to the Regional Administrator, and provide instructions for submitting such an appeal. If no appeal is submitted by the deadline, the Regional Administrator would issue a final decision letter. An appeal must be submitted in writing, allege credible facts or circumstances, and include any relevant information or documentation to support the appeal. If an appeal is submitted, the Regional Administrator would appoint an appeals officer to determine if there is sufficient information to support the appeal and that all procedural requirements have been met. The appeals officer would then review the record and issue a recommendation to the Regional Administrator. The Regional Administrator, acting on behalf of the Secretary of Commerce, would then review the appeal and issue a written decision. If the Regional Administrator's final determination (whether or not there was an appeal) finds that ITQ permit holder is out of compliance, full payment would be required within 30 days. Following a final determination, we may also suspend the ITQ permit, thereby prohibiting any transfer of cage tags or quota share, use of associated cage tags to land surfclams or ocean quahogs, or renewal of the ITQ permit until full payment, including any interest or penalties, is received. If full payment is not received within this final 30-day period as required, we may then refer the matter to the appropriate authorities, including the Department of Treasury, for collection.

Each year NMFS would issue a report on the status of the ITQ cost recovery program. This report would provide details of the recoverable costs to be collected, the success of previous collection efforts, and other relevant information.

**Biological Reference Points**

Under National Standard 1, the Magnuson-Stevens Act requires that each Council FMP define overfishing as a rate or level of fishing mortality (F) that jeopardizes a fishery's capacity to produce maximum sustainable yield (MSY) on a continuing basis, and defines an overfished stock as a stock size that is less than a minimum biomass threshold (see 50 CFR 600.310(e)(2)). The Magnuson-Stevens Act also requires that each FMP specify

objective and measurable status determination criteria (*i.e.,* biological reference points) for identifying when stocks covered by the FMP are overfished or subject to overfishing (see section 303(a)(10), 16 U.S.C. 1853). To fulfill these requirements, status determination criteria are comprised of two components: (1) A maximum fishing mortality threshold; and (2) a minimum stock size threshold.

Currently, the biological reference points in the FMP were set by Amendment 12 for ocean quahog (October 26, 1999; 64 FR 57587) and Amendment 13 for surfclam (December 16, 2003; 68 FR 69970). Although several stock assessments since these amendments have produced new biological reference points, there has not been an FMP amendment to adjust the figures in the plan. As a result, the definitions in the FMP have become inconsistent with the best scientific information available. This action would modify how these biological reference points are defined in the FMP. Rather than using specific definitions, the FMP would include broad criteria to allow for greater flexibility in incorporating changes to the definitions of the maximum fishing mortality threshold and/or minimum stock size threshold as the best scientific information consistent with National Standards 1 and 2 becomes available. The Council has already adopted this approach in several of its other FMPs, and this change would make the Surfclam and Ocean Quahog FMP consistent with these other FMPs.

The maximum fishing mortality threshold for surfclams and ocean quahogs would be defined as $F_{MSY}$ (or a reasonable proxy thereof), which is a function of productive capacity, and would be based upon the best scientific information consistent with National Standards 1 and 2. Specifically, $F_{MSY}$ is the fishing mortality rate associated with MSY. The maximum fishing mortality threshold ($F_{MSY}$) or a reasonable proxy may be defined as a function of (but not limited to): Total stock biomass; spawning stock biomass; total egg production; and may include males, females, both, or combinations and ratios thereof that provide the best measure of productive capacity for each of the species managed under the FMP. Exceeding the established fishing mortality threshold would constitute overfishing as defined by the Magnuson-Stevens Act.

The minimum stock size threshold for each of the species under the FMP would be defined as ½ $B_{MSY}$ (or a reasonable proxy thereof), which is a function of productive capacity, and would be based upon the best scientific information, consistent with National Standards 1 and 2. $B_{MSY}$ is the stock biomass associated with MSY. The minimum stock size threshold (½ $B_{MSY}$) or a reasonable proxy may be defined as a function of (but not limited to): Total stock biomass; spawning stock biomass; total egg production; and may include males, females, both, or combinations and ratios thereof that provide the best measure of productive capacity for each of the species managed under the FMP. The minimum stock size threshold would be the level of productive capacity associated with the relevant ½ MSY level. Should the measure of productive capacity for the stock fall below this minimum threshold, the stock would be considered overfished as defined by the Magnuson-Stevens Act. The target for rebuilding, when applicable, is specified as $B_{MSY}$ (or reasonable proxy thereof) at the level of productive capacity associated with the relevant MSY level, under the same definition of productive capacity as specified for the minimum stock size threshold.

Specific definitions or modifications to the status determinations criteria, and their associated values, would result from the most recent peer-reviewed stock assessments and their panelist recommendations. The Northeast Regional Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC) process is the primary mechanism utilized in the Greater Atlantic Region at present to review scientific stock assessment advice, including status determination criteria, for federally-managed species. There are also periodic reviews, which occur outside the SAW/SARC process that are subject to rigorous peer-review and may also result in scientific advice to modify or change the existing stock status determination criteria. These periodic reviews outside the SARC process could include any of the following review processes listed below, as deemed appropriate by the Council and NMFS.

- Council Scientific and Statistical Committee (SSC) Review
- Council externally contracted reviews with independent experts (*e.g.,* Center for Independent Experts—CIE)
- NMFS internally conducted review (*e.g.,* comprised of NMFS scientific and technical experts from NMFS Science Centers or Regions)
- NMFS externally contracted review with independent experts (*e.g.,* CIE)

The scientific advice developed on stock status determination criteria would be provided to the Council's SSC. The SSC would use this information to develop acceptable biological catch (ABC) recommendations that address scientific uncertainty based on the information provided in the peer reviewed assessment of the stock. The SSC would provide these recommendations to the Council. In addition, the Council's Industry Advisory groups are often engaged to provide management recommendations to the Council. The Council would then consider all available information and advice when developing its own recommendations to put forward through the regulatory process for setting the annual specifications for the upcoming fishing year, which is the primary mechanism for updating and adjusting management measures on a regular basis in order to meet the goals of the FMP.

**Optimum Yield**

Currently, the FMP specifies a surfclam optimum yield range of 1.85–3.40 million bushels (98.5 to 181.0 million L), and an ocean quahog the optimum yield range of 4.00–6.00 million bushels (213.0 to 319.4 million L). The Council must select commercial quotas within these ranges. Under the current FMP process, modification to the upper end of the ranges would require a framework adjustment. Commercial quotas may be set below the lower bounds if the SSC sets a lower ABC, resulting in an optimum yield range that is higher than ABC. The current optimum yield ranges in the FMP were based on scientific information and industry input from the 1980's, and have not been adjusted to reflect subsequent changes in our understanding of the biology of these stocks.

This action proposes to remove the optimum yield ranges from the FMP, but commercial quotas for surfclam and ocean quahog would continue to be set under the existing system of catch limits. This is consistent with the other FMPs that the Council manages; surfclam and ocean quahog are the only stocks with optimum yield ranges specified in the FMP.

As prescribed under this quota setting process, the Council may not exceed the ABC recommendations of the SSC, and would continue to specify annual catch limits, targets, and commercial quotas as otherwise described in the FMP. As part of the specifications process, the advisory panel would develop recommendations for commercial quotas, including optimum yield recommendations which would be provided to the Council.

This action also proposes a modification to the regulations pursuant to the Secretary's authority under

section 305(d) of the Magnuson-Stevens Act (16 U.S.C. 1855(d)) to ensure that FMPs are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action proposes to modify the regulations at 50 CFR 648.11(a) so that vessels holding a Federal permit for Atlantic surfclam or ocean quahog are included on the list of vessels required to carry a NMFS-certified fisheries observer if requested by the Regional Administrator. All other Federal fisheries permits issued in the Greater Atlantic Region are already covered by either § 648.11(a) or a similar provision at § 697.12(a), which applies to vessels with an American lobster permit. The recent Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment final rule (June 30, 2015; 80 FR 37182) modified how at-sea observers are assigned to fishing vessels. The Council's discussions of that action and analysis of alternatives clearly indicate the Council intended for the requirement (that vessels carry a NMFS-certified observer if requested by the Regional Administrator) to apply to all fisheries subject to the SBRM Omnibus Amendment final rule. The surfclam and ocean quahog fisheries have historically had very low bycatch and have been a low priority for observer coverage. Prior to the SBRM Omnibus Amendment final rule, NMFS used its discretion to prioritize observer coverage to other fishing fleets. The SBRM Omnibus Amendment final rule removed this discretion and implemented a formulaic process for assigning observer coverage across fisheries. This resulted in observer coverage being assigned to the surfclam and ocean quahog fisheries. Subsequent to the publication of the SBRM Omnibus Amendment final rule, it became apparent that § 648.11(a) does not currently apply to surfclam and ocean quahog vessel permits. Over 700 vessels have a surfclam or ocean quahog permit. However, all but 15 of those vessels are already subject to this observer requirement because they also carry another Federal permit.

Pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed that this proposed rule is necessary and appropriate for the purpose of implementing Amendment 17, with the exception of the measure noted above as proposed under the Secretary's authority under section 305(d) of the Magnuson-Stevens Act.

## Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 17, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared a draft environmental assessment (EA) for this FMP amendment that analyzes the impacts on the environment as a result of this action. A copy of the draft EA is available from the Federal e-Rulemaking portal *www.regulations.gov*. Type ''NOAA–NMFS–2015–0057'' in the Enter Keyword or ID field and click search. A copy of the draft EA is also available upon request from the Council (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council prepared an analysis of the potential economic impacts of this action, which is included in the draft EA for this action and supplemented by information contained in the preamble of this proposed rule. The SBA defines a small business in the commercial harvesting sector, as a firm with receipts (gross revenues) of up to $5.5 million for shellfish businesses and $20.5 million for finfish businesses. Using these definitions, there are 26 small entities and 3 large entities that landed surfclam and/or ocean quahog in 2013, the most recent year of data available to the Council during development of Amendment 17.

The alternatives for the mechanism to update biological reference points and to change the optimum yield range in the FMP are administrative in nature. None of the alternatives are expected to change fishing methods or activities, nor will they alter the catch and landings limits for these species or the allocation of the resources among user groups. These administrative alternative measures are not expected to impact the economic aspects of these fisheries, as they are not expected to produce changes in landings, prices, consumer and producer surplus, harvesting costs, enforcement costs, or to have distributional effects.

Four alternatives were considered for the development of a cost recovery program. All of the alternatives would recover the costs of management, data collection and analysis, and enforcement activities related to the ITQ program, as required by the Magnuson-Stevens Act. Each alternative varies in how these costs would be distributed across the fishery. The total recovered costs could be up to the statutory maximum of 3 percent of the ex-vessel value of surfclams and ocean quahogs harvested under the ITQ program, although estimates predict that the recoverable costs would be much lower than this maximum. A conservative initial estimate placed costs at approximately $100,000 annually, or about 0.2 percent of the ex-vessel value of the fishery in 2013. For comparison, both a 3-percent fee and a 0.2-percent fee were used in the analysis of potential economic impact of the alternatives. Table 2 presents the average cost associated with a 0.2- and 3-percent cost recovery program for active surfclam and ocean quahog fishery small entities in 2013.

TABLE 2—ACTIVE SURFCLAM AND OCEAN QUAHOG FISHERY SMALL ENTITIES IN 2013, INCLUDING ENTITY AVERAGE SURFCLAM AND OCEAN QUAHOG (SC/OQ) REVENUES

| Revenue (millions of dollars (M)) | Count of small entity firms | Average gross receipts | Average SC/OQ receipts | Average cost associated with a 0.2-percent fee recovery program | Average cost associated with a 3-percent fee recovery program | Per firm average cost associated with a 0.2-percent fee recovery program | Per firm average cost associated with a 3-percent fee recovery program |
|---|---|---|---|---|---|---|---|
| 0–1M | 17 | $421,701 | $393,488 | $787 | $11,805 | $46 | $694 |
| 1–2M | 5 | 1,366,782 | 1,355,820 | 2,712 | 40,675 | 542 | 8,135 |
| 2–5.5M | 4 | 3,591,773 | 3,489,377 | 6,979 | 104,681 | 1,745 | 26,170 |
| Total | 26 | 1,091,150 | 1,054,843 | 2,110 | 31,645 | 81 | 1,217 |

As illustrated by this analysis and Table 2 (above), the anticipated annual fee for each small entity is very low under both the anticipated 0.2-percent fee and the statutory maximum 3-percent fee, and would not have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 10, 2016.

**Samuel D. Rauch III,**

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.11, revise paragraph (a) to read as follows:

**§ 648.11 At-sea sea sampler/observer coverage.**

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

* * * * *

■ 3. In § 648.14, redesignate paragraphs (j)(3) through (6) as (j)(4) through (7) and add paragraph (j)(3) to read as follows:

**§ 648.14 Prohibitions.**

* * * * *

(j) * * *

(3) *ITQ cost recovery.* (i) Fail to pay an ITQ cost recovery bill for which they are responsible by the due date specified in a final decision, as specified at § 648.74(c)(6)(iii)(C).

(ii) Possess or land surfclams or ocean quahogs harvested in or from the EEZ if the associated ITQ permit has been suspended for non-payment, as specified at § 648.74(c)(6)(iii)(C).

* * * * *

■ 4. In § 648.72, revise paragraphs (a) introductory text and (a)(1) to read as follows:

**§ 648.72 Surfclam and ocean quahog specifications.**

(a) *Establishing catch quotas.* The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports.* On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

(i) Exploitable and spawning biomass relative to the quotas.

(ii) Fishing mortality rates relative to the quotas.

(iii) Magnitude of incoming recruitment.

(iv) Projected effort and corresponding catches.

(v) Geographical distribution of the catch relative to the geographical distribution of the resource.

(vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

* * * * *

■ 5. In § 648.74, add paragraph (c) to read as follows:

**§ 648.74 Individual Transferable Quota (ITQ) Program.**

* * * * *

(c) *ITQ cost recovery*—(1) *General.* The cost recovery program collects fees of up to three percent of the ex-vessel value of surfclams or ocean quahogs harvested under the ITQ program in accordance with the Magnuson-Stevens Act. NMFS collects these fees to recover the actual costs directly related to the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program.

(2) *Fee responsibility.* If you are an ITQ permit holder who holds ITQ quota share and receives an annual allocation pursuant to paragraph (a) of this section, you shall incur a cost recovery fee, based on all landings of surfclams or ocean quahogs authorized under your initial annual allocation of cage tags. You are responsible for paying the fee assessed by NMFS, even if the landings are made by another ITQ permit holder (*i.e.,* if you transfer cage tags to another individual who subsequently uses those tags to land clams). If you permanently transfer your quota share, you are still responsible for any fee that results from your initial annual allocation of cage tags even if the landings are made after the quota share is permanently transferred.

(3) *Fee basis.* NMFS will establish the fee percentages and corresponding per-tag fees for both the surfclam and ocean quahog ITQ fisheries each year. The fee percentages cannot exceed three percent of the ex-vessel value of surfclams and ocean quahogs harvested under the ITQ fisheries pursuant to section 304(d)(2)(B) of the Magnuson-Stevens Act.

(i) *Calculating fee percentage.* In the first quarter of each calendar year, NMFS will calculate the fee percentages for both the surfclam and ocean quahog ITQ fisheries based on information from the previous year. NMFS will use the following equation to annually determine the fee percentages: Fee percentage = the lower of 3 percent or $(DPC/V) \times 100$, where:

(A) ''DPC,'' or direct program costs, are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of the ITQ program. ''Actual incremental costs'' mean those costs that would not have been incurred but for the existence of the ITQ program. If the amount of fees collected by NMFS is greater or lesser than the actual incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(B) ''V'' is the total ex-vessel value from the previous calendar year attributable to the ITQ fishery.

(ii) *Calculating per-tag fee.* To facilitate fee collection, NMFS will convert the annual fee percentages into per-tag fees for both the surfclam and ocean quahog ITQ fisheries. NMFS will use the following equation to determine each per-tag fee: Per-Tag Fee = (Fee Percentage × V)/T, where:

(A) ''T'' is the number of cage tags used, pursuant to § 648.77, to land shellfish in the ITQ fishery in the previous calendar year.

(B) ''Fee percentage'' and ''V'' are defined in paragraph (c)(i) of this section.

(C) The per-tag fee is rounded down so that it is expressed in whole cents.

(iii) *Publication.* During the first quarter of each calendar year, NMFS will announce the fee percentage and per-tag fee for the surfclam and ocean quahog ITQ fisheries, and publish this information on the Regional Office Web site (*www.greateratlantic.fisheries.noaa.gov*).

(4) *Calculating individual fees.* If you are responsible for a cost recovery fee under paragraph (c)(2) of this section, the fee amount is the number of ITQ cage tags you were initially allocated at the start of the fishing year that were subsequently used to land shellfish multiplied by the relevant per-tag fee, as described in paragraph (c)(3)(ii) of this section. If no tags from your initial allocation are used to land clams you will not incur a fee.

(5) *Fee payment and collection.* NMFS will send you a bill each year for any applicable ITQ cost recovery fee.

(i) *Payment due date.* You must submit payment within 30 days of the date of the bill.

(ii) *Payment method.* You may pay your bill electronically using a credit card or direct Automated Clearing House withdrawal from a designated checking account through the Federal web portal, *www.pay.gov,* or another internet site designated by the Regional Administrator. Instructions for electronic payment will be included with your bill and are available on the payment Web site. Alternatively, payment by check may be authorized by the Regional Administrator if he/she determines that electronic payment is not practicable.

(6) *Payment compliance.* If you do not submit full payment by the due date, NMFS will notify you in writing via an initial administrative determination (IAD) letter.

(i) *IAD.* In the IAD, NMFS will:

(A) Describe the past-due fee;

(B) Describe any applicable interest charges that may apply;

(C) Provide you 30 days to either pay the specified amount or submit an appeal; and

(D) Include instructions for submitting an appeal.

(ii) *Appeals.* If you wish to appeal the IAD, your appeal must:

(A) Be in writing;

(B) Allege credible facts or circumstances;

(C) Include any relevant information or documentation to support your appeal; and

(D) Be received by NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of the business on the next business day. Your appeal must be mailed or hand delivered to the address specified in the IAD.

(iii) *Final decision*—(A) *Final decision on your appeal.* If you appeal an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on your appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on your appeal which is the final decision of the Department of Commerce.

(B) *Final decision if you do not appeal.* If you do not appeal the IAD within 30 calendar days, NMFS will notify you via a final decision letter. The final decision will be from the Regional Administrator and is the final decision of the Department of Commerce.

(C) *If the final decision determines that you are out of compliance.* (*1*) After the final decision has been made, NMFS may suspend your ITQ permit, thereby prohibiting any transfer of cage tags or quota share, use of associated cage tags to land surfclams or ocean quahogs, or renewal of your ITQ permit until the outstanding balance is paid in full, including any applicable interest.

(*2*) The final decision will require full payment within 30 calendar days.

(*3*) If full payment is not received within 30 calendar days of issuance of the final decision, NMFS may refer the matter to the appropriate authorities for the purposes of collection or enforcement.

(*7*) *Annual report.* NMFS will publish annually a report on the status of the ITQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program, and other relevant information at the discretion of the Regional Administrator.

■ 6. In § 648.79, revise paragraph (a)(1) to read as follows:

**§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.**

(a)* * *

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

* * * * *

[FR Doc. 2016–05846 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 81, No. 51
Wednesday, March 16, 2016

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Document Number AMS–NOP–15–0085; NOP–15–16]**

### Notice of Meeting of the National Organic Standards Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), the Agricultural Marketing Service (AMS), Department of Agriculture, is announcing a meeting of the National Organic Standards Board (NOSB) to assist the Department in the development of standards for substances to be used in organic production and to advise the Secretary of Agriculture on any other aspects of the implementation of Organic Foods Production Act.

**DATES:** The Board will hold one webinar at which it will receive public comment: April 19 from 1:00 p.m. to approximately 4:00 p.m. Eastern Time. A face-to-face meeting will be held April 25–27, 2016, from approximately 8:30 a.m. to approximately 6:00 p.m. Eastern Time. Deadline to sign up for oral comment: Midnight Eastern Time, 30 days after publication of this notice. Deadline to submit written comments: Midnight Eastern Time, 30 days after publication of this notice.

**ADDRESSES:** The April 19, 2016 meeting will take place via webinar (access information will be available on the NOP Web site prior to the webinar). The April 25–27, 2016 meeting will take place at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008. *http://www.omnihotels.com/hotels/washington-dc-shoreham.* Detailed information pertaining to the meeting, including instructions about providing written and oral comments can be found at *www.ams.usda.gov/NOSBMeetings.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Michelle Arsenault, Advisory Committee Specialist, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2642–S, Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The NOSB makes recommendations to the Department of Agriculture about whether substances should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the Organic Foods Production Act (7 U.S.C. 6501–6522). The public meeting allows the NOSB to discuss and vote on proposed recommendations to the USDA, receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture, and receive comments from the organic community. The meeting is open to the public. The meeting agenda, NOSB proposals and discussion documents, instructions for submitting and viewing public comments, and instructions for requesting time for oral comments will be available on the AMS Web site at *www.ams.usda.gov/NOSBMeetings.* Meeting topics will encompass a wide range of issues, including: Substances petitioned for addition to or deletion from the National List of Allowed and Prohibited Substances (National List), substances on the National List that require NOSB review before their 2018 sunset dates, and guidance on organic policies. At this meeting, the NOSB will begin its review of substances that have a sunset date in 2018.

#### Public Comments

Comments should address specific topics noted on the meeting agenda.

Written comments:

Written public comments will be accepted on or before midnight Eastern Time, 30 days after publication of this notice via *www.regulations.gov.* Comments submitted after this date will be provided to the NOSB, but Board members may not have adequate time to consider those comments prior to making a recommendation. The NOP strongly prefers comments to be submitted electronically; however, written comments may also be submitted (*i.e.* postmarked) by the deadline, via mail to Ms. Michelle Arsenault listed under **FOR FURTHER INFORMATION**.

Oral Comments:

The NOSB is providing the public multiple dates and opportunities to provide oral comments and will accommodate as many individuals and organizations as time permits. Persons or organizations wishing to make oral comments must pre-register by midnight Eastern Time, 30 days after publication of this notice, and can only register for one speaking slot: Either during the webinar, April 19, 2016, or at the face-to-face meeting April 25–27, 2016. Instructions for registering and participating in the webinar can be found at *www.ams.usda.gov/NOSBMeetings* or by contacting Michelle Arsenault listed under **FOR FURTHER INFORMATION CONTACT**.

*Meeting Accommodations:* The meeting hotel is ADA Compliant, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify Michelle Arsenault listed under **FOR FURTHER INFORMATION CONTACT**. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: March 10, 2016.

**Elanor Starmer,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–05835 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–SC–15–0080; SC16–996–2]**

### Peanut Standards Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for nominations.

**SUMMARY:** The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced

and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations for individuals to be considered for selection as Board members for a term of office ending June 30, 2019. Selected nominees would replace three producer and three industry representatives who currently serve on the Board and have terms of office that end on June 30, 2016. The Board consists of 18 members representing producers and the industry. In an effort to obtain diversity among candidates, USDA encourages the nomination of men and women of all racial and ethnic groups and persons with a disability.

**DATES:** Written nominations must be received on or before May 2, 2016.

**ADDRESSES:** Nominations should be sent to Steven W. Kauffman of the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 1st Street South, Winter Haven, FL 33880; Telephone: (863) 837–3375; Fax: (863) 291–8614; Email: *Steven.Kauffman@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 1308 of the 2002 Farm Bill requires the Secretary of Agriculture to establish and consult with the Board for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States.

The 2002 Farm Bill provides that the Board's makeup will include three producers and three peanut industry representatives from States specified in each of the following producing regions: Southeast (Alabama, Georgia, and Florida); Southwest (Texas, Oklahoma, and New Mexico); and Virginia/Carolina (Virginia and North Carolina).

The term ''peanut industry representatives'' includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The 2002 Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act.

USDA invites individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would fill two positions in the Southeast region, two positions in the Southwest region, and two positions in the Virginia/Carolina region.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Steven Kauffman at the address provided in the **ADDRESSES** section above. Copies of this form may be obtained at the Internet site *http://www.ams.usda.gov/about-ams/facas-advisory-councils/peanut-board,* or from the Southeast Marketing Field Office. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

**Authority:** 7 U.S.C. 7958.

Dated: March 10, 2016.

**Elanor Starmer,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2016–05867 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Application of Schools Applying for Recognition Through HealthierUS School Challenge: Smarter Lunchrooms

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for reviewing and evaluating the practices of schools participating in both the National School Lunch and School Breakfast Programs as a part of their application for recognition through HealthierUS School Challenge: Smarter Lunchrooms. The goal is to highlight and recognize those schools that are achieving success above and beyond Federal meal pattern requirements in the areas of actively implementing smarter lunchroom techniques, Smart Snacks, nutrition education, physical education, local school wellness policies, and other criteria for excellence.

**DATES:** Written comments must be received on or before May 16, 2016.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Ebony James, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 630, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Ebony James at 703–305–2549 or via email to *Ebony.James@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 630, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Ebony James at 703–305–2827.

**SUPPLEMENTARY INFORMATION:**

*Title:* HealthierUS School Challenge: Smarter Lunchrooms Application.

*Form Number:* FNS–779.

*OMB Number:* Not Yet Assigned.

*Expiration Date:* Not Yet Determined.

*Type of Request:* New collection.

*Abstract:* The HealthierUS School Challenge (HUSSC), begun in 2004, serves as a way to motivate and facilitate improvements in nutrition and physical activity in schools by collecting and sharing best practices. It also allows the Food and Nutrition Service (FNS) to showcase schools that have made positive steps in advancing implementation of wellness policies and the latest *Dietary Guidelines for*

*Americans* and food guidance system. Research supports the use of both incentives and the recognition of good work to promote positive behavior and performance. Therefore, the foundation of the HealthierUS School Challenge: Smarter Lunchrooms (HUSSC: SL) initiative is based on four levels of excellence in nutrition and physical activity. Team Nutrition schools that voluntarily submit applications for one of HUSSC: SL's four levels of excellence, and meet the HUSSC: SL criteria, receive an award plaque, banner, monetary incentive, and national and community recognition of their accomplishments.

This information collection will inform how the Food and Nutrition Service develops policy and technical assistance regarding the school nutrition environment. Collective feedback from the schools submitting application forms will inform FNS on what is actually being implemented at the local level. An assessment of the information obtained from schools will help FNS to better target efforts to design science-based nutrient standards for school meals, develop training and nutrition education materials in support of Federal child nutrition programs, plan for program enhancements, and share descriptive information about best practices with other schools across the country; and will assist those schools in planning and implementing their own feasible, results-oriented practices. Ultimately, the information on the application forms will help FNS better meet the needs of its customers, strengthen the development of policy directed toward the administration's interest in eliminating childhood obesity and food insecurity, and enhance the health and nutritional status of the US population.

This application is currently approved under OMB Control No. 0584–0524 Generic Clearance to Conduct Formative Research (which expires June 30, 2016). FNS is now seeking approval for this application in its own information collection.

*Affected Public:* State, Local, and Tribal Government. Respondent groups identified include school and school district representatives.

*Estimated Number of Respondents:* FNS anticipates that 1,000 school or school district representatives will voluntarily submit HealthierUS School Challenge: Smarter Lunchrooms applications over a one year period (see chart).

*Estimated Number of Responses per Respondent:* The school or district representative will be asked to participate in completing one application form.

*Estimated Total Annual Responses:* 1,000.

*Estimated Time per Response:* 2 hours.

*Estimated Total Annual Burden on Respondents:* 2,000 hours.

See the table below for estimated total annual burden for the respondents.

| Respondent | Estimated number of respondents | Responses annually per respondent | Total annual responses (Col. bxc) | Estimated average number of hours per response | Estimated total hours (Col. dxe) |
|---|---|---|---|---|---|
| Reporting Burden | | | | | |
| School or School District Representative | 1,000 | 1 | 1,000 | 2 | 2,000 |
| Total Reporting Burden | 1,000 | | 1,000 | | 2,000 |

Dated: March 8, 2016.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2016–05893 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Successful Approaches To Reduce Sodium in School Meals

**AGENCY:** Food and Nutrition Service, United States Department of Agriculture (USDA).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection to study Successful Approaches to Reduce Sodium in School Meals.

**DATES:** Written comments must be received on or before May 16, 2016.

**ADDRESSES:** Comments are invited on the following topics: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques, and/or other forms of information technology.

Comments may be sent to Alice Ann Gola, Social Science Research Analyst, Special Nutrition Evaluation Branch, Office of Policy Support, USDA Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via email to *AliceAnn.Gola@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Alice Ann Gola at *AliceAnn.Gola@fns.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Successful Approaches to Reduce Sodium in School Meals.

*Form Number:* N/A.

*OMB Number:* Not yet assigned.

*Expiration Date:* Not yet determined.

*Type of Request:* New collection.

*Abstract:* The National School Lunch Program (NSLP) and the School Breakfast Program (SBP) are federally

assisted meal programs operating in almost 100,000 public schools, non-profit private schools, and residential child-care institutions. Any child enrolled in a participating school may purchase a meal through the SBP and NSLP. Children from families with incomes at or below 130 percent of the poverty level are eligible for free meals. Children from families with incomes between 130 percent and 185 percent of poverty are eligible for reduced-price meals. School districts that participate in NSLP receive cash subsidies and commodities (USDA foods) from the USDA for each meal they serve. In return, they must serve meals that meet Federal requirements.

Federal regulations (7 CFR part 210.10) set nutritional and other meal requirements for school lunches, including targets for sodium levels. The purpose of this study is to identify, among schools that are successfully meeting the sodium targets, ''best practices'' that could be used to provide technical assistance to School Food Authorities (SFAs) for developing lower sodium menus. This study relies on qualitative data from four sources: SFA directors, school administrators, community-based stakeholders, and local food suppliers to SFAs. The study activities subject to this notice include online prescreening surveys, brief telephone interviews, in-depth telephone interviews, and in-depth on-site interviews. The online prescreening survey will verify which SFAs are currently meeting sodium targets. The brief site visit selection telephone interview will provide additional information used to determine which of the eligible sites will experience in-depth interviews, either on-site or by telephone.

*Affected Public:* This study includes four respondent groups: (1) State, Local, and Tribal Government (SFA directors and school administrators), (2) Business or Other For-Profit (local food suppliers), (3) Individuals or Households (community-based stakeholders), and (4) Not-For-Profit Institutions (community-based stakeholders).

*Estimated Number of Respondents:* The total estimated number of respondents is 753. This figure includes 608 respondents and 145 non-respondents. The initial sample will consist of 625 SFA directors. Assuming that 80 percent respond to the pre-screening survey, the resulting respondent sample will include approximately 500 SFA directors. Of the SFA directors identified as eligible from the pre-screening survey results, 45 will be contacted with an expected response rate of 80 percent (36 SFA director respondents and 9 non-respondents). In-depth interviews will be conducted with the 36 SFA directors (with an expected 100 percent response rate). The following respondent types will be recruited within each of the SFAs, resulting in 36 responses per respondent type: 40 school administrators (with an expected response rate of 90 percent); 46 local food suppliers (with an expected response rate of 78 percent); and 42 community-based stakeholders (32 individuals with an expected response rate of 87.5 percent and 10 not-for-profit institutions with an expected response rate of 80 percent). The 145 non-respondents include 125 SFA directors, 4 school administrators, 10 local food suppliers, 4 individual community-based stakeholders, and 2 not-for-profit community-based stakeholders.

*Estimated Frequency of Responses per Respondent:* FNS estimates that the frequency of responses per respondent will average 1.11 responses per respondent across the entire collection. SFA directors may provide responses on three occasions (prescreening survey, brief site visit selection telephone interview, and in-depth interview), although most will provide responses on the prescreening survey only. School administrators, community-based stakeholders, and local food suppliers to SFAs will be expected to provide a one-time response during the in-depth interview.

*Estimated Total Annual Responses:* The total number of responses expected across all respondent categories is 834.

*Estimated Time per Response:* The estimated time will vary depending on the respondent category and will range from three minutes (0.05 hours) to one hour. The table that follows outlines the estimated total annual burden for each type of respondent. Across all study respondents and non-respondents, the average estimated time per response is 0.47 hours.

*Estimated Total Annual Burden Hours on Respondents:* 391.22 hours (see table below for estimated total annual burden hours by type of respondent).

| Affected Public | Respondent type | Instrument | Total Sample Size | Estimated Number of Respondents[b] | Frequency of Response | Total Annual Responses | Average Time Per Response (Hours)[c] | Total Annual Burden Estimate (Hours) | Estimated Number of Non-Respondents[e] | Frequency of Non-Response | Total Annual Non-Responses | Average Time Per Non-Response (Hours)[d] | Total Annual Burden Estimate (Hours) | Grand Total Burden Estimate (Hours) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **State, Local, and Tribal Government** | | | | | | | | | | | | | | |
| State, Local, and Tribal Government | SFA Director | Prescreening Reminder Follow-up and Survey Completion-Web[a] | 625 | 500 | 1 | 500 | 0.39 | 195 | 125 | 1 | 125 | 0.26 | 32.5 | 227.50 |
| | | Brief Interview-Telephone | 45 | 36 | 1 | 36 | 0.50 | 18 | 9 | 1 | 9 | 0.08 | 0.72 | 18.72 |
| | | In-depth Interview-Telephone or On Site | 36 | 36 | 1 | 36 | 1 | 36 | 0 | 1 | 0 | 0.08 | 0 | 36.00 |
| | School Administrator | In-depth Interview-Telephone or On Site | 40 | 36 | 1 | 36 | 1 | 36 | 4 | 1 | 4 | 0.05 | 0.20 | 36.20 |
| **Subtotal of State, Local, and Tribal Government** | | | | **536** | **1** | **608** | **0.47** | **285** | **129** | **1** | **138** | **0.24** | **33.42** | **318.42** |
| **Business or Other For-Profit** | | | | | | | | | | | | | | |
| Business or Other For-Profit | Local Food Supplier | In-depth Interview-Telephone/On Site | 46 | 36 | 1 | 36 | 1 | 36 | 10 | 1 | 10 | 0.05 | 0.50 | 36.50 |
| **Subtotal of Business or Other For-Profit** | | | | **36** | **1** | **36** | **1** | **36** | **10** | **1** | **10** | **0.05** | **0.50** | **36.50** |
| **Individuals or Households** | | | | | | | | | | | | | | |
| Individuals or Households | Community-based Stakeholder | In-depth Interview-Telephone/On Site | 32 | 28 | 1 | 28 | 1 | 28 | 4 | 1 | 4 | 0.05 | 0.20 | 28.20 |
| **Individuals or Households** | | | | **28** | **1** | **28** | **1** | **28** | **4** | **1** | **4** | **0.05** | **0.20** | **28.20** |
| **Not-For-Profit Institutions** | | | | | | | | | | | | | | |
| Not-for-Profit Institutions | Community-based Stakeholder | In-depth Interview-Telephone/On Site | 10 | 8 | 1 | 8 | 1 | 8 | 2 | 1 | 2 | 0.05 | 0.10 | 8.10 |
| **Non-For Profit Institutions** | | | | **8** | **1** | **8** | **1** | **8** | **2** | **1** | **2** | **0.05** | **0.10** | **8.10** |
| **Grand Total** | | | | **608** | **1** | **680** | **0.53** | **357** | **145** | **1** | **154** | **0.22** | **34.22** | **391.22** |

[a]A welcome email with the prescreening survey link will be sent the first week of recruitment. Two more reminder emails will be sent; one during the second and third weeks. Four reminder phone calls will be made; two each week during the second and third weeks.

[b]500 SFA directors are estimated to participate in the pre-screening survey; 45 of those 500 will be asked to participate in the brief telephone interview; 36 of those 45 are expected to respond and the same 36 are expected to participate in the in-depth interview

[c]The burden hours reflect the data collection activity of an average 20 min. survey as well as an average correspondence burden of .08 (maximum of three welcome/reminder emails at 3 min. and four reminder phone calls at 1.2 min.)

[d]The burden hours reflect the burden associated with non-response to repeated correspondence of .26 hours (three welcome/reminder emails at 3 min. and four phone calls at 1.2 min.)

[e]These estimated 9 non-respondents are not unique non-respondents. Therefore, they are not included in the total count of non-respondents.

Dated: March 7, 2016.

**Audrey Rowe,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2016–05895 Filed 3–15–16; 8:45 am]

**BILLING CODE 3410–30–C**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by May 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Thomas P. Dickson, Acting Director, Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave. SW., STOP 1522, Room 5164 South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. FAX: (202) 720–4120.

**SUPPLEMENTARY INFORMATION:**

*Title:* Seismic Safety of New Building Construction.

*OMB Control Number:* 0572–0099.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that measures to assure seismic safety be imposed on federally assisted new building construction.

Title 7 Part 1792, Subpart C, Seismic Safety of Federally assisted New Building Construction, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by RUS or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB. This subpart implements and explains the provisions of the loan contract utilized by the RUS for both electric and telecommunications borrowers and by the RTB for its telecommunications borrowers requiring construction certifications affirming compliance with the standards.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .75 hours per response.

*Respondents:* Small business or organizations.

*Estimated Number of Respondents:* 192.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 144.

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 will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to: Thomas P. Dickson, Acting Director, Program Development and Regulatory Analysis, USDA Rural Utilities Service, STOP 1522, 1400 Independence Ave. SW., Washington, DC 20250–1522. FAX: (202) 720–8435. Email: *Thomas.dickson@wdc.usda.gov.*

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853. FAX: (202) 720–8435. Email: *marypat.daskal@wdc.usda.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 9, 2016.

**Brandon McBride,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2016–05925 Filed 3–15–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Notice of Solicitation of Applications (NOSA); Correction

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice; correction.

**SUMMARY:** The Rural Utilities Service (RUS) published in the **Federal Register**, on March 9, 2016 a Notice of Solicitation of Applications (NOSA), announcing the Household Water Well System Grant Program application window for fiscal year (FY) 2016. Inadvertently, an incorrect web link was included in the NOSA that did not permit access to the intended Web site. This document removes the incorrect web reference and replaces it with the correct version.

**DATES:** Effective on March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Derek Jones, Community Programs Specialist, Water and Environmental Programs, Rural Utilities Service, Rural Development, U.S. Department of Agriculture, STOP 1570, Room 2234–S, 1400 Independence Avenue SW., Washington, DC 20250–1570, Telephone: (202) 720–9640, fax: (202) 690–0649, email: *derek.jones@wdc.usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Rural Utilities Service (RUS) published in the **Federal Register** on March 9, 2016, at 81 FR 12451, a Notice of Solicitation of Applications (NOSA), for its Household Water Well System Grant Program application window for fiscal year (FY) 2016. Inadvertently, an incorrect web link was included in the NOSA that did not permit access to the intended Web site. This document removes all references to the incorrect web link published on March 9, 2016 and replaces it with the correct web reference.

In the Notice of Solicitation of Applications (NOSA) FR Doc. 2016–05170 published on March 9, 2016, at 81 FR 12451, make the following correction. Remove ''*rurdev.usda.gov/UWP-individualwellsystems''* and add in its place ''*http://www.rd.usda.gov/programs-services/household-water-well-system-grants*'' on the following pages:

Page 12451, second column, **ADDRESSES**: 1. Electronic copies: Page 12453, second column, IV. Application and Submission Information, A. Where To Get Application Information, 1. Internet for electronic copies; Page 12454, column one, (14) Assurances and certifications of compliance with other Federal Statutes; and, Page 12457,

column 2, VII Agency Contacts, A. Web site.

Dated: March 10, 2016.

**Brandon McBride,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2016–05926 Filed 3–15–16; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Michigan Advisory Committee to Discuss Preparations for a Public Hearing Regarding the Civil Rights Impact of Civil Forfeiture Practices in the State

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** 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 that the Michigan Advisory Committee (Committee) will hold a meeting on Tuesday, March 29, 2016, at 10:00 a.m. EDT for the purpose of discussing preparations for a public hearing regarding the civil rights impact of civil asset forfeiture in the State.

This meeting is available to the public through the following toll-free call-in number: 888–556–4997, conference ID: 2174573. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement at the end of the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=255. C*lick on the ''Meeting Details'' and ''Documents'' links to download. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

Welcome and Introductions
Donna Budnick, Chair
Preparatory Discussion for Public Hearing:
Civil Rights Impact of Civil Forfeiture Practices in Michigan
Future plans and actions
Open Comment
Adjournment

**DATES:** The meeting will be held on Tuesday, March 29, 2016, at 10:00 a.m. EDT, Public Call Information: Dial: 888–556–4997, Conference ID: 2174573.

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski at *mwojnaroski@usccr.gov* or 312–353–8311.

Dated March 10, 2016.

**David Mussatt,**

*Chief, Regional Programs Unit.*

[FR Doc. 2016–05845 Filed 3–15–16; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Missouri Advisory Committee To Discuss Draft Report Resulting From Testimony Received Regarding Civil Rights and Police/Community Interactions in the State

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Notice of meeting.

**SUMMARY:** 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 that the Missouri Advisory Committee (Committee) will hold a meeting on Thursday April 21, 2016, for the purpose of discussing oral and written testimony received during two public meetings focused on civil rights and police and community interactions in Missouri. Themes and findings discussed during this meeting will form the basis of a report to be issued to the Commission on this topic.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–587–0615, conference ID: 4444578. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur regular charges for calls they initiate over wireless lines according to their wireless plan, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within thirty days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov*. Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available at *https://database.faca.gov/committee/meetings.aspx?cid=258*. Click on ''meeting details'' and ''documents'' to download. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

**Agenda**

Welcome and Introductions
Committee Discussion: Draft report resulting from Committee hearings on Civil Rights and Police/

Community Relations in Missouri. (February 23, 2015 St. Louis; August 20, 2015 Kansas City)
Open Comment
Recommendations and Next Steps

**DATES:** The meeting will be held on Thursday, April 21, 2016, at 11:30 a.m. CDT

*Public Call Information:*
Dial: 888–587–0615
Conference ID: 4444578

**FOR FURTHER INFORMATION CONTACT:** Melissa Wojnaroski, DFO, at 312–353–8311 or *mwojnaroski@usccr.gov*.

Dated: March 10, 2016.

**David Mussatt,**

*Chief, Regional Programs Unit.*

[FR Doc. 2016–05844 Filed 3–15–16; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–890]**

### Wooden Bedroom Furniture From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On February 29, 2016, the United States Court of International Trade (''CIT'' or ''Court'') sustained the Department of Commerce's (''Department'') final results of redetermination [1] in which the Department determined, under protest, that four chests of Ethan Allen Operations, Inc. (''Ethan Allen'') are not subject to the scope of the *WBF Order,*[2] pursuant to the CIT's remand order in *Ethan Allen Operations, Inc.* v. *United States,* Consol. Court No. 14–00147 (December 1, 2015) (''*Ethan Allen*'').

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken,*[3] as clarified by *Diamond Sawblades,*[4] the Department is notifying the public that the Court's final judgment in this case is not in harmony with the Department's *Ethan Allen Scope Ruling* and is therefore amending its final scope ruling.[5]

**DATES:** *Effective Date:* March 10, 2016.

**FOR FURTHER INFORMATION CONTACT:** Cara Lofaro, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 482–5720.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 27, 2014 the Department issued the *Ethan Allen Scope Ruling,* in which it determined that Ethan Allen's Marlene, Nadine, and Serpentine chests were subject to the *WBF Order* based on an analysis under 19 CFR 351.225(k)(1), and that the Vivica chest was also subject merchandise based on an analysis of the factors under both 19 CFR 351.225(k)(1) and (k)(2) (the ''(k)(2) analysis''). The Department then requested a voluntary remand to allow further notice to, and comment from, parties on its (k)(2) analysis of the Vivica chest, which the Court granted. In the *Voluntary Remand Results,* the Department responded to the arguments of the parties to the dispute and determined, again, based on a (k)(2) analysis, that Ethan Allen's Vivica chest is subject to the scope of the *WBF Order.*[6]

On December 1, 2015, the Court issued its opinion on the *Ethan Allen Scope Ruling,* remanding each of the Department's determinations back to the agency for further analysis,[7] as discussed in further detail in the *Final Remand Results.*[8] Specifically, the Court held that with respect to the Vivica chest, ''because the (k)(1) factors are dispositive as to the Vivica chest and demonstrate that the Vivica chest is not within the scope of the *WBF Order,* the court does not proceed to an analysis of the (k)(2) factors and remands to Commerce to issue a ruling consistent with this opinion.'' [9] The Court further held that with respect to the Marlene, Nadine, and Serpentine chests ''because the (k)(1) factors are non-dispositive {in the *Ethan Allen Scope Ruling* the Department determined that the Marlene, Nadine, and Serpentine chests were covered by the *WBF Order* after analyzing the criteria listed in 19 CFR 351.225(k)(1)}, Commerce should evaluate the (k)(2) factors consistent with this decision,'' in which the Court noted, in part, that ''the proper inquiry should focus on the intended function of the product, *i.e.,* whether it was intended and designed for use in the bedroom.'' [10]

Accordingly, the Department issued the *Final Remand Results* and, consistent with the Court's analysis, determined that the Vivica chest is not subject to the *WBF Order.* Furthermore, in accordance with the Court's holding that the Marlene, Nadine, and Serpentine chests should be evaluated using a (k)(2) analysis, Commerce conducted such an analysis and determined that ''the weight of the record evidence supports a determination that the Nadine, Marlene, and Serpentine chests are not covered by the scope of the *WBF Order.*'' [11]

In *Ethan Allen II,* the Court sustained the Department's *Final Remand Results* in its entirety.[12]

#### Timken Notice

In its decision in *Timken* [13] as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the ''Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's February 29, 2016, judgment in *Ethan Allen II,* sustaining the Department's decision in the *Final Remand Results* that the four chests at issue are not covered by the scope of the *WBF Order,* constitutes a final decision of that court that is not in harmony with the *Ethan Allen Scope Ruling.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the chests at issue pending expiration of the period to appeal or, if appealed,

[1] *Ethan Allen Operations, Inc.* v. *United States,* Court No. 14–000147, Slip Op. 16–19 (CIT February 29, 2016) (''*Ethan Allen II*''), which sustained the Final Results of Redetermination Pursuant to Court Order, *Ethan Allen Operations, Inc.* v. *United States,* dated February 11, 2016 (''*Final Remand Results*'').

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (''*WBF Order*'').

[3] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*'').

[4] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*'').

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on Ethan Allen Operations Inc.'s Chests'' (May 27, 2014) (''*Ethan Allen Scope Ruling*'').

[6] *See* Final Results of Voluntary Redetermination Pursuant To Court Order, dated November 26, 2014. (''*Voluntary Remand Results*'').

[7] *See Ethan Allen.*

[8] *See Final Remand Results* at 1–2.

[9] *See Ethan Allen* at 16.

[10] *Id.* at 13.

[11] *See Final Remand Results* at 14.

[12] *See Ethan Allen II.*

[13] *See Timken,* 893 F.2d at 341.

pending a final and conclusive court decision.

**Amended Final Determination**

Because there is now a final court decision with respect to the *Ethan Allen Scope Ruling,* the Department is amending its final scope ruling. The Department finds that the scope of the *WBF Order* does not cover the products addressed in the *Ethan Allen Scope Ruling.* The Department will instruct U.S. Customs and Border Protection (''CBP'') that the cash deposit rate will be zero percent for the four chests imported by Ethan Allen. In the event that the CIT's ruling is not appealed, or if appealed, upheld by the CAFC, the Department will instruct CBP to liquidate entries of Ethan Allen's four chests at issue without regard to antidumping and/or countervailing duties, and to lift suspension of liquidation of such entries.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: March 9, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–05942 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–867]**

### Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 4, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on large power transformers from the Republic of Korea.[1] The review covers five producers/exporters of the subject merchandise, Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS). ILJIN, ILJIN Electric, and LSIS, were not selected for individual examination. The period of review (POR) is August 1, 2013, through July 31, 2014. As a result of our analysis of the comments and information received, these final results differ from the *Preliminary Results.* For the final weighted-average dumping margins, *see* the ''Final Results of Review'' section below.

**DATES:** *Effective Date:* March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Brian Davis (Hyosung) or Edythe Artman (Hyundai), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–7924 or (202) 482–3931, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On September 4, 2015, the Department published the *Preliminary Results.* In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our *Preliminary Results.*[2] On October 16, 2015, Hyundai timely submitted a case brief and on October 19, 2015, Hyosung and ABB Inc. (Petitioner) timely submitted case briefs.[3] Rebuttal briefs were also timely filed by Hyosung, Hyundai, and Petitioner, on October 27, 2015.[4] On December 22, 2015, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from January 4, 2016 to February 24, 2016.[5] On February 29, 2016, the Department further extended the final results to March 8, 2015.[6]

**Scope of the Order**

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540.[7]

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.[8] A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via ACCESS. ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.ita.doc.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we recalculated Hyosung's and

[1] *See Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014,* 80 FR 53496 (September 4, 2015) (*Preliminary Results*).

[2] The Department issued the briefing schedule in a Memorandum to the File, dated September 9, 2015. This briefing schedule was later extended at the request of interested parties to October 16, 2015 for briefs and October 26, 2015 for rebuttal briefs.

[3] *See* Case Brief from Petitioner regarding Hyundai, (Petitioner Brief Hyundai), Brief from Petitioner regarding Hyosung (Petitioner Brief Hyosung), and Hyosung Brief, all dated October 19, 2015, and Hyundai Brief, dated October 16, 2015.

[4] *See* Hyosung Rebuttal Brief, Hyundai Rebuttal Brief and Petitioner Rebuttal Brief: All dated October 26, 2015. Petitioner requested an extension for the briefing schedule to 30 days after Hyundai's submission of a post-verification supplemental questionnaire and an extension for filing rebuttal briefs, which the Department partially granted for all parties in a letter dated September 29, 2015 and extended in a letter dated October 13, 2015. *See* Letter to Petitioner dated September 29, 2015 and Letter to Petitioner dated October 13, 2015.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, ''Large Power Transformers from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2013–2014'' (December 22, 2015).

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, ''Large Power Transformers from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2013–2014'' (February 29, 2016); *see also* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016. As explained in this memorandum, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now March 8, 2016.

[7] For a full description of the scope of the order, *see* the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2013–2014'' (Issues and Decision Memorandum), which is issued concurrently with, and hereby adopted by, this notice.

[8] *Id.*

Hyundai's weighted-average dumping margins for these final results.

For Hyosung, we revised our margin program by adjusting our treatment of Hyosung's installation revenue, indirect selling expense ratio, U.S. commission expenses, and U.S. warranty expenses.[9] For Hyundai, we revised the margin program with respect to our treatment of bank charges and packing expenses incurred in the home market, installation and supervision expenses incurred in both markets, domestic inventory carrying costs and U.S. credit expenses, and U.S. commission expenses.[10]

As a result of the aforementioned recalculations of Hyosung's and Hyundai's weighted-average dumping margins, the weighted-average dumping margin for the three non-selected companies also changed.

**Final Results of the Review**

As a result of this review, the Department determines the following weighted-average dumping margins [11] for the period August 1, 2013, through July 31, 2014, are as follows:

| Manufacturer/exporter | Weighted-average margin (percent) |
|---|---|
| Hyosung Corporation | 9.40 |
| Hyundai Heavy Industries Co., Ltd | 4.07 |
| ILJIN Electric Co., Ltd | 6.74 |
| ILJIN | 6.74 |
| LSIS Co., Ltd | 6.74 |

**Duty Assessment**

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[12] For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.,* at or above 0.5 percent), the Department will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period.

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.00 percent, the all-others rate established in the antidumping investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers Regarding the Reimbursement of Duties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Order**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: March 8, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Final Issues and Decision Memorandum**



[9] *See* Memorandum from Brian Davis to the File, regarding ''Analysis of Data Submitted by Hyosung Corporation in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2013–2014'' (Hyosung Final Analysis Memorandum), dated March 23, 2014, at section ''Changes from the Preliminary Results,'' for further information.

[10] *See* Memorandum from Edythe Artman to the File, regarding ''Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2013–2014'' (Hyundai Final Analysis Memorandum), dated March 23, 2014, at section ''Changes from the Preliminary Results,'' for further information.

[11] As we did not have publicly-ranged U.S. sales volumes for Hyosung for the period August 1, 2013, through July 31, 2014, to calculate a weighted-average percentage margin for the non-selected companies (*i.e.,* ILJIN, ILJIN Electric, and LSIS) in this review, the rate applied to the non-selected companies is a simple-average percentage margin calculated based on the margins calculated for Hyosung and Hyundai.

[12] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[13] *See Large Power Transformers From the Republic of Korea: Antidumping Duty Order,* 77 FR 53177 (August 31, 2012).

[FR Doc. 2016–05940 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–956 and C–570–957]**

### Seamless Carbon Alloy Steel Standard Line and Pressure Pipes From the People's Republic of China: Continuation of Antidumping Duty Order and Countervailing Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the determinations by the Department of Commerce (the Department) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order and countervailing duty (CVD) order on seamless carbon alloy steel standard line and pressure pipes (seamless pipe) from the People's Republic of China (PRC) would likely lead to a continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order and the countervailing duty order.

**DATES:** *Effective Date:* March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Aleksandras Nakutis, Office IV, or, Peter Zukowski, Office I, AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3147 or (202) 482–0189.

**SUPPLEMENTARY INFORMATION:**

## Background

On November 10, 2010, the Department published the AD and CVD orders on imports of seamless pipes from the PRC.[1] There have been no administrative reviews since issuance of the *Orders.* There have been no related findings or rulings (*e.g.,* changed circumstances review, scope ruling, duty absorption review) since issuance of the *Orders.*

On October 1, 2015, the Department published a notice of initiation of the first sunset review of the AD and CVD *Orders* on seamless pipe from the PRC, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its reviews, the Department determined that revocation of the AD order would likely lead to a continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies. The Department, therefore, notified the ITC of the magnitude of the margin and the net countervailable subsidy rates likely to prevail should the antidumping order and the countervailing duty order be revoked.[3] On March 7, 2016, the ITC published notice of its determination, pursuant to section 751(c) of the Act, that revocation of the AD and CVD orders on seamless pipe from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

## Scope of the Orders

The scope of these orders consists of certain seamless carbon and alloy steel (other than stainless steel) pipes and redraw hollows, less than or equal to 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (*e.g.,* hot-finished or cold-drawn), end finish (*e.g.,* plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish (*e.g.,* bare, lacquered or coated). Redraw hollows are any unfinished carbon or alloy steel (other than stainless steel) pipe or ''hollow profiles'' suitable for cold finishing operations, such as cold drawing, to meet the American Society for Testing

[1] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 75 FR 69052 (November 10, 2010); *see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 75 FR 69050 (November 10, 2010) (*Orders*).

[2] *See Initiation of Five-Year ''Sunset'' Reviews,* 80 FR 59133 (October 1, 2015).

[3] *See Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 81 FR 7305 (February 11, 2016) and accompanying Issues and Decision Memorandum; *see also Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Final Results of Expedited First Sunset Review of the Countervailing Duty Order,* 81 FR 5985 (February 4, 2016) and the accompanying Issues and Decision Memorandum.

[4] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China: Determination,* 81 FR 11837 (March 7, 2016); *see also Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China: Investigation Numbers 701–TA–469 and 731–TA–1168 (Review),* USITC Publication 4595, (February 2016).

and Materials (''ASTM'') or American Petroleum Institute (''API'') specifications referenced below, or comparable specifications. Specifically included within the scope are seamless carbon and alloy steel (other than stainless steel) standard, line, and pressure pipes produced to the ASTM A–53, ASTM A–106, ASTM A–333, ASTM A–334, ASTM A–589, ASTM A–795, ASTM A–1024, and the API 5L specifications, or comparable specifications, and meeting the physical parameters described above, regardless of application, with the exception of the exclusion discussed below.

Specifically excluded from the scope of the orders are: (1) All pipes meeting aerospace, hydraulic, and bearing tubing specifications; (2) all pipes meeting the chemical requirements of ASTM A–335, whether finished or unfinished; and (3) unattached couplings. Also excluded from the scope of the order are all mechanical, boiler, condenser and heat exchange tubing, except when such products conform to the dimensional requirements, *i.e.,* outside diameter and wall thickness of ASTM A–53, ASTM A–106 or API 5L specifications.

The merchandise covered by the orders is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.19.1020, 7304.19.1030, 7304.19.1045, 7304.19.1060, 7304.19.5020, 7304.19.5050, 7304.31.6050, 7304.39.0016, 7304.39.0020, 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.51.5005, 7304.51.5060, 7304.59.6000, 7304.59.8010, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, and 7304.59.8070. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

**Continuation of the Orders**

As a result of the determinations by the Department and the ITC that revocation of the AD and CVD orders would likely lead to a continuation or recurrence of dumping and countervailable subsidies and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), the Department hereby orders the continuation of the AD order and CVD order on seamless pipe from the PRC. U.S. Customs and Border Protection will continue to collect antidumping and countervailing duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the orders will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year (''sunset'') reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: March 9, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–05941 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–847]**

### Heavy Walled Rectangular Carbon Steel Pipes and Tubes From Mexico: Amended Preliminary Determination of Sales at Less Than Fair Value

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of the correction of a significant ministerial error, the Department of Commerce (the Department) continues to preliminarily determine that heavy walled rectangular carbon steel pipes and tubes (HWR pipes and tubes) from Mexico are being sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act). The period of investigation is July 1, 2014, through June 30, 2015. Interested parties are invited to comment on this amended preliminary determination.

**DATES:** *Effective Date:* March 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Blaine Wiltse or David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6345 or (202) 482–3693, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On February 29, 2016, Productos Laminados de Monterrey S.A. de C.V. (Prolamsa), alleged that the Department made a significant ministerial error in the *Preliminary Determination*.[1]

**Scope of the Investigation**

The products covered by this investigation are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

**Significant Ministerial Error**

A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' Further, 19 CFR

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From Mexico: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 81 FR 10587 (March 1, 2016) (*Preliminary Determination*).

351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.'' A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.[2]

**Ministerial Error Allegation**

Productos Laminados de Monterrey S.A. de C.V. (Prolamsa) argues that the Department in its margin calculations incorrectly referenced the variable name for the production quantity reported in Prolamsa' cost of production database as ''QUANTITY,'' rather than ''PRODQTY.'' [3] As a result of this error, Prolamsa points out that the Department failed to weight average Prolamsa's reported costs by production quantity, but instead calculated a simple average of Prolamsa's costs.

We agree with Prolamsa. Moreover, pursuant to 19 CFR 351.224(g)(2), this error is significant because the correction of the error results in a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin originally calculated for Prolamsa. Therefore, we are correcting the error alleged by Prolamsa and we are amending our preliminary determination accordingly.

The collection of cash deposits and suspension of liquidation will be revised accordingly in accordance with sections 733(d) and (f) of the Act and 19 CFR 351.224. Because the correction of the error for Prolamsa results in a reduced cash deposit rate, the revised rates calculated for Prolamsa and the companies covered by the ''all others'' rate will be effective retroactively to March 1, 2016, the date of publication of the *Preliminary Determination.*

**Amended Preliminary Determination**

We are amending the preliminary determination of sales at LTFV for HWR pipes and tubes from Mexico to reflect the correction of a ministerial error made in the margin calculation of that determination for Prolamsa. As a result of the correction of the ministerial error, the revised weighted-average dumping margins are as follows:

| Exporter/manufacturer | Weighted-average dumping margin (percent) |
|---|---|
| Productos Laminados de Monterrey S.A. de C.V. | 5.17 |
| All Others | [4] 4.92 |

**International Trade Commission (ITC) Notification**

In accordance with section 733(f) of the Act, we are notifying the International Trade Commission (ITC) of our amended preliminary determination of sales at LTFV. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.[5]

**Notification to Interested Parties**

The Department intends to disclose calculations performed in connection with this amended preliminary determination within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

This determination is issued and published in accordance with sections 733(f) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: March 9, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–05943 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–DS–P**

[2] *See* 19 CFR 351.224(g)(1) and (2).

[3] *See* letter from Prolamsa entitled, ''Heavy Walled Rectangular Carbon Steel Pipes and Tubes from Mexico: Ministerial Error Comments,'' dated February 29, 2016, at page 3.

[4] In this investigation, we based our calculation of the all-others rate on the weighted-average of the margins calculated for Maquilacero S.A. de C.V. and Prolamsa using publicly-ranged data. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business-proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for these respondents. For further discussion of this calculation, *see* the memorandum entitled ''Less-Than-Fair-Value Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Mexico: Calculation of the All-Others Rate for the Amended Preliminary Determination,'' dated concurrently with this notice.

[5] *See* 735(b)(2) of the Act.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–427–602]**

## Brass Sheet and Strip From France: Final Results of Antidumping Duty Administrative Review; 2014–2015

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On December 1, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on brass sheet and strip from France.[1] The review covers Griset SA (Griset) and KME France SAS (KME France). The period of review (POR) is March 1, 2014, through February 28, 2015. We invited interested parties to comment on our *Preliminary Results.* No parties commented, and our final results remain unchanged from our *Preliminary Results.* The final results are listed in the section entitled ''Final Results of Review'' below.

**DATES:** *Effective Date:* March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mark Flessner or Robert James, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6312 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 1, 2015, the Department published the preliminary results of this review in the **Federal Register.** *See Preliminary Results.* We invited parties to comment on the *Preliminary Results.* No party commented, nor did any party request a hearing.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of this review is now April 5, 2016.[2]

[1] *See Brass Sheet and Strip From France: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015,* 80 FR 75055 (December 1, 2015) (*Preliminary Results*).

[2] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative

Continued

**Scope of the Order**

The product covered by the order is brass sheet and strip, other than leaded and tinned brass sheet and strip, from France. The merchandise is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7409.21.00 and 7409.29.00.[3]

**Final Results of Review**

As noted above, the Department has received no comments concerning the *Preliminary Results* on the record of this segment of the proceeding. As there are no changes from, or comments upon, the *Preliminary Results,* there is no decision memorandum accompanying this **Federal Register** notice. For further details of the issues addressed in this proceeding, *see Preliminary Results.* The final weighted-average dumping margin for the period March 1, 2014, through February 28, 2015, is as follows:

| Producer or exporter | Estimated weighted-average dumping margin (percent) |
|---|---|
| Griset SA | 42.24 |
| KME France SAS | 42.24 |

**Assessment**

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department intends to issue appropriate assessment instructions for the companies subject to this review to CBP 15 days after the date of publication of these final results. We shall instruct CBP to apply an *ad valorem* assessment rate of 42.24 percent to all entries of subject merchandise during the POR which were produced and/or exported by Griset or KME France.

**Cash Deposit Requirements**

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of brass sheet and strip from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) For Griset or KME France, the cash deposit rate will be equal to the weighted-average dumping margin listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, any previous review, or the original investigation, the cash deposit rate will be 42.24 percent *ad valorem,* the ''all others'' rate established in the LTFV investigation.[4] These cash deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Administrative Protective Order Notification to Interested Parties**

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

**Notification to Interested Parties**

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h)(1).

Dated: March 9, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2016–05992 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–909]**

### Certain Steel Nails From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the ''Department'') published the *Preliminary Results* of the sixth administrative review of the antidumping duty order on certain steel nails from the People's Republic of China (''PRC'') on September 4, 2015.[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculation for these final results regarding one of the mandatory respondents, Stanley.[2] We also continue to find that the other mandatory respondent, Shandong Oriental Cherry Hardware Group Co., Ltd. (''Shandong Oriental Cherry''), withheld requested information, significantly impeded this administrative review, and did not cooperate to the best of its ability. Accordingly, pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (''the Act''), we continue to apply total adverse facts available (''AFA'') to Shandong Oriental Cherry and find that it is not eligible for separate rate status and, thus, is part of the PRC-wide entity. The final dumping margins are listed below in the ''Final Results of Administrative Review'' section of this notice. The period of

Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' dated January 27, 2016. Therefore, the deadline for signature of these final results will be Tuesday, April 5, 2016.

[3] For a full description of the scope of the order, *see* the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled ''Decision Memorandum for Preliminary Results of the 2014–2015 Antidumping Duty Administrative Review: Brass Sheet and Strip from France,'' dated November 17, 2015.

[4] *See Antidumping Duty Order; Brass Sheet and Strip From France,* 52 FR 6995 (March 6, 1987).

[1] *See Certain Steel Nails from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2013–2014,* 80 FR 53490 (September 4, 2015) (''*Preliminary Results''*) and accompanying Preliminary Decision Memorandum.

[2] The Stanley Works (Langfang) Fastening Systems Co., Ltd. and Stanley Black & Decker, Inc. (collectively, ''Stanley'').

review (''POR'') is August 1, 2013, through July 31, 2014.

**DATES:** *Effective Date:* March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock or Matthew Renkey, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone 202–482–1394 or 202–482–2312, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

The Department published the *Preliminary Results* on September 4, 2015.[3] On December 21, 2015, the Department extended the deadline in this proceeding by 60 days.[4] As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results of this review is now March 7, 2016.[5]

In accordance with 19 CFR 351.309, we invited parties to comment on our *Preliminary Results.* On October 30, 2015, Qingdao D&L, *et al.,*[6] Nanjing Yuechang,[7] National Nail,[8] Petitioner,[9] Shandong Oriental Cherry, and Tianjin Jinchi [10] submitted timely-filed case briefs, pursuant to our regulations.[11] Additionally, on November 6, 2015, Petitioner and Stanley submitted timely-filed rebuttal briefs.[12] Moreover, on November 20, 2015, Stanley submitted its timely-filed case brief, pursuant to our regulations.[13] Finally, on January 12, 2016, the Department held a public hearing where counsel for National Nail, Petitioner, Shandong Oriental Cherry, and Stanley presented issues raised in their case and rebuttal briefs.

## Scope of the Order

The merchandise covered by the order includes certain steel nails having a shaft length up to 12 inches. Certain steel nails subject to the order are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 7317.00.55, 7317.00.65, 7317.00.75, and 7907.00.6000.[14] While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order, which is contained in the accompanying Issues and Decision Memorandum (''I&D Memo''), is dispositive.[15]

## Analysis of Comments Received

We addressed all issues raised in the case and rebuttal briefs by parties in this review in the I&D Memo. Attached to this notice, in Appendix I, is a list of the issues which parties raised. The I&D Memo is a public document and is on file in the Central Records Unit (''CRU''), Room B8024 of the main Department of Commerce building, as well as electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *http://access.trade.gov* and in the CRU. In addition, a complete version of the I&D Memo can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed I&D Memo and the electronic versions of the I&D Memo are identical in content.

## Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we revised the margin calculation for Stanley. Accordingly, for the final results, the Department has updated the margin to be assigned to companies eligible for a separate rate as the revised calculated margin of the sole mandatory respondent, Stanley, whose margin is not zero, *de minimis,* or based on facts available, unlike the other mandatory respondent, Shandong Oriental Cherry, whose margin is the PRC-wide entity rate of 118.04 percent. The Surrogate Values Memo contains further explanation of our changes to the surrogate values selected for Stanley's factors of production.[16] For a list of all issues addressed in these final results, please refer to Appendix I accompanying this notice.

## Final Determination of No Shipments

In the *Preliminary Results,* the Department preliminarily determined that Besco Machinery Industry (Zhejiang) Co., Ltd. (''Besco''), Certified Products International Inc. (''CPI''), Huanghua Jinhai Hardware Products Co., Ltd. (''Jinhai''), Huanghua Xionghua Hardware Products Co., Ltd. (''Huanghua Xionghua''), Nanjing Yuechang Hardware Co., Ltd. (''Yuechang''), PT Enterprise Inc., Qingdao Jisco Co., Ltd. and Jisco Corporation (collectively, ''JISCO''),

[3] *See Preliminary Results.*

[4] *See* Memorandum to Gary Taverman, ''Certain Steel Nails from the People's Republic of China: Extension of Deadline for Final Results of the Sixth Antidumping Duty Administrative Review,'' (December 21, 2015).

[5] *See* Memorandum to the Record from Ron Lorentzen, Acting A/S for Enforcement & Compliance, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas,'' (January 27, 2016).

[6] Qingdao D&L Group Ltd. (''Qingdao D&L''), SDC International Aust. PTY. Ltd. (''SDC International''), Tianjin Lianda Group Co., Ltd. (''Tianjin Lianda''), and Tianjin Universal Machinery Import & Exp. Corporation (''Tianjin Universal'') (collectively, ''Qingdao D&L, *et al.*'').

[7] Nanjing Yuechang Hardware Co., Ltd. (''Nanjing Yuechang'').

[8] National Nail Corp. (''National Nail'').

[9] Mid Continent Steel & Wire, Inc. (''Petitioner'').

[10] Tianjin Jinchi Metal Products Co., Ltd. (''Tianjin Jinchi'').

[11] *See* Letter to the Secretary from Qingdao D&L, et al., ''Certain Steel Nails from the People's Republic of China: Case Brief'' (October 30, 2015) (''Qingdao D&L, et al.'s Case Brief''); Letter to the Secretary from Nanjing Yuechang, ''Certain Steel Nails from the People's Republic of China; Case Brief'' (October 30, 2015) (''Nanjing Yuechang's Case Brief''); Letter to the Secretary from National Nail, ''Certain Steel Nails from the People's Republic of China: Case Brief'' (October 30, 2015); Letter to the Secretary from Petitioner, ''Certain Steel Nails from the People's Republic of China: Case Brief'' (October 30, 2015) (''Petitioner's Case Brief''); Letter to the Secretary from Shandong Oriental Cherry, ''Certain Steel Nails from the People's Republic of China: Case Brief,'' (October 30, 2015) (''Shandong Oriental Cherry's Case Brief''); and Letter to the Secretary from Tianjin Jinchi, ''Certain Steel Nails from the People's Republic of China: Case Brief,'' (October 30, 2015) (''Tianjin Jinchi's Case Brief'').

[12] *See* Letter to the Secretary from Petitioner, ''Certain Steel Nails from China: Petitioner's Rebuttal Brief'' (November 6, 2015) (''Petitioner's Rebuttal Brief''); and Letter to the Secretary from Stanley, ''Certain Steel Nails from China: Stanley's Rebuttal Brief'' (November 6, 2015) (''Stanley's Rebuttal Brief'').

[13] *See* Letter to the Secretary from Stanley, ''Certain Steel Nails from China: Stanley's Revised Case Brief'' (November 20, 2015) (''Stanley's Revised Case Brief'').

[14] The Department recently added the Harmonized Tariff Schedule category 7907.00.6000, ''Other articles of zinc: Other,'' to the language of the *Order. See* Memorandum to Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, through James C. Doyle, Director, Office 9, Antidumping and Countervailing Duty Operations, regarding ''Certain Steel Nails from the People's Republic of China: Cobra Anchors Co. Ltd. Final Scope Ruling,'' (September 19, 2013).

[15] For a full description of the scope of the *Order, see* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Issues and Decision Memorandum for the Final Results of Sixth Antidumping Duty Administrative Review: Certain Steel Nails from the People's Republic of China'' (March 7, 2016) (''I&D Memo'') which is adopted by this notice.

[16] *See* Memorandum to the File, through Paul Walker, Program Manager, Office V, Enforcement and Compliance, from Julia Hancock, Senior International Trade Analyst, Office V, Enforcement and Compliance, regarding Sixth Antidumping Administrative Review of Certain Steel Nails from the People's Republic of China: Surrogate Values for the Final Results, dated concurrently with and hereby adopted by this notice (''Surrogate Values Memo'').

Shanghai Jade Shuttle Hardware Tools Co., Ltd. (''Shanghai Jade Shuttle''), Shanghai Tengyu Hardware Tools Co., Ltd. (''Shanghai Tengyu''), Shanxi Yuci Broad Wire Products Co., Ltd. (''Shanxi Yuci''), and Zhejiang Gem-Chun Hardware Accessory Co., Ltd (''Gem-Chun'') did not have any reviewable transactions during the POR. Consistent with the Department's assessment practice in non-market economy (''NME'') cases, we completed the review with respect to the above-named companies. Based on the certifications submitted by the aforementioned companies, and our analysis of CBP information, we continue to determine that these companies did not have any reviewable transactions during the POR. As noted in the ''Assessment Rates'' section below, the Department intends to issue appropriate instructions to CBP for the above-named companies based on the final results of this review.

**Final Results of Administrative Review**

The weighted-average dumping margins for the administrative review are as follows:

| Exporter | Weighted-average margin (percent) |
|---|---|
| Stanley | 11.95 |
| Chiieh Yung Metal Ind. Corp | 11.95 |
| Dezhou Hualude Hardware Products Co., Ltd | 11.95 |
| Hebei Cangzhou New Century Foreign Trade Co., Ltd | 11.95 |
| Nanjing Caiqing Hardware Co., Ltd | 11.95 |
| Qingdao D&L Group Ltd | 11.95 |
| SDC International Aust. PTY. Ltd | 11.95 |
| Shandong Dinglong Import & Export Co., Ltd | 11.95 |
| Shanghai Curvet Hardware Products Co., Ltd | 11.95 |
| Shanghai Yueda Nails Industry Co., Ltd | 11.95 |
| Shanxi Hairui Trade Co., Ltd | 11.95 |
| Shanxi Pioneer Hardware Industrial Co., Ltd | 11.95 |
| Shanxi Tianli Industries Co., Ltd | 11.95 |
| S-Mart (Tianjin) Technology Development Co., Ltd | 11.95 |
| Suntec Industries Co., Ltd | 11.95 |
| Tianjin Jinchi Metal Products Co., Ltd | 11.95 |
| Tianjin Jinghai County Hongli Industry & Business Co., Ltd | 11.95 |
| Tianjin Lianda Group Co., Ltd | 11.95 |
| Tianjin Universal Machinery Imp. & Exp. Corporation | 11.95 |
| Tianjin Zhonglian Metals Ware Co., Ltd | 11.95 |
| Xi'an Metals & Minerals Import & Export Co., Ltd | 11.95 |

In addition, the Department continues to find that the companies identified in Appendix to the Issues and Decision Memorandum, attached to this notice, are part of the PRC-wide entity.[17]

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.212(b), the Department has determined, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Where the respondent reported reliable entered values, we calculated importer- (or customer specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[18] Where the Department calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, the Department will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[19] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis,* the Department will instruct CBP to collect the appropriate duties at the time of liquidation.[20] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[21] We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

Pursuant to the Department's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the PRC-wide entity rate. Additionally, if the Department determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the PRC-wide entity rate.[22]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be the rate established in the final results of review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5

[17] The Department notes that a company, Nanjing Yuechang Hardware Co., Ltd. (''Yuechang''), is no longer being considered part of the PRC-wide entity, as discussed in Comment 13 of the Issues and Decision Memorandum.

[18] *See* 19 CFR 351.212(b)(1).

[19] *Id.*

[20] *Id.*

[21] *See* 19 CFR 351.106(c)(2).

[22] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-Wide rate of 118.04 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

**Disclosure**

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Notification to Importers**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: March 7, 2016.

**Paul Piquado,**

*Assistant Secretary for Enforcement and Compliance.*

**Appendix I—Issues and Decision Memorandum**



[FR Doc. 2016–05994 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC969**

### Draft Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing—Acoustic Threshold Levels for Onset of Permanent and Temporary Threshold Shifts

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

**ACTION:** Notice; request for comments.

**SUMMARY:** The National Marine Fisheries Service (NMFS), on behalf of NMFS and the National Ocean Service (referred collectively here as the National Oceanic and Atmospheric Administration (NOAA)), announces the availability of a document containing proposed changes to its Draft Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing. The Guidance provides updated received levels, or thresholds, at which individual marine mammals under NOAA's management authority are predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater anthropogenic sound sources. NOAA has re-evaluated and modified several parts of the Draft Guidance and is soliciting public comment on the proposed changes.

**DATES:** Comments must be received by March 30, 2016.

**ADDRESSES:** The proposed changes to the Draft Guidance are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/acoustics/.*

You may submit comments, which should be identified with NOAA–NMFS–2013–0177, by either of the following methods:

*Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

*Mail:* Send comments to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Acoustic Guidance.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

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

**FOR FURTHER INFORMATION CONTACT:** Amy Scholik-Schlomer, Office of Protected Resources, 301–427–8449, *Amy.Scholik@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** NOAA has developed Draft Guidance for assessing the effects of anthropogenic sound on the hearing of marine mammal species under NOAA's jurisdiction (*i.e.,* whales, dolphins, porpoises, seals and sea lions). Specifically, the Guidance, which is technical in nature, identifies the received levels, or thresholds, at which individual marine mammals are

predicted to experience changes in their hearing sensitivity (either temporary or permanent) for all underwater anthropogenic sound sources. This Guidance is intended to be used by NOAA analysts and managers and other relevant user groups and stakeholders, including other federal agencies, when seeking to determine whether and how their activities are expected to result in particular types of impacts to marine mammals via acoustic exposure. The document outlines NOAA's updated acoustic threshold levels, describes in detail how the thresholds were developed, and explains how we intend to update them in the future.

NOAA first published a **Federal Register** Notice on December 27, 2013, announcing the availability of the Draft Guidance and a 30-day public comment period (78 FR 78822), which was extended another 45 days based upon public request (79 FR 4672; January 29, 2014). While NOAA was in the process of evaluating and addressing public comments, the U.S. Navy updated its methodology for the development of marine mammal auditory weighting functions and acoustic threshold levels. NOAA evaluated the proposed methodology and determined that it reflected the best available science. As a result, NOAA incorporated the Navy's methodology into our Draft Guidance and conducted another 45-day public comment period (80 FR 45642; July 31, 2015). Please refer to these **Federal Register** Notices for additional background about the 2013 and 2015 Draft Guidance.

While NOAA was working to address public comments from the second public comment period and finalize the Guidance, NOAA and the Navy (SPAWAR Systems Center Pacific) further evaluated certain aspects of the U.S. Navy's methodology. As a result, several recommendations/modifications were suggested.

The recommendations include: An updated methodology for predicting a composite audiogram for LF cetaceans; modification of the methodology used to establish auditory threshold levels for LF cetaceans; movement of the white-beaked dolphin (*Lagenorhynchus albirostris*) from mid-frequency (MF) to high-frequency (HF) cetaceans; the inclusion of a newly published harbor porpoise (HF cetacean) audiogram (Kastelein et al. 2015); the exclusion of multiple data sets from the phocid pinniped weighting function; removal of peak sound pressure level (PK) acoustic threshold levels for non-impulsive sounds; and updated methodology for deriving PK acoustic threshold levels for functional hearing groups where no data are available.

After consideration of these recommendations, NOAA has updated the Draft Guidance to reflect the suggested changes and is soliciting public comment on those revisions, which have been placed in a stand-alone document, via a focused 14-day public comment period. As the Guidance is finalized, NOAA will address *all* substantive public comments on the Guidance (*i.e.,* from the first and second public comment periods, as well as those from this focused third public comment period). Accordingly, there is no need to reiterate or resubmit comments made during the first and second public comment period on other sections of the Draft Guidance. NOAA encourages the public to focus comment on the document containing the proposed changes to the Guidance.

The Guidance is classified as a Highly Influential Scientific Assessment by the Office of Management and Budget. As such, independent peer review is required prior to broad public dissemination by the Federal Government. As part of this process, NOAA has conducted three independent peer reviews in association with the Guidance. Details of all peer reviews can be found within the Guidance and at the following Web site: *http://www.nmfs.noaa.gov/pr/acoustics/.* Concurrent with this third public comment period, NOAA requested that the peer reviewers of the Navy's methodology review the document containing the proposed changes to the Draft Guidance and indicate whether the revisions would significantly alter any of the comments made during their original review.

Dated: March 10, 2016.

**Donna S. Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2016–05886 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XE407**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

**ACTION:** Notice; request for comments.

**SUMMARY:** We have made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This EFP would allow two commercial fishing vessels to trawl for summer flounder using an experimental Turtle Excluder Device to test target species catch retention rates, and exempt the vessels from minimum size requirements and possession limits found at 50 CFR part 648 in order to sample the catch for scientific purposes.

The Magnuson-Stevens Fishery Conservation and Management Act requires publication of this notice to provide the public an opportunity to comment on the proposed Exempted Fishing Permit.

**DATES:** Comments must be received on or before March 31, 2016.

**ADDRESSES:** You may submit written comments by any of the following methods:

- *Email: NMFS.GAR.EFP@noaa.gov.* Include in the subject line ''Comments on CFF Fluke Cable TED EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CFF Fluke Cable TED EFP.''

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Scheimer, Fisheries Management Specialist, 978–281–9236, *Elizabeth.scheimer@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Coonamessett Farm Foundation (CFF) submitted a complete application for an Exempted Fishing Permit (EFP) on December 15, 2015, to conduct commercial fishing activities that the regulations would otherwise restrict. The EFP would authorize two vessels to temporarily retain undersized and prohibited catch for biological sampling during experimental Turtle Excluder Device (TED) testing in the summer flounder fishery.

Currently approved TEDs have been shown to reduce summer flounder targeted catch at a level that is of concern to the industry, and the objective of this research is to find TED gear configurations that exclude sea turtles while maintaining target catch. The CFF would test an experimental TED made of flexible cable instead of aluminum or steel pipe in bottom trawl gear directed on summer flounder. The TED was already tested in 2015 for its ability to exclude sea turtles, but is not yet certified, and this research will quantify catch retention. This TED would be attached in a 3-inch mesh TED

extension which meets applicable gear requirements. All fishing would occur north of the Summer Flounder Fishery Sea Turtle Exemption Area (37°05′ N latitude), in waters where approved TEDs are not required, and no Endangered Species Act (ESA) research permit would be required.

Eighty tows would be conducted between March and October 2016, in southern New England and mid-Atlantic waters. A trawl net with the modified TED would be compared against a control net of the vessels' standard bottom trawl gear. Paired tows would be conducted across multiple strata with trawl times of 60–90 minutes. Data collected on total catch would include total weight and length measurements on all summer flounder. Other landed species will be sampled if conditions permit, or a representative subsample will be taken. Underwater camera equipment would be installed in the net to investigate the performance of the cable TED, the fishing gear, and any potential problems in the rigging of the TED. All participating vessels would have permits and quota to target summer flounder, which would be kept and sold consistent with applicable regulations. All bycatch would be returned to the sea as soon as practicable following data collection.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 10, 2016.

**Emily H. Menashes,**

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

[FR Doc. 2016–05823 Filed 3–15–16; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### U.S. Air Force Academy Board of Visitors Notice of Meeting; Withdrawal

**AGENCY:** U.S. Air Force Academy Board of Visitors, DoD.

**ACTION:** Meeting notice; withdrawal.

**SUMMARY:** The document titled ''U.S Air Force Academy Board of Visitors Notice of Meeting'', which published in the **Federal Register** on March 7, 2016 (81 FR 11764), is withdrawn. Due to circumstances beyond the Air Force's control, the meeting notice for the upcoming USAF BoV meeting was published in the **Federal Register** with less than 15 days' notice to the public and therefore has to be revised to include a waiver notice. The revised document will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For additional information or to attend this BoV meeting, contact Major Jennifer Hubal, Accessions and Training Division, AF/A1PT, 1040 Air Force Pentagon, Washington, DC 20330, (703) 695–4066, *Jennifer.M.Hubal.mil@mail.mil.*

**Henry Williams,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2016–05947 Filed 3–15–16; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### U.S. Air Force Exclusive Patent License

**AGENCY:** Air Force Research Laboratory Information Directorate, Rome, New York, Department of the Air Force, DOD.

**ACTION:** Notice of intent to issue an exclusive patent license.

**SUMMARY:** Pursuant to the provisions of part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant Lilo Life LLC, a corporation of New York, having a place of business at 106 Genesee St., Utica, New York 13413, an exclusive license in any right, title and interest the United States Air Force has in: In U.S. Patent No. 8,317,058 entitled ''Bicyclists' Water Bottle with Bottom Drinking Valve'', issued on November 27th, 2012, U.S. Design Patent No. D588,856 issued on March 24th, 2009, and U.S. Design Patent D583,626 issued on December 20th, 2008.

**FOR FURTHER INFORMATION CONTACT:** An exclusive license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objections should be sent to: Air Force Research Laboratory, Office of the Staff Judge Advocate, AFRL/RIJ, 26 Electronic Parkway, Rome, New York 13441–4514. Telephone: (315) 330–2087; Facsimile (315) 330–7583.

**Henry Williams,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2016–05946 Filed 3–15–16; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 15–81]**

### 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:** Heather N. Harwell, DSCA/LMO, (703) 697–9217.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15–81 with attached Policy Justification.

Dated: March 10, 2016.

**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

MAR 0 5 2016

The Honorable Paul D. Ryan
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 herewith Transmittal No. 15-81, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Indonesia for defense articles and services estimated to cost $95 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

for J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 15–81

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:* Indonesia

(ii) *Total Estimated Value:*

| | |
|---|---|
| Major Defense Equipment* .. | $80 million |
| Other ..... | $15 million |
| Total ..... | $95 million |

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

*Major Defense Equipment (MDE):*

Thirty-six (36) AIM–120C–7 Advanced Medium-Range Air-to-Air Missiles (AMRAAMs)

One (1) Missile Guidance Section

*Non-Major Defense Equipment (non-MDE):*

Control section support equipment, spare parts, services, integration activities, logistics, technical contractor engineering and technical support, loading adaptors, technical publications, familiarization training, test equipment, and other related elements.

(iv) *Military Department:* Air Force (X7–D–YAB).

(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:* 09 March 2016.

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Indonesia–AIM–120C–7 Advanced Medium-Range Air-to-Air Missiles (AMRAAMs)

The Government of Indonesia has requested a possible sale of thirty-six (36) AIM–120C–7 AMRAAMs and one (1) Missile Guidance Section. Also included in this possible sale are; control section support equipment, spare parts, services, logistics, technical contractor engineering and technical support, loading adaptors, technical publications, familiarization training, test equipment, and other related elements. The total estimated value of MDE is $80 million. The overall total estimated value is $95 million.

This proposed sale contributes to the foreign policy and national security of the United States by helping to improve the security of a key partner that has been, and continues to be, an important force for political stability and economic progress in the Asia-Pacific region.

The proposed sale improves Indonesia's capability to deter regional threats and strengthen its homeland defense. Indonesia is able to absorb this additional equipment and support into its armed forces.

The proposed sale of this equipment and support does not alter the basic military balance in the region.

The prime contractor will be determined by competition. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Indonesia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–81

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as Amended

Annex

Item No. vii

(vii) Sensitivity of Technology

1. AIM–120C–7 Advanced Medium Range Air-to-Air (AMRAAM) is a radar-guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high flying, low flying, and maneuvering targets. The AMRAAM All Up Round is classified CONFIDENTIAL. Major components and subsystems are classified up to CONFIDENTIAL, and technology data and other documentation are classified up to SECRET.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

4. All defense articles and services listed in this transmittal have been authorized for release and export to Indonesia.

[FR Doc. 2016–05852 Filed 3–15–16; 8:45 am]

**BILLING CODE 5001–06–C**

## 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:* CP16–81–000.

*Applicants:* Equitrans, L.P., and Rager Mountain Storage Company LLC.

*Description:* Abbreviated Application of Equitans, L.P., and Rager Mountain Storage Company LLC for Amendment Authorization.

*Filed Date:* 2/29/16.

*Accession Number:* 20160229–5453.

*Comments Due:* 5 p.m. ET 3/29/16.

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:* RP16–578–001.

*Applicants:* Enable Gas Transmission, LLC.

*Description:* Compliance filing Compliance Filing in RP16–578–000 to be effective 2/1/2016.

*Filed Date:* 3/8/16.

*Accession Number:* 20160308–5185.

*Comments Due:* 5 p.m. ET 3/21/16.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 9, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–05871 Filed 3–15–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2790–066]**

### Boott Hydropower, Inc., and Eldred L. Field Hydroelectric Facility Trust; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request to revise mitigation requirements.

b. *Project No:* 2790–066.

c. *Date Filed:* February 4, 2016.

d. *Applicant:* Boott Hydropower, Inc., and Eldred L. Field Hydroelectric Facility Trust.

e. *Name of Project:* Lowell Hydroelectric Project.

f. *Location:* Merrimack River in the City of Lowell in Middlesex County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ryan Berg, P.E., Boott Hydropower, LLC, One Tech Drive, Suite 220, Andover, MA 01810, (978) 681–1900.

i. *FERC Contact:* Ms. Shana High, (202) 502–8674, *shana.high@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* April 11, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2790–066.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The Commission issued an order amending license on April 18, 2013; ordering paragraph (H) required Boott to consult with the Lowell National Historical Park and the Massachusetts State Historic Preservation Officer (SHPO), and implement specific mitigation measures. Boott is requesting to remove certain mitigation requirements from ordering paragraph (H), specifically items (b), (c), and (d). The National Park Service, by letter dated February 2, 2016, indicated it is waiving these items. The SHPO, by letter dated March 2, 2016, indicated it has no comments on the proposed revision.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 10, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–05874 Filed 3–15–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ID–7484–003; ID–7783–001]**

## Alan C. Richardson; Kris Chahley; Notice of Filing

Take notice that on March 10, 2016, Alan C. Richardson and Kris Chahley (Applicants) filed a supplement to application for authorization to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act [1] and Part 45.8 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure [2].

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 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 electronic 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 March 21, 2016.

[1] 16 U.S.C. 825d(b) (2015).

[2] 18 CFR part 45.8 (2015).

Dated: March 10, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–05872 Filed 3–15–16; 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:* ER10–2374–010; ER12–673–008; ER12–672–008.

*Applicants:* Puget Sound Energy, Inc., Brea Generation LLC, Brea Power II, LLC.

*Description:* Notice of Non-Material Change in Status of Puget Sound Energy, Inc., et al.

*Filed Date:* 3/9/16.

*Accession Number:* 20160309–5158.

*Comments Due:* 5 p.m. ET 3/30/16.

*Docket Numbers:* ER15–1825–003.

*Applicants:* California Independent System Operator Corporation.

*Description:* Compliance filing: 2016–03–10 Filing in Compliance With Feb. 24 Order Delaying RSI Effective Date to be effective 5/1/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5148.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–540–001.

*Applicants:* Public Service Company of Colorado.

*Description:* Tariff Amendment: CSU Deficiency Response #1 to be effective 1/1/2013.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5100.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–542–001.

*Applicants:* Public Service Company of Colorado.

*Description:* Tariff Amendment: CSU Deficiency Response #2 to be effective 1/1/2015.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5124.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–733–000.

*Applicants:* LQA, LLC.

*Description:* Supplement to January 15, 2016 LQA, LLC tariff filing.

*Filed Date:* 3/9/16.

*Accession Number:* 20160309–5116.

*Comments Due:* 5 p.m. ET 3/30/16.

*Docket Numbers:* ER16–750–002.

*Applicants:* Bethel Wind Farm LLC.

*Description:* Tariff Amendment: Second Supplement to MBR Application and Request for Expedited Treatment to be effective 3/21/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5123.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–897–001.

*Applicants:* California Independent System Operator Corporation.

*Description:* Compliance filing: 2016–03–10 Filing in compliance with February 24, 2016 order (CPM_ER16–897) to be effective 3/25/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5096.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–910–000.

*Applicants:* EPP New Jersey Solar, LLC.

*Description:* Amendment to February 8, 2016 EPP New Jersey Solar, LLC and EPP New Jersey Biogas, LLC tariff filings.

*Filed Date:* 3/8/16.

*Accession Number:* 20160308–5262.

*Comments Due:* 5 p.m. ET 3/29/16.

*Docket Numbers:* ER16–914–000.

*Applicants:* Axpo U.S. LLC.

Description: Supplement to February 4, 2015 Axpo U.S. LLC tariff filing.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5105.

*Comments Due:* 5 p.m. ET 3/21/16.

*Docket Numbers:* ER16–1124–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Revised Service Agreement No. 4355; Queue Z2–011 (ISA Assignment) to be effective 12/21/2015.

*Filed Date:* 3/9/16.

*Accession Number:* 20160309–5154.

*Comments Due:* 5 p.m. ET 3/30/16.

*Docket Numbers:* ER16–1124–001.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Errata to Correct Metadata in Revised Service Agreement No. 4355 to be effective 12/21/2015.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5034.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1125–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amended ISA No. 3198 and ICSA Nos. 2642 and 2643, Queue No. T157/W4–037 to be effective 9/1/2010.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5053.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1126–000.

*Applicants:* Tucson Electric Power Company.

*Description:* § 205(d) Rate Filing: NEC BA Agreement to be effective 5/9/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5113.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1128–000.

*Applicants:* Southern California Edison Company.

*Description:* § 205(d) Rate Filing: Service Agreement with AgPower Visalia, LLC to be effective 5/10/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5121.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1129–000.

*Applicants:* VPI Enterprises, Inc.

*Description:* Baseline eTariff Filing: Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 3/11/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5137.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1130–000.

*Applicants:* DifWind Farms Limited I.

*Description:* Baseline eTariff Filing: Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 3/11/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5138.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1131–000.

*Applicants:* DifWind Farms Limited II.

*Description:* Baseline eTariff Filing: Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 3/11/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5139.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1132–000.

*Applicants:* DifWind Farms Limited V.

*Description:* Baseline eTariff Filing: Application for Initial Market-Based Rate Tariff and Granting Certain Waivers to be effective 3/11/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5140.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1133–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original Service Agreement No. 4425; Queue Position #Z2–076 to be effective 2/9/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5149.

*Comments Due:* 5 p.m. ET 3/31/16.

*Docket Numbers:* ER16–1134–000.

*Applicants:* TransCanada Power Marketing Ltd.

*Description:* Baseline eTariff Filing: Notice of Succession to be effective 3/10/2016.

*Filed Date:* 3/10/16.

*Accession Number:* 20160310–5151.

*Comments Due:* 5 p.m. ET 3/31/16.

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: March 10, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–05870 Filed 3–15–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission or Commission Staff Attendance at Miso Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following MISO-related meetings:

- Advisory Committee
  - March 23, 10:15 a.m.–5 p.m., Loews Hotel, 300 Poydras St., New Orleans, LA
  - April 27, 10 a.m.–1 p.m., Carmel
  - May 25, 10 a.m.–1 p.m., Carmel
- Board of Directors Audit & Finance Committee
  - March 23, 4:45 p.m.–6:45 p.m., Loews Hotel, 300 Poydras St., New Orleans, LA
- Board of Directors
  - March 24, 9:30 a.m.–12 noon, Loews Hotel, 300 Poydras St., New Orleans, LA
- Board of Directors Markets Committee
  - March 22, 10 a.m.–12 noon, 300 Poydras St., New Orleans, LA
- Board of Directors System Planning Committee
  - March 22, 3:45 p.m.–5:45 p.m., 300 Poydras St., New Orleans, LA
  - May 17, 1 p.m.–3:30 p.m., Call only
- MISO Informational Forum
  - March 22, 3 p.m.–5 p.m., 300 Poydras St., New Orleans, LA
  - April 26, 3 p.m.–5 p.m., Carmel
  - May 24, 3 p.m.–5 p.m., Carmel
- MISO Market Subcommittee
  - April 5, 9:30 a.m.–4 p.m., Carmel
  - May 3, 9:30 a.m.–4 p.m., Carmel
- MISO Resource Adequacy Subcommittee
  - April 14, 12:30 p.m.–4:30 p.m., Carmel
- MISO Regional Expansion Criteria and Benefits Working Group
  - April 19, 1 p.m.–4 p.m., Carmel
- MISO Planning Advisory Committee
  - March 16, 8:30 a.m.–3:30 p.m., Little Rock
  - April 20, 9:30–4:30 p.m., Carmel

Unless otherwise noted all of the meetings above will be held at either:

Carmel, MISO Headquarters, 701 City Center Drive, 720 City Center Drive, and Carmel, IN 46032

Little Rock, 1700 Centerview Drive, Little Rock, AR

Eagan, 2985 Ames Crossing Rd., Eagan, MN

Metarie, 3850 N. Causeway Blvd., Suite 442, Metairie, LA

Further information and dial in instructions may be found at *www.misoenergy.org.* All times are Local Prevailing Time.

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–678, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–2302, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER13–187, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER13–186, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER13–101, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER13–89, *MidAmerican Energy Company*

Docket No. ER12–1266, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1265, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER13–1924, *Midcontinent Independent System Operator, Inc.*

Docket No. ER13–1943, *Midcontinent Independent System Operator, Inc.*

Docket No. ER13–1944, *Midcontinent Independent System Operator, Inc.*

Docket No. ER13–1945, *Midcontinent Independent System Operator, Inc.*

Docket No. EL13–88, *Northern Indiana Public Service Corp. v Midcontinent Independent System Operator, Inc., et al.*

Docket No. EL14–12, *ABATE et al. v Midcontinent Independent System Operator, Inc., et al.*

Docket No. AD12–16, *Capacity Deliverability across the MISO/PJM Seam*

Docket No. AD14–3, *Coordination of Energy and Capacity across the MISO/PJM Seam*

Docket No. ER13–1938, *Midcontinent Independent System Operator, Inc.*

Docket No. ER14–1736, *Midcontinent Independent System Operator, Inc.*

Docket No. ER14–2445, *Midcontinent Independent System Operator, Inc.*

Docket No. ER15–133, *Midcontinent Independent System Operator, Inc.*

Docket No. ER15–530, *Midcontinent Independent System Operator, Inc.*

Docket No. ER15–767, *Midcontinent Independent System Operator, Inc.*

Docket No. ER15–945, *Midcontinent Independent System Operator, Inc.*

Docket No. ER09–1431, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–2275, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–3279, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1194, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER15–1210, *Midcontinent Independent System Operator, Inc.*

Docket No. ER13–1938, *Midcontinent Independent System Operator, Inc.*

Docket No. ER14–649, *Midcontinent Independent System Operator, Inc.*

Docket No. ER14–2952, *Midcontinent Independent System Operator, Inc.*

Docket No. ER14–2605, *Midcontinent Independent System Operator, Inc.*

Docket No. ER14–1210, *Midcontinent Independent System Operator, Inc.*

Docket No. ER15–943, *Midcontinent Independent System Operator, Inc.*

Docket No. ER16–469, *Midcontinent Independent System Operator, Inc.*

Docket No. ER15–2657, *Midcontinent Independent System Operator, Inc.*

Docket No. ER16–533, *Midcontinent Independent System Operator, Inc.*

Docket No. ER16–534, *Midcontinent Independent System Operator, Inc.*

Docket No. ER16–675, *Midcontinent Independent System Operator, Inc.*

Docket No. EL15–70, *Public Citizen, Inc* v. *Midcontinent Independent System Operator, Inc.*

Docket No. EL15–71, *People of the State of Illinois* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL15–72, *Southwestern Electric Cooperative, Inc.* v. *Midcontinent Independent System Operator, Inc.*
Docket No. EL15–82, *Illinois Industrial Energy Consumers* v. *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–696, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–770, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–833, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–56, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–1039, *Midcontinent Independent System Operator, Inc.*
Docket No. ER16–1096, *Midcontinent Independent System Operator, Inc.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Dated: March 10, 2016.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–05873 Filed 3–15–16; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13465–002]**

### Henry County Conservation Department; Notice of Surrender of Preliminary Permit

Take notice that Henry County Conservation Department, permittee for the proposed Oakland Mills Hydropower Project, filed a letter on March 1, 2016, requesting that its successive preliminary permit be surrendered. The permit was issued on April 3, 2013, and would have expired on March 31, 2016.[1] The project would have been located on the Skunk River, near Tippecanoe Township, Henry County, Iowa.

The preliminary permit for Project No. 13465 will remain in effect until the close of business, March 31, 2016. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: March 10, 2016 .

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2016–05875 Filed 3–15–16; 8:45 am]

**BILLING CODE 6717–01–P**

[1] 143 FERC ¶ 62,005 (2013).

[2] 18 CFR 385.2007(a)(2) (2015).

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2015–0021; FRL–9943–18]**

### Pesticide Product Registration; Receipt of Applications for New Active Ingredients

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

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

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Director, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Susan Lewis, Director, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov*. The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html*.

**II. Registration Applications**

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *File Symbol:* 8917–R. *Docket ID number:* EPA–HQ–OPP–2016–0036. *Applicant:* J.R. Simplot Co., 5369 W. Irving St., Boise, ID 83706. *Product name:* W8 Russet Burbank potato. *Active ingredient:* Plant-incorporated protectant—*Rpi-vnt1* Resistance Gene and VNT1 protein in potato at 0.00001%. *Proposed use:* To confer resistance against late blight is potato. *Contact:* BPPD.

*2. File Symbol:* 8917–E. *Docket ID number:* EPA–HQ–OPP–2016–0036. *Applicant:* J.R. Simplot Co., 5369 W. Irving St., Boise, ID 83706. *Product name:* X17 Ranger Russet potato. *Active ingredient:* Plant-incorporated protectant—*Rpi-vnt1* Resistance Gene and VNT1 protein in potato at 0.00001%. *Proposed use:* To confer resistance against late blight is potato. *Contact:* BPPD.

3. *File Symbol:* 8917–G. *Docket ID number:* EPA–HQ–OPP–2016–0036. *Applicant:* J.R. Simplot Co., 5369 W. Irving St., Boise, ID 83706. *Product name:* Y9 Atlantic potato. *Active ingredient:* Plant-incorporated protectant—*Rpi-vnt1* Resistance Gene and VNT1 protein in potato at 0.00001%. *Proposed use:* To confer resistance against late blight is potato. *Contact:* BPPD.

4. *File Symbols:* 11581–A and 11581–L. *Docket ID number:* EPA–HQ–OPP–2015–0817. *Applicant:* OAT AGRIO CO., LTD., 1–3–1 Kanda Ogawa-machi, Chiyoda-ku, Tokyo 101–0052, Japan. *Active ingredient:* Flutianil. *Product type:* Fungicide. *Proposed use:* Apple, cantaloupe, cherry, cucumber, grape; squash, and strawberry. *Contact:* RD.

*5. File Symbol:* 56336–TR. *Docket ID number:* EPA–HQ–OPP–2016–0095. *Applicant:* Suterra, LLC, 20950 NE Talus Place, Bend, OR 97701. *Product name:* CheckMate CRS. *Active ingredient:* Arthropod Pheromone; California Red Scale Pheromone, (3S, 6R) (3S, 6S)—3- Methyl-6-isopropenyl-9-decen-1-yl acetate at 5.86%. *Proposed use:* Arthropod Pheromone for use as an attractant and mating disruptor. *Contact:* BPPD.

*6. File Symbol:* 56336–TN. *Docket ID number:* EPA–HQ–OPP–2016–0095. *Applicant:* Suterra, LLC, 20950 NE Talus Place, Bend, OR 97701. *Product name:* CheckMate CRS Technical Pheromone. *Active ingredient:* Arthropod Pheromone; California Red Scale Pheromone, (3S, 6R) (3S, 6S)—3-Methyl-6-isopropenyl-9-decen-1-yl acetate at 81.02%. *Proposed use:* Arthropod Pheromone for use as an attractant and mating disruptor. *Contact:* BPPD.

*7. File Symbol:* 82074–I. *Docket ID number:* EPA–HQ–OPP–2016–0079. *Applicant:* LAM International Corp., 117 South Parkmont, Butte, MT 59701. *Product name: Purpureocillium lilacinum* strain PL11 Technical. *Active ingredient:* Nematocide—*Purpureocillium lilacinum* strain PL11 at 100.0%. *Proposed use:* For manufacturing of *Purpureocillium lilacinum* strain PL11 pesticide products. *Contact:* BPPD.

*8. File Symbol:* 82074–O. *Docket ID number:* EPA–HQ–OPP–2016–0079. *Applicant:* LAM International Corp., 117 South Parkmont, Butte, MT 59701. *Product name:* Biostat WP. *Active ingredient:* Nematocide—*Purpureocillium lilacinum* strain PL11 at 2.0%. *Proposed use:* For control of certain plant-parasitic nematodes in soils and growth media. *Contact:* BPPD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: March 8, 2016.

**Susan Lewis,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–05819 Filed 3–15–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2015–0022 FRL–9943–20]**

## Pesticide Product Registration; Receipt of Applications for New Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0022 and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

**FOR FURTHER INFORMATION CONTACT:** Robert McNally, Director, Biopesticides and Pollution Prevention Division (BPPD) (7511P), email address: *BPPDFRNotices@epa.gov*; or Susan Lewis, Director, Registration Division (RD) (7505P), email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. The main telephone number is (703) 305–7090. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

**II. Registration Applications**

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *EPA Registration Number:* 264–1118 and 264–1119. *Docket ID number:* EPA–HQ–OPP–2015–0559. *Applicant:* Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Penflufen. *Product type:* fungicide. *Proposed use:* Onion Subgroups 3–07A; 3–07B. *Contact:* RD.

2. *EPA Registration Number:* 264–1118; 264–1119; and 264–1122. *Docket ID number:* EPA–HQ–OPP–2015–0559. *Applicant:* Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. *Active ingredient:* Penflufen. *Product type:* fungicide. *Proposed uses:* Sugarbeet seed treatment. *Contact:* RD.

3. *EPA File Symbol:* 264–1141 and 264–1143. *Docket ID number:* EPA–HQ–OPP–2013–0226. *Applicant:* Bayer CropScience LP, 2 T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709. *Active ingredient:* Flupyradifurone. *Product Type:* Insecticide. *Proposed Uses:* Abiu; Akee Apple; Avocado; Bacury; Banana; Binjai; Caneberry subgroup 13–07A; Canistel; Cilantro; Cupuacú; Etambe; Greenhouse Cucumbers; Greenhouse Lettuce; Greenhouse Pepper; Greenhouse Tomato; Jatobá; Kava roots and leaves; Kei Apple; Langstat; Lanjut; Lucuma; Mabolo; Mango; Mangosteen; Indoor Ornamentals; Paho; Papaya; Pawpaw common; Pelipisam; Pequi; Pequia; Persimmon, American; Plantain; Pomegranate; Poshte; Quandong; Quinoa; Residential Ornamentals; Sapote; Sataw; Screw-Pine; Star apple, Tamarind-of-the-Indies; Stone Fruit group 12–12; and Wild Loquat. *Contact:* RD.

4. *EPA Registration Numbers:* 279–3242, 279–3181, 279–3241, 279–3276 and 279–3194. *Docket ID number:* EPA–HQ–OPP–2015–0030. *Applicant:* FMC Corporation, Agricultural Products Group, 1735 Market Street Philadelphia, PA 19103. *Active ingredient:* Carfentrazone-ethyl. *Product type:* Herbicide. *Proposed uses:* Artichoke; Asparagus; Berry, low growing subgroup 13–07G; Bushberry subgroup 13–07B; Caneberry subgroup 13–07A; Fruit, citrus group 10–10; Fruit, pome group 11–10; Fruit, small vine climbing subgroup 13–07F, except fuzzy kiwi fruit; Fruit, stone group 12–12; Grain, cereal, forage, group 16; Grain, cereal, hay, group 16; Grain, cereal, stover, group 16, Grain, cereal, straw, group 16; Nut, tree group 14–12; Oilseed group 20; Peppermint, tops; Psyllium, seed; Quinoa, grain; Spearmint, tops; Teff, grain; Teff, forage; Teff, straw; Teff, hay; Vegetable, bulb group 3–07; and Vegetable, fruiting group 8–10. *Contact:* RD.

5. *EPA Registration Numbers:* 279–3460, 279–3052, 279–3158. *Docket ID number:* EPA–HQ–OPP–2015–0763. *Applicant:* FMC, 1735 Market Street, Philadelphia, PA 19103. *Active ingredient:* Clomazone. *Product type:* Herbicide. *Proposed uses:* Asparagus and Edamame. *Contact:* RD.

6. *EPA Registration Number:* 5481–433 and 5481–429. *Docket ID number:* EPA–HQ–OPP–2014–0769. *Applicant:* AMVAC Chemical Corporation, 4695 MacArthur Court, Suite 1200, Newport Beach, CA 92660. *Active ingredient:* 1-Naphthaleneacetic acid ester. *Product type:* Fungicide. *Proposed use:* Pomegranate. *Contact:* RD.

7. *EPA Registration Number:* 7969–261, 7969–262. *Docket ID number:* EPA–HQ–OPP–2015–0825. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. *Active ingredient:* Topramezone (3-(4,5-Dihydro-isoxazol-3-yl)-4-methanesulfonyl-2-methylphenyl]-(5-hydroxyl-1-methyl-1H-pyrazol-4-yl)methanone). *Product type:* Herbicide. *Proposed use:* Sugarcane. *Contact:* RD.

8. *EPA Registration Number:* 10163–277. *Docket ID number:* EPA–HQ–OPP–2015–0797. *Applicant:* Gowan Company, P.O. Box 5569, Yuma, AZ, 85366–5569. *Active ingredient:* Hexythiazox. *Product type:* Insecticide. *Proposed use:* Sugar beet. *Contact:* RD.

9. *EPA Registration Number:* 10163–277. *Docket ID number:* EPA–HQ–OPP–2015–0795. *Applicant:* Gowan Company, P.O. Box 5569, Yuma, AZ, 85366–5569. *Active ingredient:* Hexythiazox. *Product type:* Insecticide. *Proposed use:* Bermudagrass. *Contact:* RD.

10. *EPA Registration Number:* 10163–322. *Docket ID number:* EPA–HQ–OPP–2016–0029. *Applicant:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Fenazaquin. *Product type:* Miticide/Insecticide. *Proposed uses:* Hops and Tree nut crop group 14–12. *Contact:* RD.

11. *EPA Registration Number or File Symbol:* 11678–73 and 66222–EAE. *Docket ID number:* EPA–HQ–OPP–2015–0569. *Applicant:* Makhteshim Agan of North America, 3120 Highlands Blvd., Suite 100, Raleigh, NC 27604. *Active ingredient:* Fluensulfone. *Product type:* Insecticide. *Proposed Use:* Tuber and corm vegetables subgroup 1C. *Contact:* RD.

12. *EPA Registration Numbers:* 59639–119, 59639–99, 59639–207, 59639–127, 59639–97. *Docket ID number:* EPA–HQ–OPP–2015–0658. *Applicant:* Valent USA Corporation, 1600 Riviera Avenue, Suite 200. Walnut Creek, CA 94596–8025. *Active ingredient:* flumioxazin 2-[7-fluoro-3,4-dihydro3-oxo-4-(2-proponyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1Hisoindole-1,3(2H)-dione. *Product type:* Herbicide. *Proposed uses:* Berry, low growing, subgroup 13–07G; *Brassica,* head and stem, subgroup 5A; caneberry, subgroup 13–07A; citrus oil; clover, forage; clover, hay; fruit, citrus group 10–10; fruit, pome group 11–10; fruit, small vine climbing, except fuzzy kiwifruit, subgroup 13–07F; fruit, stone, group 12–12; nut, tree group 14–12; onion, bulb subgroup 3–07A; and vegetable, fruiting group 8–10. *Contact:* RD.

13. *EPA Registration Numbers:* 66330–38 and 66330–39. *Docket ID number:* EPA–HQ–OPP–2015–0829. *Applicant:* Arysta LifeScience North America, LLC, 15410 Weston Parkway, Suite 150, Cary, NC 27513. *Active ingredient:* Acequinocyl. *Product type:* Miticide. *Proposed Uses:* Avocado, Dry Bean, Cucurbit Vegetables group 9, Tea, Cherry subgroup 12–12A, and Crop Group Conversions for Citrus Fruit group 10–10, Pome Fruit group 11–10, Tree Nut group 14–12, and Fruiting Vegetable group 8–10. *Contact:* RD.

14. *EPA Registration Numbers:* 66330–64 and 66330–65. *Docket ID number:* EPA–HQ–OPP–2015–0727. *Applicant:* Arysta LifeScience North America, LLC 15401 Weston Parkway, Suite 150, Cary, North Carolina 27513. *Active ingredient:* Fluoxastrobin. *Product type:* Fungicide. *Proposed uses:* Avocado, barley; canola (Rapeseed Subgroup 20A); and dried shelled pea and bean (except soybean) Crop Subgroup 6C. *Contact:* RD.

15. *EPA Registration Numbers:* 63588–91, 63588–92. *Docket ID number:* EPA–HQ–OPP–2015–0787. *Applicant:* K–I Chemical USA. Inc., 11 Martine Ave., Suite 970 White Plains, NY 10606. *Active ingredient:* Pyroxasulfone. *Product type:* Herbicide. *Proposed uses:* Flax, peanut crop subgroup 6C. *Contact:* RD.

16. *EPA Registration Number:* 71185–5. *Docket ID number:* EPA–HQ–OPP–2015–0820. *Applicant:* Geo Logic Corporation, P.O. Box 3091, Tequesta, FL 33469. *Active ingredient:* Oxytetracycline hydrochloride. *Product type:* Fungicide/Bactericide. *Proposed use:* Citrus Fruit Crop Group 10–10. *Contact:* RD.

17. *File Symbol:* 71512–1 and 71512–8. *Docket ID number:* EPA–HQ–OPP–2015–0703. *Applicant:* ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH, 44077. *Active ingredient:* Fluazinam. *Product type:* Fungicide. *Proposed Uses:* Brassica leafy group 5 (except

cabbage), cabbage, mayhaw, squash/cucumber subgroup 9B, and tuberous and corm subgroup 1C. *Contact:* RD.

18. *EPA File Symbol:* 72500–EA. *Docket ID number:* EPA–HQ–OPP–2015–0826. *Applicant:* Scimetrics Ltd. Corporation, P.O. Box 1045, Wellington, CO 80549. *Active ingredient:* Warfarin. *Product type:* Rodenticide. *Proposed Use:* Bait applied in bait dispensers to control feral hogs. *Contact:* RD.

19. *File Symbol:* 80289–EE. *EPA Registration Numbers:* 80289–1, 80289–7, 80289–8 80289–18. *Docket ID number:* EPA–HQ–OPP–2015–0695. *Applicant:* Isagro S.P.A. (d/b/a Isagro USA, Inc.) 430 Davis Drive, Suite 240, Morrisville, NC 27560. *Active ingredient:* Tetraconazole. *Product type:* Fungicide. *Proposed use:* Cucurbit Vegetables Group (*Crop Group 9*) and Fruiting Vegetable Group (Crop Group 8–10). *Contact:* RD.

20. *EPA Registration Number:* 80990–1. *Docket ID number:* EPA–HQ–OPP–2015–0820. *Applicant:* Agrosource, Inc. P.O. Box 3091 Tequesta, FL 33469. *Active ingredient:* Oxytetracycline hydrochloride. *Product type:* Fungicide/Bactericide. *Proposed use:* Citrus Fruit Crop Group 10–10. *Contact:* RD.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: March 9, 2016.

**G. Jeffery Herndon,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2016–05818 Filed 3–15–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2016–0020; FRL–9943–49]**

## Certain New Chemicals; Receipt and Status Information for January 2016

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is required under the Toxic Substances Control Act (TSCA) to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN); an application for a test marketing exemption (TME), both pending and/or expired; and a periodic status report on any new chemicals under EPA review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document covers the period from January 4, 2016 to January 29, 2016.

**DATES:** Comments identified by the specific case number provided in this document, must be received on or before April 15, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2016–2016–0020, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

**FOR FURTHER INFORMATION CONTACT:**

*For technical information contact:* Jim Rahai, IMD 7407M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitters of the actions addressed in this document.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

### II. What action is the Agency taking?

This document provides receipt and status reports, which cover the period from January 4, 2016 to January 29, 2016, and consists of the PMNs and TMEs both pending and/or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

### III. What is the Agency's authority for taking this action?

Under TSCA, 15 U.S.C. 2601 *et seq.,* EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.*

Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic reports on the status of new chemicals under review and the receipt of NOCs to manufacture those chemicals.

### IV. Receipt and Status Reports

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information

provided by the submitter, and (G) indicates that the information in the table is generic information because the specific information provided by the submitter was claimed as CBI.

For the 37 PMNs received by EPA during this period, Table 1 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the PMN; The date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer/importer; the potential uses identified by the manufacturer/importer in the PMN; and the chemical identity.

TABLE 1—PMNS RECEIVED FROM JANUARY 4, 2016 TO JANUARY 29, 2016

| Case No. | Date received | Projected end date for EPA review | Manufacturer/ importer | Use(s) | Chemical identity |
|---|---|---|---|---|---|
| P–16–0040 ..... | 1/4/2016 | 4/3/2016 | CBI ..... | (G) Polymer ..... | (G) Tar acids fraction. |
| P–16–0157 ..... | 1/11/2016 | 4/10/2016 | CBI ..... | (G) Fabric treatment ..... | (G) Fluorinated polyurethane. |
| P–16–0163 ..... | 1/4/2016 | 4/3/2016 | Gelest ..... | (S) Used as a modifier for polymeric systems to make specialty coatings, etc., in automotive fuel lines and other parts, coatings for microelectronic housing, industrial and oil and gas equipment; the amount of the new substance is estimated to be about 20mg per square meter. | (S) Silsesquioxanes, 3,3,4,4,5,5,6,6, 7,7,8,8,8-tridecafluorooctyl-. |
| P–16–0164 ..... | 1/4/2016 | 4/3/2016 | CBI ..... | (G) Processing aid ..... | (G) Thiocarbamic acid derivative. |
| P–16–0167 ..... | 1/6/2016 | 4/5/2016 | CBI ..... | (S) Light stabilizer for plastic articles | (G) Hindered amine alkyl ester compounds. |
| P–16–0168 ..... | 1/6/2016 | 4/5/2016 | CBI ..... | (S) Processing aid for thermoplastics. | (G) Acrylic polymer. |
| P–16–0169 ..... | 1/6/2016 | 4/5/2016 | Weylchem US, Inc. | (S) Reactant in reaction ..... | (S) Thiourea, n-[2,6-bis(1-methylethyl)-4-phenoxyphenyl]-. |
| P–16–0170 ..... | 1/8/2016 | 4/7/2016 | CBI ..... | (G) (C) Open non-dispersive: The nanocarbon is used in a water-based liquid admixture once the carbon is mixed in the liquid (and in downstream materials), it is no longer a respiratory hazard, the admixture is used by the concrete industry to densify the cement matrix of concrete enhancing the materials performance—mainly in strength and abrasion resistance. | (G) Nanocarbon. |
| P–16–0171 ..... | 1/11/2016 | 4/10/2016 | CBI ..... | (S) Raw material used in the manufacture of ultra violet curable inks and coatings. | (G) Acrylic polymer. |
| P–16–0172 ..... | 1/12/2016 | 4/11/2016 | CBI ..... | (G) Open, non-dispersive use ..... | (G) 1,3-propanediol, 2,2-dimethyl-, polymer with diisocyanatoalkane, dialkyl heteromonocycle-blocked. |
| P–16–0173 ..... | 1/12/2016 | 4/11/2016 | CBI ..... | (G) Printing ink vehicles ..... | (G) Aminoalkyl alaninate sodium salt (1:1), polymer with alkyldiol, dialkyl-alkanediol, alkyldioic acid, alkyldiol, polyol, cycloaliphatic diisocyanate, polyalkylene glycol mono-alkyl ether-blocked. |
| P–16–0174 ..... | 1/13/2016 | 4/12/2016 | Itaconix Corp ..... | (S) Chelant in detergents ..... | (S) Butanedioic acid, 2-methylene-, telomer with phosphinic acid and sodium 4-ethenylbenzenesulfonate (1:1), sodium salt. |
| P–16–0175 ..... | 1/12/2016 | 4/11/2016 | CBI ..... | (G) Pump oil ..... | (G) Alkyl substituted cabopolycycle. |
| P–16–0176 ..... | 1/13/2016 | 4/12/2016 | Organic Dyestuffs Corporation. | (S) Reactive dye for cotton ..... | (S) Benzoic acid, 2-[[4-chloro-6-[[8-hydroxy-7—[2-(4-methoxyphenyl) diazenyl]-3,6-disulfo-1-naphthalenyl] amino]-1,3,5-triazin-2-yl] amino-4-sulfo-, sodium salt (1:4). |
| P–16–0178 ..... | 1/13/2016 | 4/12/2016 | CBI ..... | (G) Paint additive ..... | (G) This information will be provided by the foreign manufacturer of the new chemical substance in a letter of support. |
| P–16–0179 ..... | 1/14/2016 | 4/13/2016 | CBI ..... | (G) Grease ..... | (G) Alkanoic acids, esters with alkanetriol. |

TABLE 1—PMNS RECEIVED FROM JANUARY 4, 2016 TO JANUARY 29, 2016—Continued

| Case No. | Date received | Projected end date for EPA review | Manufacturer/ importer | Use(s) | Chemical identity |
|---|---|---|---|---|---|
| P–16–0180 ..... | 1/14/2016 | 4/13/2016 | CBI ..... | (S) Component of industrial and maintenance coatings. | (G) Isocyanic acid, polymethylenepolyphenylene ester, polymer with a-hydro-w-hydroxypoly[oxy(methyl-1,2-ethanediyl)] and alkylene oxide polymer, alkylamine initiated. |
| P–16–0181 ..... | 1/14/2016 | 4/13/2016 | CBI ..... | (S) Stabilizer for use with polymers | (G) Butenoic acid, thio-ethanediyl ester. |
| P–16–0182 ..... | 1/15/2016 | 4/14/2016 | Huntsman International, LLC. | (G) Open, non-dispersive resins use | (S) Manganese, tris[.mu.-(2-ethyl hexanoato-.kappa.o:.kappa.o')]bis (octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine-*.kappa. n1,.kappa.n4,.kappa.n7)-manganese, [.mu.-(acetato-.kappa.o:.kappa.o')]bis[-(2-ethylhexanoato-o:o')]bis(octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine.kappa.n1,.kappa.n4,.kappa.n7)-manganese, bis[.mu.-(acetato-.kappa.o:.kappa.o')][-(2-ethylhexanoato-o:o')]bis(octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine-.kappa.n1,.kappa.n4,.kappa.n7)-manganese, tris[.mu.-(acetato-.kappa.o:.kappa.o')]bis(octahydro-1,4,7-trimethyl-1h-1,4,7-triazonine-.kappa.n1,.kappa.n4,.kappa.n7)-. |
| P–16–0183 ..... | 1/14/2016 | 4/13/2016 | CBI ..... | (S) Corrosion inhibitor for use in metal working fluids. | (G) Fatty acid homopolymer salt. |
| P–16–0184 ..... | 1/15/2016 | 4/14/2016 | CBI ..... | (S) Mixture of polyester carboxylates used as a wetting and dispersing agent for inorganic pigments and fillers in industrial and decorative coatings. | (G) Mixture of polyester carboxylates. |
| P–16–0185 ..... | 1/15/2016 | 4/14/2016 | Intertek Health, Environmental & Regulatory Services. | (G) Component in chemical manufacture. | (G) Rosin ester. |
| P–16–0187 ..... | 1/18/2016 | 4/17/2016 | CBI ..... | (G) Organic light-emitting diode material. | (G) Amine-alkyl-polyaromatic hydrocarbon polymer. |
| P–16–0188 ..... | 1/19/2016 | 4/18/2016 | CBI ..... | (G) Component of manufactured consumer article—contained use. | (G) Substituted carbocycle, n-[[[4-[[(4-substituted carbocyclic)amino]sulfonyl]carbocyclic]amino]carbonyl]-4-methyl-. |
| P–16–0189 ..... | 1/19/2016 | 4/18/2016 | Honeyol, Inc ..... | (S) Use in production of resins (raw material used in the production of resins). | (S) Tar acids, (shale oil), c6–9 fraction. |
| P–16–0190 ..... | 1/19/2016 | 4/18/2016 | CBI ..... | (G) Lubricant ..... | (G) Aryl polyolefin. |
| P–16–0191 ..... | 1/22/2016 | 4/21/2016 | The Shepherd Color Company. | (G) Pigment for anti-corrosive paints | (S) Aluminum vanadium zinc hydroxide oxide. |
| P–16–0192 ..... | 1/24/2016 | 4/23/2016 | Evonik Corporation. | (S) Reinforcing filler coupling agent for production of tire/rubber goods. | (G) Silanized amorphous silica. |
| P–16–0194 ..... | 1/28/2016 | 4/27/2016 | CBI ..... | (G) Process aid ..... | (G) Silane-treated aluminosilicate. |
| P–16–0195 ..... | 1/28/2016 | 4/27/2016 | CBI ..... | (G) Process aid ..... | (G) Silane-treated aluminosilicate. |
| P–16–0196 ..... | 1/28/2016 | 4/27/2016 | CBI ..... | (G) Process aid ..... | (G) Silane-treated aluminosilicate. |
| P–16–0197 ..... | 1/28/2016 | 4/27/2016 | CBI ..... | (G) Process aid ..... | (G) Silane-treated aluminosilicate. |
| P–16–0198 ..... | 1/28/2016 | 4/27/2016 | CBI ..... | (G) Process aid ..... | (G) Silane-treated aluminosilicate. |
| P–16–0199 ..... | 1/28/2016 | 4/27/2016 | CBI ..... | (G) Process aid ..... | (G) Silane-treated aluminosilicate. |
| P–16–0205 ..... | 1/4/2016 | 4/3/2016 | CBI ..... | (G) Lubricant oil ..... | (G) Amide. |
| P–16–0205 ..... | 1/4/2016 | 4/3/2016 | CBI ..... | (S) General industrial oil ..... | (G) Amide. |
| P–16–0205 ..... | 1/4/2016 | 4/3/2016 | CBI ..... | (S) Hydraulic oil ..... | (G) Amide. |

For the 25 NOCs received by EPA during this period, Table 2 provides the following information (to the extent that such information is not claimed as CBI): The EPA case number assigned to the NOC; the date the NOC was received by EPA; the projected date of commencement provided by the submitter in the NOC; and the chemical identity.

TABLE 2—NOCS RECEIVED FROM JANUARY 4, 2016 TO JANUARY 29, 2016

| Case No. | Date received | Projected date of commence-ment | Chemical identity |
|---|---|---|---|
| P–13–0944 .... | 1/14/2016 | 12/16/2015 | (S) 5-isobenzofurancarboxylic acid, 1,3-dihydro-1,3-dioxo-,polymer with 2-aminoethanol, 2,2-dimethyl-1,3-propanediol, 2,5-furandione and 3a,4,7,7a-tetrahydro-1,3-isobenzofurandione. |
| P–14–0300 .... | 1/6/2016 | 12/8/2015 | (G) Substituted polysiloxane. |
| P–14–0377 .... | 1/15/2016 | 1/13/2016 | (G) Reaction product of acidic polymers with amino silanes. |
| P–14–0499 .... | 1/8/2016 | 8/12/2015 | (G) Methacrylic acid, polymer with butyl methacrylate, substituted acrylamide, styrene, methyl methacrylate and substituted ethyl methacrylate. |
| P–14–0563 .... | 1/26/2016 | 12/30/2015 | (G) Quaternary alkyl methyl amine ethoxylate methyl chloride. |
| P–14–0788 .... | 1/25/2016 | 1/21/2016 | (G) Complex of carboxylic acids and polyamino alcohols. |
| P–15–0001 .... | 1/18/2016 | 1/7/2016 | (S) Oxirane, 2-methyl-, polymer with oxirane, monohexadecyl ether, phosphate. |
| P–15–0140 .... | 1/15/2016 | 1/11/2016 | (S) D-glucitol, 1-deoxy-1-(methylamino)-, n-c12–14 acyl derivs. |
| P–15–0142 .... | 1/15/2016 | 1/11/2016 | (S) D-glucitol, 1-deoxy-1-(methylamino)-, n-coco acyl derivs. |
| P–15–0296 .... | 1/12/2016 | 1/11/2016 | (S) Aziridine, polymer with 1,6-diisocyanatohexane and 1,1′-methylenebis[4-isocyanatocyclohexane]. |
| P–15–0342 .... | 1/27/2016 | 1/18/2016 | (G) Carboxylated styrene butadiene polymer. |
| P–15–0408 .... | 1/4/2016 | 12/28/2015 | (S) Hexanedioic acid, polymer with 1,4-butanediol, 1,3-diisocyanatomethylbenzene, 1,2-ethanediamine and 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid, diethanolamine-blocked. |
| P–15–0502 .... | 1/8/2016 | 12/15/2015 | (G) Perfluorobutanesulfonamide and polyoxyalkylene containing polyurethane. |
| P–15–0617 .... | 1/5/2016 | 12/23/2015 | (S) Erbium gadolinium ytterbium oxide. |
| P–15–0664 .... | 1/20/2016 | 1/6/2016 | (G) Quarternary aminosilicone-polyether copolymer. |
| P–15–0688 .... | 1/8/2016 | 12/30/2015 | (S) Ethyl tetrahydrofuran-2-carboxylate. |
| P–15–0698 .... | 1/14/2016 | 1/12/2016 | (G) Polyester- polymer of aliphatic dicarboxylic acid, alkanediol and cycloaliphatic diol. |
| P–15–0700 .... | 1/8/2016 | 12/02/2015 | (G) Vegtable oil polymer with 1,1′-methylene[isocyantobenzene], oxepanone and trimethylolpropane. |
| P–15–0713 .... | 1/26/2016 | 1/22/2016 | (G) Cellulose, polymer with substituted oxirane, 2-(diethylamino) ethyl ether. |
| P–15–0717 .... | 1/25/2016 | 1/11/2016 | (S) Oxirane, 2-methyl-, polymer with alpha-hydro-omega-hydroxypoly[oxy (methyl-1,2-ethanediyl)], oxirane and 2- [[3- (triethoxysilyl)propoxy]methyl]oxirane, diester with alpha-butyl-omega-hydroxypoly [oxy(methyl-1,2-ethanediyl)] monoester with n-[3- [(carboxyamino )methyl]-3,5 ,5-trimethylcyclohexyl)carbamic acid. |
| P–15–0718 .... | 1/25/2016 | 1/11/2016 | (S) Oxirane, 2-methyl, polymer with alpha-hydro-omega-hydroxypoly [oxy(methyl-1,2-ethanediyl)] and 2-[[3-(triethoxysilyl)propoxy]methy] oxirane, diester with alpha-butyl-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)] monoester with n-[3-[(carboxyamino)methyl]-3,5,5-trimethylcyclohexyl]carbamic acid. |
| P–16–0002 .... | 1/7/2016 | 1/7/2016 | (G) Substituted carbomonocycle, polymer with alkanediol, substituted-alkanediol, substituted heteropolycycle and heteropolycycle. |
| P–16–0006 .... | 1/7/2016 | 1/4/2016 | (G) Alkyl alkenoic acid, polymer with cycloalkyl alkyl alkenoate, substituted alkyl alkenoate, alkyl alkyl alkenoate and substituted alkyl alkenoate. |
| P–16–0015 .... | 1/7/2016 | 1/7/2016 | (S) Siloxanes and silicones, di-me, polymer with octyl silsesquioxanes and silicic acid (h4sio4) tetra-et ester. |
| P–16–0024 .... | 1/28/2016 | 1/12/2016 | (G) Alkylamine—modified silane. |

**Authority:** 15 U.S.C. 2601 *et seq.*

Dated: March 9, 2016.

**Pamela Myrick,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2016–05970 Filed 3–15–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2005–0265; FRL–9941–37]**

## Dicloran (DCNA); Notice of Receipt of Request To Voluntarily Amend Registrations To Terminate Certain Uses

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is issuing a notice of receipt of a request by Gowan Company to voluntarily amend their dicloran (DCNA) product registrations to terminate certain uses. The request would delete DCNA use in or on apricots, chrysanthemums, conifers, gladiolus, grapes, greenhouse cucumbers, greenhouse lettuce, greenhouse rhubarb, greenhouse tomato, nectarines, peaches, plums/prunes, roses, and sweet cherries. The request would not terminate the last DCNA product registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws its request. If this request is granted, any sale, distribution, or use of products listed in

this notice will be permitted after the uses have been deleted only if such sale, distribution, or use is consistent with the terms as described in the final order.

**DATES:** Comments must be received on or before September 12, 2016.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2005–0265, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

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

**FOR FURTHER INFORMATION CONTACT:** James Parker, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; email address: *parker.james@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

## II. Background on the Receipt of Requests To Amend Registrations To Delete Uses

This notice announces receipt by EPA of a request from Gowan Company to delete certain uses of DCNA product registrations. DCNA is a pre- and post-harvest fungicide used on various agricultural commodities and ornamentals. In a letter dated October 16, 2014, Gowan Company requested EPA to delete certain uses of pesticide product registrations identified in Table 1 of Unit III. Specifically, in order to alleviate several data requirements identified in the DCNA reregistration data call-in (DCI), Gowan Company submitted a letter requesting to voluntarily cancel DCNA use in or on: Apricots, chrysanthemums, conifers, gladiolus, grapes, greenhouse cucumbers, greenhouse lettuce, greenhouse rhubarb, greenhouse tomato, nectarines, peaches, plums/prunes, roses, and sweet cherries. This action will not terminate the last pesticide products registered in the United States for DCNA.

## III. What action is the Agency taking?

This notice announces receipt by EPA of a request from Gowan Company to delete certain uses of DCNA product registrations. The affected products and the registrants making the requests are identified in Tables 1 and 2 of this unit.

Unless a request is withdrawn by the registrant or if the Agency determines that there are substantive comments that warrant further review of this request, EPA intends to issue an order canceling and/or amending the affected registrations at the conclusion of the 180-day comment period.

TABLE 1—DICLORAN (DCNA) PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

| Registration No. | Product name | Company |
|---|---|---|
| 10163–189 | Botran 75–W Fungicide | Gowan Company. |
| 10163–195 | Botran Technical | Gowan Company. |
| 10163–226 | Botran 5F Fungicide | Gowan Company. |

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY AMENDMENTS

| EPA Company No. | Company name and address |
|---|---|
| 10163 | Gowan Company, P.O. Box 5569, Yuma, Arizona 85366–5569. |

## IV. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**.

Section 6(f)(1)(B) of FIFRA (7 U.S.C. 136d(f)(1)(B)) requires that before acting on a request for voluntary cancellation, EPA must provide a 30-day public comment period on the request for voluntary cancellation or use

termination. In addition, FIFRA section 6(f)(1)(C) (7 U.S.C. 136d(f)(1)(C)) requires that EPA provide a 180-day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The DCNA registrant has not requested that EPA waive the 180-day comment period. Accordingly, EPA will provide a 180-day comment period on the proposed request.

### V. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for use deletion should submit the withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

### VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the action. If the request for amendment to delete uses is granted, the Agency intends to publish the cancellation order in the **Federal Register**.

In any order issued in response to this request for an amendment to delete uses EPA proposes to include the following provisions for the treatment of any existing stocks of the products listed in Table 1 of Unit III.

Effective on the date of publication of the cancellation order, the registrant may not sell, distribute or use existing stocks of products whose labels include deleted uses. Persons other than the registrant may sell, distribute, or use existing stocks of products whose labels include the deleted uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the deleted uses.

**Authority:** 7 U.S.C. 136 *et seq.*

Dated: March 8, 2016.

**Yu-Ting Guilaran,**

*Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.*

[FR Doc. 2016–05960 Filed 3–15–16; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2015–0805; FRL–9940–22]**

## Chemical Safety Advisory Committee; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 3-day meeting of the Chemical Safety Advisory Committee (CSAC) to consider and review the draft risk assessment for TSCA work plan chemical, 1-bromopropane (CASRN–106–94–5).

**DATES:** The meeting will be held on May 24–26, 2016, from approximately 9:00 a.m. to 5:00 p.m.

*Comments.* The Agency encourages written comments be submitted on or before May 10, 2016, and requests to present oral comments be submitted on or before May 17, 2016. Written comments and requests to make oral comments may be submitted until the date of the meeting; however, anyone submitting written comments after May 10, 2016, should contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. For additional instructions, see Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

*Nominations.* Nominations of candidates to serve on the review subcommittee for this meeting of the CSAC should be provided on or before March 31, 2016.

*Webcast.* Please refer to the Web site at *http://www.epa.gov/sap* for information on how to access the meeting webcast. Please note that the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the meeting will continue as planned.

*Special accommodations.* For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** at least 10 days prior to the meeting to give EPA ample time to process your request.

**ADDRESSES:**

*Meeting:* The meeting will be held in the Washington, DC area. For additional information on the meeting location, please visit *http://www.epa.gov/sap.*

*Comments:* Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0805, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not electronically submit information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.* Additional instructions on commenting or visiting the docket, along with more information about dockets, is available at *http://www.epa.gov/dockets.*

*Nominations, requests to present oral comments, and requests for special accommodations.* Submit nominations to serve on the review subcommittee for this meeting of the CSAC, requests for special accommodations, or requests to present oral comments to the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Steven M. Knott, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–0103; email address: *knott.steven@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, disposal, and/or the assessment of risks involving chemical substances and mixtures. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit CBI information to EPA through regulations.gov or email. If your comments contain any information that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting your comments.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

*C. How may I participate in this meeting?*

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPPT–2015–0805 in the subject line on the first page of your request.

1. *Written comments.* The Agency encourages written comments be submitted, using the instructions in **ADDRESSES** and Unit I.B., on or before May 10, 2016, to provide CSAC the time necessary to consider and review the written comments. Written comments are accepted until the date of the meeting, but anyone submitting written comments after May 10, 2016, should contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**. Anyone submitting written comments at the meeting should bring 15 copies for distribution to CSAC.

2. *Oral comments.* The Agency encourages each individual or group wishing to make brief oral comments to CSAC to submit a request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before May 17, 2016, in order to be included on the meeting agenda. Requests to present oral comments will be accepted until the date of the meeting and, to the extent that time permits, the Chair of CSAC may permit the presentation of oral comments at the meeting by interested persons who have not previously requested time. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before CSAC are limited to approximately five minutes unless prior arrangements have been made. In addition, each speaker should bring 15 copies of his or her comments and presentation for distribution to CSAC at the meeting.

3. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

4. *Request for nominations to serve as review subcommittee members for this meeting of the CSAC.* As part of a broader process for developing a pool of candidates for each meeting, EPA staff solicits the stakeholder community for nominations of prospective candidates for service as review subcommittee members for CSAC. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific review. Individuals nominated for this meeting should have expertise in one or more of the following areas: Epidemiology of neurotoxicity of volatile and semivolatile organic chemicals; risk assessment of neurotoxic chemicals; risk assessment for developmental toxicity of volatile and semivolatile organic chemicals; cancer assessment of mutagenic chemicals; statistics with experience with bench mark dose response analysis of cancer and noncancer endpoints; occupational exposure to volatile and semivolatile organic chemicals; consumer exposure to volatile and semivolatile organic chemicals. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, email address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before March 31, 2016. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before that date. However, final selection of subcommittee members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on CSAC subcommittees is based on the function of the subcommittee and the expertise needed to address the Agency's charge to the subcommittee. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency, except EPA. Other factors considered during the selection process include availability of the potential subcommittee member to fully participate in the subcommittee's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Although financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on a subcommittee. Numerous qualified candidates may be identified for each subcommittee. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the subcommittee. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately three to four review subcommittee members.

CSAC members and subcommittee members are subject to the provisions of 5 CFR part 2634—Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture, as supplemented by EPA in 5 CFR part 6401. In anticipation of this requirement, prospective candidates for service on CSAC and CSAC subcommittees will be asked to submit confidential financial information which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidates financial disclosure form to assess whether there are financial conflicts of interest, appearance of a lack of impartiality, or any prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on CSAC or CSAC subcommittees. Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of CSAC members and CSAC subcommittee members participating at this meeting will be posted on the Web site at *http://www.epa.gov/sap* or may be obtained from the OPPT Docket at *http://www.regulations.gov.*

## II. Background

*A. Purpose of CSAC*

OPPT manages programs under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* and the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.* Under these laws, EPA evaluates new and existing chemical substances and their risks, and finds ways to prevent or reduce pollution before it is released into the environment. OPPT also manages a variety of environmental stewardship programs that encourage companies to reduce and prevent pollution.

The CSAC was established under FACA section 9(a) to provide advice and recommendations on the scientific basis for risk assessments, methodologies, and pollution prevention measures or

approaches. The CSAC is composed of 10 members who serve as Regular Government Employees (RGEs) or Special Government Employees (SGEs). A copy of the CSAC charter is available on the EPA Web site and in the docket.

*B. Public Meeting*

During the meeting scheduled for May 24–26, 2016, the CSAC will focus on the external peer review of the draft document entitled, ''TSCA Work Plan Chemical Risk Assessment 1-bromopropane (n-Propyl Bromide): Spray adhesives, dry cleaning, and degreasing uses (CASRN: 106–94–5).'' The assessment will focus on uses of 1-bromopropane in commercial (*i.e.,* vapor degreasing, spray adhesives, and dry cleaning) and consumer applications (*i.e.,* aerosol solvent cleaners and spray adhesives). Given the range of endpoints (*i.e.,* cancer, non-cancer; the latter includes potential effects on the developing fetus and adults of both sexes), susceptible populations are expected to include adults (including pregnant women) in commercial uses and children (as bystanders) and adults of all ages (including pregnant women) for consumer uses. Thus, the assessment will focus on all humans/lifestages. The CSAC will be charged with reviewing the scientific and technical merit of the draft 1-bromopropane risk assessment focusing exclusively on the scientifically relevant issues pertinent to the assessment.

*C. CSAC Documents and Meeting Minutes*

EPA's background paper, related supporting materials, charge/questions to CSAC, CSAC composition (*i.e.,* members and subcommittee members for this meeting), and the meeting agenda will be available approximately 4 weeks prior to the meeting. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available at *http://www.regulations.gov* and the Web site at *http://www.epa.gov/sap.*

CSAC will prepare meeting minutes summarizing its recommendations to the Agency approximately 90 days after the meeting. The meeting minutes will be posted to the Web site at *http://www.epa.gov/sap* or may be obtained from the OPPT Docket at *http://www.regulations.gov.*

**Authority:** 5 U.S.C. App. 2 § 9(c).

Dated: February 26, 2016.

**David J. Dix,**

*Director, Office of Science Coordination and Policy.*

[FR Doc. 2016–05987 Filed 3–15–16; 8:45 am]

**BILLING CODE 6560–50–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: American Family Association, Station KAFR, Facility ID 81300, BPED–20151229AAQ, From Conroe, TX, To Willis, TX; Brett E. Miller, Station NEW, Facility ID 197870, BNPH–20140121NGP, From Dayton, WA, To Island City, OR; CTC Media Group, Inc., Station WNOS, Facility ID 54363, BP–20160121ADA, From New Bern, NC, To Winterville, NC; Edgar Eaton, Station KHKF, Facility ID 198769, BMPH–20151231ABB, From Manzanita, OR, To Lincoln Beach, OR; Georgia-Carolina Radiocasting Company, LLC., Station WSNW–FM, Facility ID 84470, BPH–20151123ABO, From Tignall, GA, To Westminster, SC; Hi-Line Radio Fellowship, Station KGCM, Facility ID 122022, BPED–20151208ADK, From Belgrade, MT, To Three Forks, MT; Isleta Radio Company, Station KRKE, Facility ID 22391, BP–20151123BZF, From Milan, NM, To Eldorado, NM; JLD Media, LLC, Station KMTZ, Facility ID 166087, BPH–20151208ADJ, From Three Forks, MT, To Walkerville, MT; Mediactive, LLC., Station KZDR, Facility ID 10066, BPH–20160126AAK, From Kindred, ND, To Breckenridge, MN; New Wavo Communication Group, Inc., Station KVST, Facility ID 26858, BMPH–20151229ADK, From Willis, TX, To Huntsville, TX; Northwest Indy Radio, Station KBSG, Facility ID 174954, BPED–20160112ABE, From Westport, WA, To Raymond, WA; Radio Fargo-Moorhead, Inc., Station KPFX, Facility ID 47310, BPH–20160126AAL, From Fargo, ND, To Kindred, ND.

**DATES:** The agency must receive comments on or before May 16, 2016.

**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://licensing.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.*

Federal Communications Commission.

**James D. Bradshaw,**

*Deputy Chief, Audio Division, Media Bureau.*

[FR Doc. 2016–05882 Filed 3–15–16; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011275–037.

*Title:* Australia and New Zealand-United States Discussion Agreement.

*Parties:* CMA CGM, S.A. and ANL Singapore Pte Ltd. (acting as a single party); Hamburg-Süd KG; Hapag-Lloyd AG; and MSC Mediterranean Shipping Company S.A.

*Filing Party:* Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1200 Nineteenth St. NW.; Washington, DC 20036.

*Synopsis:* The Amendment deletes Maersk Line A/S as a party to the Agreement.

*Agreement No.:* 201157–005.

*Title:* USMX–ILA Master Contract between United States Maritime Alliance, Ltd. and International Longshoremen's Association.

*Parties:* United States Maritime Alliance, Ltd., on behalf of Management, and the International Longshoremen's Association, AFL–CIO.

*Filing Parties:* William M. Spelman, Esq.; The Lambos Firm; 303 South Broadway, Suite 410; Tarrytown, NY 10591; and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

*Synopsis:* The amendment extends the agreement to reduce the overall assessment from $5.10 per ton to 55

cents (55¢) per ton on cargo destined to or from the Caribbean Basin handled by ILA-represented employees in the ports of Jacksonville, Southeast Florida, Tampa, Mobile, New Orleans and ports in the West Gulf to September 30, 2018.

By Order of the Federal Maritime Commission.

Dated: March 11, 2016.

**Rachel E. Dickon,**

*Assistant Secretary.*

[FR Doc. 2016–05951 Filed 3–15–16; 8:45 am]

**BILLING CODE 6731–AA–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 11, 2016.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1.* WCF Financial, M.H.C., Webster City, Iowa; to convert to stock form and merge with Webster City Federal Bancorp, Webster City, Iowa. In connection with this application, Webster City Federal Bancorp will be merged into a de novo corporation named WCF Bancorp, Inc., an Iowa corporation, which has applied to become a savings and loan holding company by acquiring 100 percent of the voting shares of WCF Financial Bank, Webster City, Iowa.

Board of Governors of the Federal Reserve System, March 11, 2016.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2016–05969 Filed 3–15–16; 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 April 11, 2016.

A. Federal Reserve Bank of Boston (Prabal Chakrabarti, Senior Vice President and Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204 or *BOS.SRC.applications.comments@bos.frb.gov:*

*1. HarborOne Mutual Bancshares and HarborOne Bancorp, Inc., both of Brockton, Massachusetts;* to become bank holding companies by acquiring 100 percent of the voting shares of HarborOne Bank, Brockton, Massachusetts, pursuant to section 3(a)(1) of the BHC Act of 1956, as amended, in connection with the conversion of HarborOne Bank from mutual to stock form.

Board of Governors of the Federal Reserve System March 11, 2016.

**Michael J. Lewandowski,**

*Associate Secretary of the Board.*

[FR Doc. 2016–05968 Filed 3–15–16; 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:* Multi-Site Evaluation of Project LAUNCH

*OMB No.:* 0970–0373.

*Description:* The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is planning to collect data for the multi-site evaluation (MSE) of Project LAUNCH (Linking Actions for Unmet Needs in Children's Health). Project LAUNCH is intended to promote healthy development and wellness in children from birth to eight years of age. Project LAUNCH grantees are funded by the Substance Abuse and Mental Health Services Administration (SAMHSA) to improve coordination among child-serving systems, enhance systems coordination, integrate child behavioral health services with other health services, and implement evidence-based programs to address children's healthy development.

The Project LAUNCH MSE seeks to determine the impact of the combined LAUNCH services and strategies on child, family, and systems level outcomes. Data for the MSE will be collected through several mechanisms. First, all LAUNCH grantees will submit semi-annual reports through a web-based data entry system. Second, Project LAUNCH grantees will be systematically sampled to include 10 LAUNCH non-tribal sites and 10 matched comparison communities will be recruited to participate in data collection efforts. Within each site, 2 elementary schools and 4 early childhood education (ECE) centers will be selected as data collection sites. Data collected from this sample of LAUNCH and comparison communities will include:

• Surveys of parents of a sample of young children (birth through age eight). Topics include child health, social emotional health, school readiness, parent-child relationships, parent depression, home environment, and parental social support.

• Surveys of a sample of kindergarten teachers. The survey will assess kindergarten students' school readiness in the areas of physical health and wellbeing; social competence; emotional maturity; language and cognitive development; and communication skills.

• Surveys of elementary school and ECE administrators. The survey will assess child suspension and expulsion. In addition, key informant interviews will be conducted with local and state early childhood leaders to gather contextual information about systems level activities and change.

*Respondents:* All Project LAUNCH grantees for the web-based data collection; a systematic sample of parents, teachers, elementary school and ECE administrators in both LAUNCH and comparison communities; and key informants at the local and state levels in both LAUNCH and comparison communities.

ANNUAL BURDEN ESTIMATES

[3 Year information collection request]

| Instrument | Number of respondents | Annual number of responses per respondent | Average burden hours per response | Total burden hours | Annual burden hours |
|---|---|---|---|---|---|
| Direct Services Survey | 31 | 2 | 8.5 | 1,317.5 | 439 |
| Systems Activities and Outcomes Survey | 31 | 1 | 8 | 744 | 248 |
| Recruitment of School Districts, Schools, ECEs, and Participants | 340 | 1 | 1.912 | 433 | 433 |
| Parent Survey | 1800 | 1 | 0.5 | 600 | 600 |
| Teacher Survey (EDI) | 160 | 1 | 10 | 533 | 533 |
| Collection of Student Demographics for Teacher Survey | 20 | 1 | 2 | 13 | 13 |
| School Survey | 120 | 1 | 1 | 80 | 80 |
| Key Informant Interviews on Systems Change | 70 | 1 | 1 | 47 | 47 |

**Note**, since original Federal Register Notice announcing this study (80 FR 15016), an additional instrument was added: Collection of Student Demographics for Teacher Survey. This was based on feedback related to the Teacher Survey. We also added burden time for recruitment efforts.

Estimated Total Annual Burden Hours: 2,393.

**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, 330 C Street SW., Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*ACF Certifying Officer.*

[FR Doc. 2016–05861 Filed 3–15–16; 8:45 am]

**BILLING CODE 4184–22–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–0001]**

### Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Endocrinologic and Metabolic Drugs Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on May 24, 2016, from 8 a.m. to 5 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

*Contact Person:* LaToya Bonner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg.31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, *EMDAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* The committee will discuss the safety and efficacy of new drug applications (NDAs) 208673 for insulin glargine and lixisenatide injection, a fixed ratio drug product consisting of insulin and a GLP–1 receptor agonist, and 208471 for lixisenatide injection, a GLP–1 receptor agonist, submitted by Sanofi Aventis c/o Sanofi U.S. Services

Inc., proposed for the treatment of adults with type 2 diabetes mellitus.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 10, 2016. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before May 2, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 3, 2016.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact LaToya Bonner at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 11, 2016.

**Jill Hartzler Warner,**

*Associate Commissioner for Special Medical Programs.*

[FR Doc. 2016–05931 Filed 3–15–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2016–N–0001]**

### Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Vaccines and Related Biological Products Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on May 11, 2016, from 1 p.m. to 4:30 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.* For those unable to attend in person, the meeting will also be Webcast and will be available at *https://collaboration.fda.gov/vrbpac0516/.*

*Contact Person:* Sujata Vijh or Rosanna Harvey, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6128, Silver Spring, MD 20993–0002, 240–402–7107, *sujata.vijh@fda.hhs.gov,* or 240–402–8072, *rosanna.harvey@fda.hhs.gov* respectively, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* On May 11, 2016, the committee will participate via teleconference. In open session, the committee will hear updates of the research program in the Laboratory of Bacterial Polysaccharides, Division of Bacterial, Parasitic, and Allergenic Products, Center for Biologics Evaluation and Research, FDA.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* On May 11, 2016, from 1 p.m. to 3:25 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 3, 2016. Oral presentations from the public will be scheduled between approximately 2:25 p.m. and 3:25 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 25, 2016. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will

notify interested persons regarding their request to speak by April 26, 2016.

*Closed Committee Deliberations:* On May 11, 2016, from 3:25 p.m. to 4:30 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research program and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Sujata Vijh at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 11, 2016.

**Jill Hartzler Warner,**

*Associate Commissioner for Special Medical Programs.*

[FR Doc. 2016–05930 Filed 3–15–16; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Service Administration

### Council on Graduate Medical Education; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

*Name:* Council on Graduate Medical Education (COGME).

*Dates and Times:* April 7, 2016 (Day 1—8:30 a.m.–5:00 p.m., EST). April 8, 2016 (Day 2—8:30 a.m.–3:00 p.m., EST).

*Place:* In-Person Meeting with Webinar/Conference Call Component, 5600 Fishers Lane, Room 5A02, Rockville, MD 20857.

*Status:* The meeting will be open to the public.

*Purpose:* The COGME provides advice and recommendations to the Secretary of the Department of Health and Human Services (the Secretary) on a range of issues including the supply and distribution of physicians in the United States, current and future physician shortages or excesses, issues relating to foreign medical school graduates, the nature and financing of medical education training, and the development of performance measures and longitudinal evaluation of medical education programs. COGME's reports are submitted to the Secretary and ranking members of the Senate Committee on Health, Education, Labor, and Pensions and the House of Representatives Committee on Energy and Commerce.

COGME will start its official meeting at 8:30 a.m. each day. Discussion will focus on finalizing the draft of COGME's Diversity Resource Paper and the development of a vision, mission, and guiding principles for graduate medical education.

*Agenda:* The COGME agenda will be available 2 days prior to the meeting on the HRSA Web site at *http://www.hrsa.gov/advisorycommittees/bhpradvisory/cogme/index.html.*

**SUPPLEMENTARY INFORMATION:** Requests to make oral comments or provide written comments to the COGME should be sent to Dr. Joan Weiss, Designated Federal Official, using the address and phone number below. Individuals who plan to participate on the conference call and webinar should notify Dr. Weiss at least 3 days prior to the meeting, using the address and phone number below. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below at least 10 days prior to the meeting. Members of the public will have the opportunity to provide comments. Interested parties should refer to the meeting subject as the HRSA Council on Graduate Medical Education.

- The conference call-in number is 1–800–619–2521. The passcode is 9271697.
- The webinar link is *https://hrsa.connectsolutions.com/cogme-council/.*

**FOR FURTHER INFORMATION CONTACT:** Anyone requesting information regarding the COGME should contact Dr. Joan Weiss, Designated Federal Official within the Bureau of Health Workforce, Health Resources and Services Administration, in one of three ways: (1) Send a request to the following address: Dr. Joan Weiss, Designated Federal Official, Bureau of Health Workforce, Health Resources and Services Administration, 5600 Fishers Lane, Room 15N39, Rockville, Maryland 20857; (2) call (301) 443–0430; or (3) send an email to *jweiss@hrsa.gov.*

**Jackie Painter,**

*Director, Division of the Executive Secretariat.*

[FR Doc. 2016–05877 Filed 3–15–16; 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; Integrated Physiology of Obesity.

*Date:* March 30, 2016.

*Time:* 12:00 p.m. to 1:00 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:* Raul Rojas, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive Room 6185, Bethesda, MD 20892, (301) 451–6319, *rojasr@mail.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Urological Applications.

*Date:* April 1, 2016.

*Time:* 2:00 p.m. to 4:00 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:* Ryan G. Morris, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Pediatric AIDS.

*Date:* April 1, 2016.

*Time:* 12:30 p.m. to 2:30 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:* Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurogenesis During Development and in Adulthood.

*Date:* April 8, 2016.

*Time:* 11:00 a.m. to 2:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Nicholas Gaiano, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892–7844, 301–435–1033, *gaianonr@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Hematology and Vascular Biology.

*Date:* April 11–12, 2016.

*Time:* 10:30 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, 301–435–1210, *chaudhaa@csr.nih.gov*.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; RFA RM13–007: New Innovator Award.

*Date:* April 13–14, 2016.

*Time:* 8:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Embassy Suites Baltimore—Inner Harbor, 222 St Paul Place, Baltimore, MD 21202.

*Contact Person:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@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: March 11, 2016.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–05963 Filed 3–15–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Clinical Research in HIV/HLB Diseases.

*Date:* Date: April 12, 2016.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Dupont Circle Hotel, 1500 New Hampshire Ave. NW., Washington, DC 20036.

*Contact Person:* Stephanie L. Constant, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7189, Bethesda, MD 20892, 301–443–8784, *constantsl@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 11, 2016.

**Michelle Trout,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–05965 Filed 3–15–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; 30-Day Comment Request; NIH Information Collection Forms To Support Genomic Data Sharing for Research Purposes (OD)

*Summary:* Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 1, 2015, page 75120 and allowed 60 days for public comment. A public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of the Director (OD), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

*Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

*For Further Information Contact:* To obtain a copy of the data collection plans and instruments, or request more information on the proposed project, contact: Dina Paltoo, Office of Science Policy, 6705 Rockledge Drive or call non-toll-free number (301) 496–9838 or Email your request, including your address to: *GDS@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

*Proposed Collection:* Forms to Support Genomic Data Sharing for Research Purposes, 0925–0670, Expiration Date 03/31/2016—REVISION, Office of the Director, OD, National Institutes of Health (NIH).

*Need and Use of Information Collection:* Sharing research data supports the NIH mission and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health. The NIH has longstanding policies to make a broad range of research data, including genomic data, publicly available in a timely manner from the research activities that it funds. Genomic research data sharing is an integral element of the NIH mission as it facilitates advances in our understanding of factors that influence health and disease, while also providing

opportunities to accelerate research through the power of combining large and information-rich datasets. To promote robust sharing of human and non-human data from a wide range of large-scale genomic research and provide appropriate protections for research involving human data, the NIH issued the NIH Genomic Data Sharing Policy (GDS Policy). Human genomic data submissions and controlled-access are managed through a central data repository, the database of Genotypes and Phenotypes (dbGaP) which is administered by the National Center for Biotechnology Information (NCBI), part of the National Library of Medicine at the NIH.

Under the GDS Policy, all investigators who receive NIH funding to conduct large-scale genomic research are expected to register studies with human genomic data in dbGaP, no matter which NIH-designated data repository will maintain the data. As part of the registration process, investigators must provide basic study information such as the type of data that will be submitted to dbGaP, a description of the study, and an institutional assurance (*i.e.* Institutional Certification) of the data submission which delineates any limitations on the secondary use of the data (*e.g.,* data cannot be shared with for-profit companies, data can be used only for research of particular diseases).

Investigators interested in using controlled-access data for secondary research must apply through dbGaP and be granted permission from the relevant NIH Data Access Committee(s). As part of the application process, investigators and their institutions must provide information such as a description of the proposed research use of controlled-access datasets that conforms to any data use limitations, agree to the Genomic Data User Code of Conduct, and agree to the terms of access through a Data Use Certification agreement. Requests to renew data access and reports to close out data use are similar to the initial data access request, requiring sign-off by both the requestor and the institution, but also ask for information about how the data have been used, and about publications, presentations, or intellectual property based on the research conducted with the accessed data as well as any data security issues or other data management incidents.

The NIH has developed online forms, available through dbGaP, in an effort to reduce the burden for researchers and their institutional officials to complete the study registration, data submission, data access, and renewal and closeout processes.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 2,505.

ESTIMATED ANNUALIZED BURDEN HOURS

| Form name | Type of respondent | Number of respondents | Number of responses per respondent | Average burden per response (in hours) | Total annual burden hour |
|---|---|---|---|---|---|
| Study Registration and Data Submission. | Investigator Submitting Data | 150 | 1 | 1 | 150 |
| | Institutional Official to Certify Submission. | 150 | 1 | 30/60 | 75 |
| Requesting Access to Data | Investigator Requesting Data | 633 | 2 | 45/60 | 950 |
| | Signing Official to Certify Request. | 633 | 2 | 30/60 | 633 |
| Renewal/project Close-out Process. | Investigator Requesting Data | 633 (same individuals as listed above). | 2 | 15/60 | 317 |
| | Signing Official to Certify Request. | 633 (same individuals as listed above). | 2 | 18/60 | 380 |
| Grand Total | | 1,566 | 5,064 | | 2,505 |

Dated: March 10, 2016.

**Lawrence A. Tabak,**

*Deputy Director, National Institutes of Health.*

[FR Doc. 2016–05910 Filed 3–15–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors; National Institute of Neurological Disorders and Stroke.

*Date:* April 24–26, 2016.

*Time:* 6:00 p.m. to 11:30 a.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Alan P. Koretsky, Ph.D., Scientific Director, Division of Intramural Research, National Institute of Neurological Disorders and Stroke, NIH, 35 Convent Drive, Room 6A 908, Bethesda, MD 20892, (301) 435–2232, koretskya@ninds.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: *March 11, 2016.*

**Sylvia L. Neal,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–05967 Filed 3–15–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

*Date:* March 31, 2016.

*Time:* 12:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Robert C. Unfer, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40A, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5035, *robert.unfer@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01).

*Date:* April 12, 2016.

*Time:* 1:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Room 3F100, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

*Contact Person:* Uday K. Shankar, Ph.D., MSC, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G21B, National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5051, *uday.shankar@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 11, 2016.

**Natasha M. Copeland,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–05966 Filed 3–15–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 31, 2016, 1:00 p.m. to March 31, 2016, 3:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on March 10, 2016, 81 FR 12744.

The meeting will be held on April 14, 2016. The meeting time and location remain the same. The meeting is closed to the public.

Dated: March 11, 2016.

**Anna Snouffer,**

*Deputy Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2016–05964 Filed 3–15–16; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

**[1651–0053]**

### Agency Information Collection Activities: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 60-Day Notice and request for comments; extension of an existing collection of information.

**SUMMARY:** U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. CBP is proposing that this information collection be extended with no change to the burden hours or to the information collected. This document is published to obtain comments from the public and affected agencies.

**DATES:** Written comments should be received on or before May 16, 2016 to be assured of consideration.

**ADDRESSES:** Written comments may be mailed to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 90 K Street NE., 10th Floor, Washington, DC 20229–1177, at 202–325–0265.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for OMB approval. All comments will become a matter of public record. In this document, CBP is soliciting comments concerning the following information collection:

*Title:* Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers.

*OMB Number:* 1651–0053.

*Form Number:* Form 6478.

*Abstract:* Commercial laboratories seeking accreditation or approval must provide the information specified in 19 CFR 151.12 to Customs and Border Protection (CBP), and Commercial Gaugers seeking CBP approval must provide the information specified under 19 CFR 151.13. This information may be submitted on CBP Form 6478. After the initial approval and/or accreditation, a private company may ''extend'' its approval and/or accreditation to add

facilities by submitting a formal written request to CBP. This application process is authorized by Section 613 of Public Law 103–182 (NAFTA Implementation Act), codified at 19 U.S.C. 1499, which directs CBP to establish a procedure to accredit privately owned testing laboratories. The information collected is used by CBP in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations. Instructions for completing these applications are accessible at: *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.* CBP Form 6478 is accessible at: *http://www.cbp.gov/sites/default/files/documents/CBP%20Form%206478_0.pdf.*

*Current Actions:* This submission is being made to extend the expiration date with a change to the burden hours based on updated estimates of the number of applicants and record keepers associated with this information collection. There are no changes to the information collected.

*Type of Review:* Extension (with change).

*Affected Public:* Businesses.

*Applications for Commercial Testing and Approval of Commercial Gaugers:*

*Estimated Number of Annual Respondents:* 8.

*Estimated Time per Response:* 1.25 hours.

*Estimated Total Annual Burden Hours:* 10.

*Record Keeping Associated with Applications for Commercial Testing and Approval of Commercial Gaugers:*

*Estimated Number of Respondents:* 180.

*Estimated Time per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 180.

Dated: March 10, 2015.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2016–05883 Filed 3–15–16; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R6–ES–2015–N052; FXES11130600000–156–FF06E00000]**

### Endangered and Threatened Wildlife and Plants; Draft Revised Recovery Plan for the Piping Plover

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability for review and comment.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability of a draft revised recovery plan for the Northern Great Plains piping plover population. This population is federally listed as threatened under the Endangered Species Act of 1973, as amended (Act). The Service solicits review and comment from the public on this draft revised plan.

**DATES:** Comments on the draft revised recovery plan must be received on or before May 16, 2016.

**ADDRESSES:** Copies of the draft revised recovery plan are available by request from the North Dakota Field Office, U.S. Fish and Wildlife Service, 3425 Miriam Avenue, Bismarck, ND 58501; telephone 701–250–4481. Submit comments on the draft recovery plan to the Project Leader at this same address or to *pipingplovercomments@fws.gov.* An electronic copy of the draft recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html.*

**FOR FURTHER INFORMATION CONTACT:** Project Leader, at the above address, or telephone 701–250–4481.

**SUPPLEMENTARY INFORMATION:**

#### Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for the federally listed species where a plan will promote the conservation of the species. Recovery plans describe site-specific actions necessary for the conservation of the species; establish objective, measurable criteria which, when met, would result in a determination that the species no longer needs the protection of the Act; and provide estimates of the time and cost for implementing the needed recovery measures.

The original plan for the species was approved in 1988. This draft revised recovery plan would replace the current version. Section 4(f) of the Act, as amended in 1988, requires that public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information received during a public comment period when preparing each new or revised recovery plan for approval. The Service and other Federal agencies also will take these comments into consideration in the course of implementing approved recovery plans. It is also our policy to request peer review of recovery plans. We will summarize and respond to the issues raised by the public and peer reviewers in an appendix to the approved recovery plan.

The Northern Great Plains population of the piping plover was listed as threatened under the provision of the Endangered Species Act on January 10, 1986 (50 FR 50726). The breeding population of the Northern Great Plains piping plover extends from Nebraska north along the Missouri River through South Dakota, North Dakota, and eastern Montana, and on alkaline (salty) lakes along the Missouri River Coteau (a large plateau extending north and east of the Missouri River) in North Dakota, Montana, and extending into Canada. The majority of piping plovers from Prairie Canada winter along the south Texas coast, while breeding piping plovers from the United States are more widely distributed along the Gulf Coast from Florida to Texas, with a small percentage of the population wintering along the Atlantic Coast and in the Bahamas.

Recovery of this species will require restoration of ecosystem functions on both the breeding and wintering grounds so that the population can persist into the foreseeable future without extensive human intervention. Since some human activities are likely to continue to impact piping plovers and their habitat, there will likely be continued public outreach, education, and partnerships for long-term protection and management even after recovery. Recovery actions are designed to protect the species' habitat and increase the knowledge of the species' genetics, life history, and population dynamics; the relationship of the piping plover to its environment; and its responses to identified threats.

#### Request for Public Comments

The Service solicits public comments on the draft revised recovery plan. All comments received by the date specified in **DATES** will be considered prior to approval of the plan. Written comments and materials regarding the plan should be addressed to the Project Leader (see **ADDRESSES**). Comments and materials received will be available, by appointment, for public inspection during normal business hours at the address under **ADDRESSES**. All public comment information provided voluntarily by mail or by phone becomes part of the official public record. If requested under the Freedom

of Information Act by a private citizen or organization, the Service may provide copies of such information.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 7, 2016.

**Matt Hogan,**

*Deputy Regional Director, Denver, Colorado.*

[FR Doc. 2016–05899 Filed 3–15–16; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–HQ–FAC–2016–N011]; [FF09F42300–FVWF97920900000–XXX]**

### Sport Fishing and Boating Partnership Council; Call for Nominations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Secretary of the Interior (Secretary) and Director of the Fish and Wildlife Service (Director) seek nominations for individuals to be considered for membership in the Sport Fishing and Boating Partnership Council (Council). The Council advises the Secretary, through the Director, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, Native American tribes, States, and the Federal Government.

**DATES:** Written nominations must be postmarked by Thursday, March 31, 2016.

**ADDRESSES:** Please address nomination letters to Mr. Daniel Ashe, Director, U.S. Fish and Wildlife Service. Mail nominations to: Brian Bohnsack, Designated Federal Officer and Coordinator, Sport Fishing and Boating Partnership Council, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Mailstop 3C016A–FAC, Falls Church, VA 22041–3803.

**FOR FURTHER INFORMATION CONTACT:** Brian Bohnsack, at the above address, via email at *brian_bohnsack@fws.gov,* or by telephone at (703) 358–2435.

**SUPPLEMENTARY INFORMATION:** The Secretary and Director seek nominations for individuals to be considered for membership in the Sport Fishing and Boating Partnership Council (Council). The Council advises the Secretary, through the Director, on aquatic conservation endeavors that benefit recreational fishery resources and recreational boating and that encourage partnerships among industry, the public, Native American tribes, States, and the Federal government. Members terms are not staggered, and the current Council members' terms expire June 3, 2016. The Secretary will appoint members for 2-year terms that will run from 2016 to 2018.

**Council Duties**

The Council conducts its operations in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.). It reports to the Secretary of the Interior through the Director of the Fish and Wildlife Service. The Council functions solely as an advisory body. The duties of the Council include:

a. Providing advice that will assist the Secretary in carrying out the authorities of the Fish and Wildlife Act of 1956.

b. Fulfilling responsibilities established by Executive Order 12962:

(1) Monitoring specific Federal activities affecting aquatic systems and the recreational fisheries they support.

(2) Reviewing and evaluating the relation of Federal policies and activities to the status and conditions of recreational fishery resources.

c. Recommending policies or programs to increase public awareness and support for the Sport Fish Restoration and Boating Trust Fund.

d. Recommending policies or programs that foster conservation and ethics in recreational fishing and boating.

e. Recommending policies or programs to stimulate angler and boater participation in the conservation and restoration of aquatic resources through outreach and education.

f. Advising how the Secretary can foster communication and coordination among government, industry, anglers, boaters, and the public.

**Council Makeup**

The Council consists of no more than 18 members, appointed for 2-year terms, which are not staggered. Members must be senior-level representatives of their organizations and/or have the ability to represent their designated constituency. The Secretary will select discretionary members from among the national interest groups listed below.

a. State fish and wildlife resource management agencies (two members: One a Director of a coastal State, and one a Director of an inland State);

b. Saltwater and freshwater recreational fishing organizations;

c. Recreational boating organizations;

d. Recreational fishing and boating industries;

e. Recreational fishery resources conservation organizations;

f. Tribal resource management organizations;

g. Aquatic resource outreach and education organizations; and

h. Tourism industry.

**Nomination Method and Eligibility**

Nominations should include a resume providing an adequate description of the nominee's qualifications, including information that would enable the Department of the Interior to make an informed decision regarding meeting the membership requirements of the Committee and permit the Department to contact a potential member. Current members can be renominated and reappointed to the Council. Individuals who are federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

Dated: February 3, 2016.

**Stephen Guertin,**

*Deputy Director.*

[FR Doc. 2016–05934 Filed 3–15–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R8–ES–2016–N041; FXES11130800000–167–FF08E00000]**

### Endangered Species Recovery Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing recovery permits to conduct certain activities with endangered species.

**DATES:** Comments on these permit applications must be received on or before April 15, 2016.

**ADDRESSES:** Written data or comments should be submitted to the Endangered

Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

**SUPPLEMENTARY INFORMATION:** The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

**Applicants**

*Permit No. TE–86884B*

Applicant: Scott L. Lillie, Surprise, Arizona

The applicant requests a permit amendment to take (harass by survey and nest monitor) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities in California, Arizona, and Nevada, for the purpose of enhancing the species' survival.

*Permit No. TE–139628*

Applicant: Garcia and Associates, San Francisco, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the Sierra Nevada yellow-legged frog (*Rana sierrae*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–36118B*

Applicant: Callie J. Ford, Escondido, California

The applicant requests a permit amendment to take (harass by survey, capture, and release) the Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities in Riverside County, California, for the purpose of enhancing the species' survival.

*Permit No. TE–86906B*

Applicant: Yosemite National Park, El Portal, California

The applicant requests a permit to take (harass by survey, capture, handle, transport, release, collect and/or translocate (eggs, tadpoles, and adults), captive rear, insert PIT (passive integrated transponder) tag, and attach VIT (visual implant elastomer tag) the Sierra Nevada yellow-legged frog (*Rana sierrae*) in conjunction with research activities in Yosemite National Park, California, for the purpose of enhancing the species' survival.

*Permit No. TE–787924*

Applicant: Markus Spiegelberg, San Diego, California

The applicant requests a permit renewal to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); and take (harass by survey and nest monitor) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–157216*

Applicant: U.S. Geological Survey, Dixon, California

The applicant requests a permit renewal to take (harass by survey, capture, mark, pit tag, and take biological samples) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with scientific research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE–87004B*

Applicant: Tara R. Baxter, San Diego, California

The applicant requests a permit to take (harass by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–027736*

Applicant: David Lacoste, San Marcos, California

The applicant requests a permit renewal to take (harass by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–837448*

Applicant: Douglas W. Allen, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey, capture, handle, release, collect vouchers, collect, process, analyze vernal pool soil samples for egg (cyst) identification, and hatch out eggs for species identification) the Riverside fairy shrimp (*Streptocephalus woottoni*), and San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–842267*

Applicant: Steve Foreman, Vacaville, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California freshwater shrimp (*Syncaris pacifica*) in Sonoma, Marin, and Napa Counties, California; and take (survey, trap, capture, handle, mark, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–87548B*

Applicant: Jonathan N. Baskin, San Marino, California

The applicant requests a permit to take (capture, handle, and release) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in Los Angeles, Ventura, and San Bernardino Counties, California; take (capture, handle, and release) the tidewater goby (*Eucyclogobius newberryi*), and Owens tui chub (*Gila bicolor snyderi*); and take (harass by survey, capture, preserve voucher specimens, and release) the desert pupfish (*Cyprinodon macularius*) in conjunction with research activities throughout the range of the species in California, for the purpose of enhancing the species' survival.

*Permit No. TE–778668*

Applicant: Bryan M. Mori, Santa Cruz, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in areas north of Kern and San Luis Obispo Counties, California; and take (harass by survey, capture, and release) the California tiger salamander ((central distinct population segment (DPS), Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with research activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–092476*

Applicant: Scott Quinnell, California Department of Transportation, San Bernardino, California

The applicant requests a permit renewal to take (harass by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–87580B*

Applicant: City of Costa Mesa, Costa Mesa, California

The applicant requests a permit to take (harass/harm while conducting habitat restoration activities) the San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with survey and restoration activities in Costa Mesa, California, for the purpose of enhancing the species' survival.

*Permit No. TE–181714*

Applicant: Pieter Johnson, Boulder, Colorado

The applicant requests a permit renewal to take (harass by survey, capture, handle, examine for limb malformations, take biological samples, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) and California tiger salamander ((central DPS and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with research activities in Alameda, Contra Costa, Marin, Monterey, Napa, Sacramento, San Benito, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Sonoma, Solano, and Yolo Counties, California, for the purpose of enhancing the species' survival.

*Permit No. TE–148555*

Applicant: Phillip Brylski, Irvine, California

The applicant requests a permit amendment to take (survey, capture, handle, and release) the Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), giant kangaroo rat (*Dipodomys ingens*), San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), Stephens' kangaroo rat (*Dipodomys stephensi*), Amargosa vole (*Microtus californicus scirpensis*), salt marsh harvest mouse (*Reithrodontomys raviventris*), Pacific pocket mouse (*Perognathus longimembris pacificus*), and riparian woodrat (*Neotoma fuscipes riparia*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

*Permit No. TE–40087B*

Applicant: U.S. Forest Service, Sonora, California

The applicant requests a permit amendment to take (harass by collecting eggs, tadpoles, and metamorphs for captive rearing) the Sierra Nevada yellow-legged frog (*Rana sierrae*) in conjunction with captive rearing activities in California for the purpose of enhancing the species' in survival.

*Permit No. TE–42833A*

Applicant: Ian Maunsell, San Diego, California

The applicant requests a permit amendment to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Riverside fairy shrimp (*Streptocephalus woottoni*) and San Diego fairy shrimp (*Branchinecta sandiegonensis*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–64146A*

Applicant: Patricia M. Varcarcel, San Francisco, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, mark, and release) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–88417B*

Applicant: Phoenix Biological Consulting, Tehachapi, California

The applicant requests a permit to take (harass by survey, nest monitor, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); and take (harass by survey, capture, handle, and release) the San Joaquin kit fox (*Vulpes macrotis mutica*), Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), and giant kangaroo rat (*Dipodomys ingens*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–59775A*

Applicant: Norman Sisk, Friant, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander ((central DPS, Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–023240*

Applicant: William Stolp, Oakhurst, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); take (harass by survey, capture, handle, and release) the California tiger salamander ((central DPS, Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)), mountain yellow-legged frog ((southern California DPS, and northern California DPS) (*Rana muscosa*)), Sierra Nevada yellow-legged frog (*Rana sierrae*), and blunt-nosed leopard lizard (*Gambelia silus*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–094308*

Applicant: Shay Lawrey Redlands, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) throughout the range of the species in California; and take (harass by capture, handle, and release) the San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*) in Los Angeles, Riverside, and San Bernardino Counties, California, in conjunction with survey activities for the purpose of enhancing the species' survival.

*Permit No. TE–162652*

Applicant: Mary Shea, Rohnert Park, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander ((central DPS, Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–64546A*

Applicant: Power Engineers, Inc., Meridian, Idaho

The applicant requests a permit to take (harass by survey, nest monitor, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities in Arizona, California, Nevada, New Mexico, Texas, and Utah, for the purpose of enhancing the species' survival.

*Permit No. TE–88597B*

Applicant: Scott Crawford, Yorba Linda, California

The applicant requests a permit to take (harass by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); and take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–054120*

Applicant: Russell Huddleston, Oakland, California

The applicant requests a permit renewal to remove/reduce to possession the *Chloropyron molle* subsp. *molle* (*Cordylanthus mollis* subsp. *mollis)* (soft bird's-beak), *Eriogonum apricum* (incl. vars. *apricum* and *prostratum*) (Ione buckwheat and Irish Hill buckwheat), *Lasthenia conjugens* (Contra Costa goldfields), *Neostapfia colusana* (Colusa grass), *Orcuttia tenuis* (slender orcutt grass), *Orcuttia viscida* (Sacramento orcutt grass), *Pseudobahia bahiifolia* (Hartweg's golden sunburst), *Tuctoria mucronata* (Solano grass) on Federal lands throughout the range of the species; and take (harass by survey, capture, handle, release, collect vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–786728*

Applicant: Avocet Research Associates, LLC

The applicant requests a permit to take (harass by survey) the California Ridgway's rail (California clapper r.) (*Rallus obsoletus obsoletus*) (*R. longirostris o.*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–071215*

*Applicant: Rebecca Doubledee, Oakland, California*

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander ((central DPS, Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)), and Sierra Nevada yellow-legged frog (*Rana sierrae*) in conjunction with survey activities throughout the range of the species for the purpose of enhancing the species' survival.

*Permit No. TE–88748B*

Applicant: Erika L. Walther, Oakland, California

The applicant requests a permit to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*); and take (harass by survey, capture, handle, and release) the California tiger salamander ((central DPS, Santa Barbara County DPS, and Sonoma County DPS) (*Ambystoma californiense*)) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE–097845*

Applicant: ManTech SRS Technologies, Lompoc, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect adult vouchers, and collect branchiopod cysts) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), and vernal pool tadpole shrimp (*Lepidurus packardi*) throughout the range of the species; take (harass by survey and nest monitor) the California least tern (*Sternula antillarum browni*) (*Sterna a. browni*) in Santa Barbara and San Luis Obispo Counties, California; take (harass by survey and nest monitor) the southwestern willow flycatcher (*Empidonax traillii extimus*) in Vandenberg Air Force Base; take (survey by pursuit, incidentally handle, and release larvae during host plant seed collection) the El Segundo blue butterfly (*Euphilotes battoides allyni*) in Los Angeles, San Luis Obispo, Santa Barbara, and Ventura Counties, California; and take (harass by survey, capture, handle, release, and collect) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in Santa Barbara County, California, in conjunction with surveys, population monitoring, and research activities for the purpose of enhancing the species' survival.

*Permit No. TE–029414*

Applicant: Nathan T. Moorhatch, La Habra, California

The applicant requests a permit renewal to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*); take (harass by pursuit) Quino checkerspot butterfly

(*Euphydryas editha quino*); and take (survey by pursuit, handle, and live-capture) Casey's June beetle (*Dinacoma caseyi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

*Permit No. TE–836491*

Applicant: Michael Wilcox, Riverside, California

The applicant requests a permit renewal to take (survey by pursuit) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) in San Bernardino and Riverside Counties, California; take (harass by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in Riverside, Orange, and San Diego Counties, California; and take (survey by pursuit, handle, and live-capture) the Casey's June beetle (*Dinacoma caseyi*) throughout the range of the species in conjunction with survey activities for the purpose of enhancing the species' survival.

**Public Comments**

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Michael Long,**

*Acting Regional Director, Pacific Southwest Region, Sacramento, California.*

[FR Doc. 2016–05890 Filed 3–15–16; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLES961000 L53200000 BK0000 XXX LVDPLANDES01; AR–ES–058127, Group No. 115, Arkansas]**

### Eastern States: Filing of Plat of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of filing of plat of survey; Arkansas.

**SUMMARY:** The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Washington, DC at least 30 calendar days from the date of publication in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, Eastern States Office, 20 M Street SE., Washington DC, 20003. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This survey was executed under the damaged lands fund.

**Fifth Principal Meridian, Arkansas**

**T. 20 N., R. 11 W.**

The plat of survey represents the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of section 13, Township 20 North, Range 11 West, of the Fifth Principal Meridian, Arkansas, and was accepted February 17, 2016. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 10, 2016.

**Dominica VanKoten,**

*Chief Cadastral Surveyor.*

[FR Doc. 2016–05891 Filed 3–15–16; 8:45 am]

**BILLING CODE 4310–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCA932000.L1440000.ET0000 16X; CACA 35558]**

### Notice of Proposed Withdrawal Extension, Red Rock Canyon State Park; California

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** The Assistant Secretary for Land and Minerals Management proposes to extend the duration of Public Land Order (PLO) No. 7260 for an additional 20-year term. PLO No. 7260 withdrew 8,896 acres of public lands from settlement, sale, location, or entry under the general land laws, including the United States mining and mineral leasing laws, except for conveyances under Section 701 of the California Desert Protection Act of 1994, to protect the Red Rock Canyon State Park resources in Kern County, California, until the lands can be conveyed to the State of California. This notice gives the public an opportunity to comment on the proposed action. This notice also announces the date, time, and location of the public meeting to be held in conjunction with the proposed extension.

**DATES:** Comments must be received by June 14, 2016. The Bureau of Land Management (BLM) will hold a public meeting in connection with the proposed withdrawal extension on April 27, 2016.

**ADDRESSES:** Comments and meeting requests should be sent to the California State Director, Bureau of Land Management (BLM), 2800 Cottage Way, Suite W–1623, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** Deanne Kidd, BLM California State Office, at 916–978–4337, or email *dykidd@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The BLM has filed an application to extend the withdrawal created by PLO No. 7260 (62 FR 26324 (1997)) for the remaining 6,072 acres of public lands, for an additional 20-year term. PLO No. 7260 will expire on May 5, 2017, unless extended. The purpose of the

withdrawal extension is to protect the park values of this designated area until the lands can be conveyed to the State of California pursuant to the California Desert Protection Act of 1994 (108 Stat. 4471, sec. 701):

**Mount Diablo Meridian, California**

T. 29 S., R. 37 E.,
Sec. 25, E½ and SW¼.
T. 29 S., R. 38 E.,
Sec. 4, lots 1 thru 4, SE¼NE¼, E½SW¼NE¼, E½SE¼NW¼, SW¼SE¼NW¼, W½NE¼SW¼, SE¼NE¼SW¼, SE¼NW¼SW¼, E½SW¼SW¼, SW¼SW¼SW¼, W½SE¼SW¼, SW¼NE¼SE¼, SE¼NW¼SE¼, NE¼SW¼SE¼, and NW¼SE¼SE¼;
Sec. 5, lots 1 and 2, SW¼NE¼, S½NW¼, N½NE¼SW¼, SW¼NE¼SW¼, NW¼SW¼, N½SW¼SW¼, N½NW¼SE¼, N½NW¼SE¼, E½SE¼NW¼SE¼, E½NE¼SW¼SE¼, E½SE¼SW¼SE¼, and SE¼SE¼;
Sec. 6, lots 1 and 7, S½NE¼, E½SW¼, N½SE¼, SW¼SE¼, N½SE¼SE¼, and SW¼SE¼SE¼;
Sec. 7, lots 1 thru 4, NW¼NE¼NE¼, NW¼NE¼, W½SW¼NE¼, E½NW¼, E½SW¼, and NW¼NW¼SE¼;
Sec. 8, E½NE¼, E½NE¼NW¼NE¼, SW¼NE¼NW¼NE¼, S½NW¼NW¼NE¼, S½NW¼NE¼, SW¼NE¼, SE¼NE¼NE¼NW¼, E½SE¼NE¼NW¼, NE¼NE¼SE¼NW¼, S½NE¼SE¼NW¼, SE¼SE¼NW¼, E½NE¼SW¼, SE¼SW¼SW¼, SE¼SW¼, and SE¼;
Sec. 9, NW¼NE¼NW¼, NW¼NW¼, N½SW¼NW¼, SW¼SW¼NW¼, and NW¼NW¼SW¼;
Sec. 17, N½NE¼, N½SW¼NE¼, SW¼SW¼NE¼, N½SE¼NE¼, E½NW¼, E½NW¼NW¼, E½SW¼NW¼, E½SW¼, E½NW¼SW¼, E½SW¼SW¼, W½NW¼SE¼, and SW¼SE¼;
Sec. 18, lots 1 and 2, and E½NW¼;
Sec. 19, E½SW¼ and SE¼;
Sec. 20, E½, E½NW¼, E½NW¼NW¼, NE¼SW¼NW¼, and SW¼;
Sec. 21, N½, SW¼, and N½SE¼;
Sec. 28, W½NW¼NW¼, SW¼NW¼, E½NW¼SW¼, SW¼SW¼, and W½SE¼SW¼;
Sec. 29, E½NE¼, NW¼NE¼, N½SW¼NE¼, SE¼SW¼NE¼, and NW¼;
Sec. 30, lots 1, 4, and 6, N½NE¼, E½SW¼NE¼, E½NW¼SW¼NE¼, E½SW¼SW¼NE¼, W½SE¼NE¼, NE¼NW¼, S½NE¼SW¼, and N½SE¼SW¼;
Sec. 33, N½, SW¼, N½SE¼, SW¼SE¼, and that portion of land in SE¼SE¼ lying north of the northern right-of-way boundary of the highway known as Redrock Randsburg Road.
T. 30 S., R. 38 E.,
Sec. 4 that portion of lot 2 of NE¼ lying north of the northern right-of-way boundary of the highway known as Redrock Randsburg Road;
Sec. 6, lots 1 and 2 of NW¼.

The areas described aggregate 6,072 acres of public lands in Kern County.

The use of a right-of-way, interagency agreement, or cooperative agreement would not segregate the lands from further mining claim filings or from other conflicting uses.

There are no suitable alternative sites as the California Desert Protection Act of 1994 mandates that the area be conveyed to the State of California.

No additional water rights will be required to fulfill the purpose of the requested withdrawal extension.

For a period until June 14, 2016, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the California State Director of the BLM at the address in the **ADDRESSES** section. Comments, including names and street addresses of respondents, will be available for public review at the BLM California State Office, during regular business hours, 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

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 the BLM in your comment to withhold your personal identifying information from public view, the BLM cannot guarantee that it will be able to do so.

Notice is hereby given that a public meeting in connection with the proposed withdrawal extension will be held at the Kerr McGee Center, 100 W. California Avenue, Ridgecrest, California, 93555 on April 28, 2016 from 6 to 8 p.m. The BLM will publish a notice of the time and place in at least one newspaper of general circulation no less than 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

**Thomas Pogacnik,**

*California Deputy State Director, Division of Natural Resources.*

[FR Doc. 2016–05911 Filed 3–15–16; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR936000.L1440000.ET0000 FUND: 15XL1109AF; HAG–15–0165; OR50483]**

## Notice of Application for Extension of Public Land Order No. 7233; Opportunity for Public Meeting; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The United States Forest Service (USFS) has filed an application with the Bureau of Land Management (BLM) requesting that the Secretary of the Interior extend the duration of Public Land Order (PLO) No. 7233 for an additional 20-year term. PLO No. 7233 withdrew approximately 2,090 acres of National Forest Systems Lands in the Rogue River-Siskiyou National Forest from mining for 20 years to protect the Rabbit Ears-Falcon Wildlife Area; Rogue River Wild and Scenic Corridor; Union Creek Historic District; Abbot Creek and Mill Creek Recreation Sites; and the Prospect Ranger Station Administrative Site. The withdrawal created by Public Land Order No. 7233 will expire on January 1, 2017, unless extended. This notice also gives an opportunity to comment on the application and to request a public meeting.

**DATES:** Comments and public meeting requests must be received by June 14, 2016.

**ADDRESSES:** Comments and meeting requests should be sent to the BLM Oregon/Washington State Director, P.O. Box 2965, Portland, OR 97208–2965.

**FOR FURTHER INFORMATION CONTACT:** Jacob Childers, BLM Oregon/Washington State Office, 503–808–6225; Candice Polisky, USFS Pacific Northwest Region, 503–808–2479.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact either of the above individuals. The FIRS is available 24 hours a day, 7 days a week. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The USFS has filed an application requesting that the Secretary of the Interior extend the withdrawal created by PLO No. 7233 for an additional 20-year term, subject to valid existing rights. PLO No. 7233 (62 FR 104 (1997)) withdrew National Forest System Lands from location and entry under United States mining laws

(30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws. The purpose of the requested withdrawal extension is to protect a wildlife area, a wild and scenic river corridor, a historic district, two recreation sites, and a ranger station administrative site. The USFS would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

PLO No. 7233 is incorporated herein by reference. The areas described aggregate 2,090 acres within the Rogue River-Siskiyou National Forest in Jackson and Douglas Counties. Records related to the application may be examined by contacting Jacob Childers at the above address or phone number.

For a period until June 14, 2016, all persons who wish to submit comments, suggestions, or objections in connection with the withdrawal extension application may present their views in writing to the BLM Oregon/Washington State Office, State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours. Be advised that your entire comment including your personal identifying information may be made publicly available. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Notice is hereby given that an opportunity for a public meeting is afforded in connection with the withdrawal extension application. All interested parties who desire a public meeting for the purpose of being heard on the withdrawal extension application must submit a written request to the BLM State Director at the address indicated above by June 14, 2016. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting. This extension will be processed in accordance with 43 CFR 2310.4.

**Fred O'Ferrall,**

*Chief, Branch of Land, Mineral, and Energy Resources.*

[FR Doc. 2016–05914 Filed 3–15–16; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNMP0000 L91450000.PP0000 16XL5573PF]**

### Pecos District Resource Advisory Council Meeting, New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, Bureau of Land Management's (BLM) Pecos District Resource Advisory Council (RAC) will meet as indicated below.

**DATES:** The RAC will meet on April 21, 2016, at the Eddy Building, 111 Blackjack Pershing, Fort Stanton, New Mexico, from 10:00 a.m.–4:00 p.m. The public may send written comments to the RAC at the BLM Pecos District, 2909 West 2nd Street, Roswell, New Mexico 88201.

**FOR FURTHER INFORMATION CONTACT:** Howard Parman, Pecos District Office, Bureau of Land Management, 2909 West 2nd Street, Roswell, New Mexico 88201, 575–627–0212. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The 10-member Pecos District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM's Pecos District. Planned agenda items include: A presentation regarding recreation use fees at Lincoln National Forest facilities, a possible treatment for bats with white nose syndrome, and presentations about the science studies in Fort Stanton Cave.

All RAC meetings are open to the public. There will be a half-hour public comment period at 10:30 a.m. for any interested members of the public who wish to address the RAC. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited.

**Byron Loosle,**

*Acting Deputy State Director.*

[FR Doc. 2016–05894 Filed 3–15–16; 8:45 am]

**BILLING CODE 4310–FB–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 701–TA–555 and 731–TA–1310 (Preliminary)]**

### Certain Amorphous Silica Fabric From China; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of certain amorphous silica fabric from China, provided for in subheadings 7019.59.40 and 7019.59.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the government of China and sold in the United States at less than fair value (''LTFV'').

#### Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under sections 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under sections 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

#### Background

On January 20, 2016, Auburn Manufacturing, Inc., Mechanic Falls, Maine, filed a petition with the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of certain amorphous silica fabric from China. Accordingly, effective January 20, 2016, the Commission, pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)), instituted countervailing duty investigation No. 701–TA–555 and antidumping duty investigation No. 731–TA–1310 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference 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** of January 26, 2016 (81 FR 4335). The conference was held in Washington, DC, on February 10, 2016, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to sections 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on March 7, 2016. The views of the Commission are contained in USITC Publication 4598 (March 2016), entitled *Certain Amorphous Silica Fabric from China: Investigation Nos. 701 TA–555 and 731–TA–1310 (Preliminary).*

By order of the Commission.

Issued: March 11, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–05888 Filed 3–15–16; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–935]**

## Certain Personal Transporters, Components Thereof, and Manuals Therefor; Issuance of a General Exclusion Order, a Limited Exclusion Order, and a Cease and Desist Order, Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to issue: (1) A general exclusion order (''GEO'') barring the unlicensed entry of certain personal transporters that infringe one patent asserted in this investigation; (2) a limited exclusion order (''LEO'') prohibiting the unlicensed entry of infringing personal transporters, components thereof, and manuals therefor manufactured abroad by or on behalf of certain respondents that are covered by one or more asserted U.S. patents and copyright; and (2) a cease and desist order (''CDO'') directed against one domestic defaulting respondent. The Commission has terminated this investigation.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), on November 10, 2014, based on a complaint filed by Segway, Inc. of Bedford, New Hampshire (''Segway'') and DEKA Products Limited Partnership of Manchester, New Hampshire (''DEKA'') (collectively, ''Complainants''). 79 *FR* 66739–40 (Nov. 10, 2014). The amended complaint, as supplemented, alleges violations of section 337 by reason of infringement of certain claims of U.S. Patent Nos. 6,789,640 (''the '640 patent''); 7,275,607 (''the '607 patent''); and 8,830,048 (''the '048 patent''); the claim of U.S. Design Patent No. D551,722 (''the '722 design patent''); the claim of U.S. Design Patent No. D551,592 (''the '592 design patent''); and U.S. Copyright Registration No. TX–7–800–563 (''the Asserted Copyright'') by numerous respondents. *Id.* In particular, the notice of investigation named the following thirteen entities as respondents: Ninebot Inc., Ninebot (Tianjin) Technology Co., Ltd.; and PowerUnion (Beijing) Tech Co. Ltd. (the ''Ninebot Respondents''); Robstep Robot Co., Ltd. (''Robstep''); Shenzhen INMOTION Technologies Co., Ltd. (''INMOTION''); Tech in the City; and Freego USA, LLC (''FreeGo USA'') (collectively, ''Terminated Respondents''); UPTECH Robotics Technology Co., Ltd. (''UPTECH''), Beijing Universal Pioneering Technology Co., Ltd. (''U.P. Technology''), Beijing Universal Pioneering Robotics Co., Ltd. (''U.P. Robotics''), FreeGo High-Tech Corporation Limited (''FreeGo China''), and EcoBoomer Co. Ltd. (''EcoBoomer'') (collectively, ''Defaulting Respondents''); and Roboscooters.com (''Roboscooters''). The Commission's Office of Unfair Import Investigations was also named as a party.

In the course of the investigation, the ALJ issued the following IDs with respect to the Terminated Respondents: ALJ Order Nos. 13 (Feb. 19, 2015) (*not reviewed* Mar. 18, 2015) (terminating respondent FreeGo USA by consent order); 19 (May 4, 2015) (*not reviewed* May 20, 2015) (terminating respondent Robstep by settlement); 23 (Jun. 19, 2015) (*not reviewed* Jul. 15, 2015) (terminating respondent INMOTION by settlement); 24 (Jul. 8, 2015) (*not reviewed* Jul. 28, 2015) (terminating respondent Tech in the City by consent order); and 27 (Aug. 20, 2015) (*not reviewed* Sept. 18, 2015) (terminating the Ninebot Respondents by settlement). The ALJ also issued an ID finding all of the Defaulting Respondents in default. *See* ALJ Order No. 20 (May 7, 2015) (*not reviewed* May 27, 2015). The sole remaining respondent Roboscooters participated in a preliminary teleconference on December 15, 2014, filed an answer to the complaint and notice of investigation (Dec. 31, 2014), partially responded to one set of Requests for Document Production, and produced a corporate witness for deposition on May 6, 2015, but did not otherwise participate in the investigation.

On July 8, 2015, Complainants filed a motion for summary determination of violation of Section 337 by Defaulting Respondents (*i.e.,* U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, and EcoBoomer), and respondent Roboscooters. The IA filed a response in support of the motion on July 23, 2015. No respondent filed a response to the motion.

On August 21, 2015, the ALJ issued an ID (order No. 28) granting Complainants' motion. No party petitioned for review of the ID.

On October 7, 2015, the Commission issued a Notice (''Commission Notice''). The Commission determined to affirm

the ALJ's finding of a violation of section 337. The Commission also determined to review the August 21 ID in part. On review, the Commission determined, *inter alia,* to clarify that the authority for the ALJ to draw adverse inferences against respondent Roboscooters for its failures to act during the investigation and find Roboscooters in violation is found in Commission Rule 210.17, 19 CFR 210.17, and corrected certain apparent typographical errors in the ID. *See* 80 *FR* 61842–43 (Oct. 14, 2015). The Commission requested written submissions on remedy, public interest, and bonding. *See id.* at 61843. Complainants and the IA timely filed their submissions pursuant to the Commission Notice. No other parties filed any submissions in response to the Commission Notice.

Having reviewed the submissions filed in response to the Commission's Notice and the evidentiary record, the Commission has determined that the appropriate form of relief in this investigation is: (a) A GEO prohibiting the unlicensed importation of certain personal transporters covered by claims 1, 2 and 4–7 of the '048 patent; (b) an LEO prohibiting the unlicensed entry of infringing (i) personal transporters, components thereof, and manuals therefor that are covered by one or more of claims 1 and 4 of the '640 patent manufactured abroad by or on behalf of, or imported by or on behalf of, the respondents UPTECH, U.P. Technology, U.P. Robotics, FreeGo China, EcoBoomer, and Roboscooters or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (ii) personal transporters, components thereof, and manuals therefor that are covered by one or more of claims 1, 3, and 7 of the '607 patent manufactured abroad by or on behalf of, or imported by or on behalf of, the respondents UPTECH, U.P. Technology, U.P. Robotics, FreeGo China, EcoBoomer, and Roboscooters or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (iii) personal transporters, components thereof, and manuals therefor that are covered by the claim of the '722 design patent manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, or UPTECH, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (iv) personal transporters, components thereof, and manuals therefor that are covered by the claim of the '592 design patent manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, UPTECH, FreeGo China, or Roboscooters, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; (v) personal transporters, components thereof, and manuals therefor that are covered by the Asserted Copyright manufactured abroad by or on behalf of, or imported by or on behalf of, U.P. Robotics, U.P. Technology, or UPTECH, or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns; and (c) a CDO directed against respondent Ecoboomer.

The Commission has further determined that the public interest factors enumerated in subsections (d)(l), (d)(2), and (f)(1) (19 U.S.C. 1337(d)(l), (d)(2), (f)(1)) do not preclude issuance of the above-referenced remedial orders. Additionally, the Commission has determined that a bond in the amount of one hundred (100) percent of the entered value is required to permit temporary importation of the articles in question during the period of Presidential review (19 U.S.C. 1337(j)). The Commission has also issued an opinion explaining the basis for the Commission's action. The investigation is terminated.

The Commission's orders and the record upon which it based its determination were delivered to the President and to the United States Trade Representative on the day of their issuance. The Commission has also notified the Secretary of the Treasury of the orders.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 10, 2016.

**Lisa R. Barton,**

*Secretary to the Commission.*

[FR Doc. 2016–05887 Filed 3–15–16; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On March 10, 2016, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Maryland in the lawsuit entitled *United States* v. *Westvaco Corporation,* Civil Action No. 00–2602.

Until May 2005, Westvaco owned and operated an integrated pulp and paper mill in Western Maryland known as the Luke Mill. The complaint filed by the United States alleges *inter alia* that Westvaco violated the Clean Air Act's Prevention of Significant Deterioration (''PSD'') regulations by making a ''major modification'' to the Luke Mill without first obtaining a PSD permit and without installing and operating Best Available Control Technology (''BACT'') to control emissions of sulfur dioxide from the mill's No. 25 power boiler. The United States' claim for civil penalties was dismissed as time barred. The United States' claim for injunctive relief, in the form of BACT on the No. 25 power boiler, was denied because Westvaco no longer owns or operates the Luke Mill. The consent decree requires the defendant to pay $1.6 million, split equally between the National Park Service and the U.S. Forest Service, to be used to implement projects in Shenandoah National Park and the Monongahela National Forest to mitigate the adverse effects of acidic deposition.

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. *Westvaco Corporation,* D.J. Ref. No. 90–5–2–1–06444. 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, DC 20044–7611. |

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *https://www.justice.gov/enrd/consent-decrees.* 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 $3.75 (25 cents per page reproduction cost) payable to the United States Treasury.

**Robert Brook,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2016–05876 Filed 3–15–16; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF LABOR

### Office of Disability Employment Policy

### Advisory Committee on Increasing Competitive Integrated Employment for Individuals With Disabilities; Notice of Meeting

The Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities (the Committee) was mandated by section 609 of the Rehabilitation Act of 1973, as amended by section 461 of the Workforce Innovation and Opportunity Act. The Secretary of Labor established the Committee on September 15, 2014 in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2. The purpose of the Committee is to study and prepare findings, conclusions and recommendations for Congress and the Secretary of Labor on (1) ways to increase employment opportunities for individuals with intellectual or developmental disabilities or other individuals with significant disabilities in competitive, integrated employment; (2) the use of the certificate program carried out under section 14(c) of the Fair Labor Standards Act of 1938 (29 U.S.C. 214(c)); and (3) ways to improve oversight of the use of such certificates.

The Committee is required to meet no less than eight times. It is also required to submit a final report to: The Secretary of Labor; the Senate Committee on Health, Education, Labor and Pensions; and the House Committee on Education and the Workforce by September 15, 2016. The Committee terminates one day after the submission of the final report.

The next meeting of the Committee will take place on Wednesday, April 27, 2016, and Thursday, April 28, 2016. The meeting will be open to the public on Wednesday, April 27th from 8:30 a.m. to 5:00 p.m. Eastern Daylight Time (EDT). On Thursday, April 28th, the meeting will be open to the public from 8:00 a.m. to 4:00 p.m. EDT. The meeting will take place at the U.S. Access Board, 1331 F Street NW., Suite 800, Washington, DC 20004–1111.

On April 27th and 28th, the four subcommittees of the Committee will report out on their work since the last meeting of the Committee. The four subcommittees are: The Transition to Careers Subcommittee, the Complexity and Needs in Delivering Competitive Integrated Employment Subcommittee, the Marketplace Dynamics Subcommittee, and the Building State and Local Capacity Subcommittee. Each subcommittee will have 30 minutes to present its most recent work for full discussion by the Committee.

In addition, the entire Committee will also discuss recommendations regarding the AbilityOne® program. Also, the Committee will consider recommendations regarding the certificate program under section 14(c) of the Fair Labor Standards Act (FLSA). The whole Committee will also discuss next steps and timelines for the final report.

During the meeting, an expert panel will present on the Pathways to Careers program. The Committee will also discuss the use and oversight of certificates under section 14(c) of the FLSA with Committee member Dr. David Weil, the Administrator of the Wage and Hour Division.

Members of the public who wish to address the Committee on the final report or other Committee related matters during the public comment period of the meeting on Wednesday, April 27th between 2:45 p.m. and 3:45 p.m., EDT, should send their name, their organization's name (if applicable) and any additional materials (such as a copy of the proposed testimony) to David Berthiaume at *Berthiaume.David.A@dol.gov* or call Mr. Berthiaume at (202) 693–7887 by Friday, April 15th. Members of the public will have the option of addressing the Committee in person or remotely by phone. If the Committee receives more requests than we can accommodate during the public comment portion of the meeting, we will select a representative sample to speak and the remainder will be permitted to file written statements. Individuals with disabilities who need accommodations should also contact Mr. Berthiaume at the email address or phone number above.

Organizations or members of the public wishing to submit comments and feedback on the interim report or general feedback may do so by using the form found at: *www.acicieid.org/comments.* All comments received prior to April 15, 2016, will be forwarded to the Committee in advance of the April meeting. Members of the public may also submit comments in writing on or before April 15, 2016, to David Berthiaume, Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, U.S. Department of Labor, Suite S–1303, 200 Constitution Avenue NW., Washington, DC 20210. Please ensure that any written submission is in an accessible format or the submission will be returned. Written statements deemed relevant by the Committee and received on or before April 15, 2016, will be included in the record of the meeting. 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.

**Jennifer Sheehy,**

*Deputy Assistant Secretary, Office of Disability Employment Policy.*

[FR Doc. 2016–05945 Filed 3–15–16; 8:45 am]

**BILLING CODE 4510–FK–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 16–023]**

### Notice of Intent To Grant Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant exclusive license.

**SUMMARY:** This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in USPN 8,577,120, Methods and Systems for Characterization of an Anomaly Using Infrared Flash Thermography, NASA Case No. MSC–24444–1; USPN 9,066,028 Methods and Systems for Measurement and Estimation of Normalized Contrast in Infrared Thermography, NASA Case No. MSC–24506–1 and USSN 14/727,383 Methods and Systems for Measurement and Estimation of Normalized Contrast in Infrared Thermography, MSC–24506–2 to Quatro Composites, LLC, having its principal place of business in Orange City, IA. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

**DATES:** The prospective exclusive license may be granted unless within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Mail Code AL; NASA Johnson Space Center, 2101 NASA Parkway, Houston, Texas 77058, Phone (281) 483–3021; Fax (281) 483–6936.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michelle P. Lewis, Technology Transfer and Commercialization Office/XP1, NASA Johnson Space Center, 2101 NASA Parkway, Houston, TX 77058, (281) 483–8051. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov.*

**Mark P. Dvorscak,**

*Agency Counsel for Intellectual Property.*

[FR Doc. 2016–05884 Filed 3–15–16; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

**[NARA–2016–020]**

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide agencies with mandatory instructions for what to do with records when agencies no longer need them for current Government business. The instructions authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice in the **Federal Register** for records schedules in which agencies propose to destroy records not previously authorized for disposal or to reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** NARA must receive requests for copies in writing by April 15, 2016. Once NARA appraises the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send you these requested documents in which to submit comments.

**ADDRESSES:** You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

*Mail:* NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740–6001.

*Email: request.schedule@nara.gov.*

*FAX:* 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

**FOR FURTHER INFORMATION CONTACT:** Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

**SUPPLEMENTARY INFORMATION:** Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. These schedules provide for timely transfer into the National Archives of historically valuable records and authorize disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless otherwise specified. An item in a schedule is media-neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is specifically limited to a specific medium. (See 36 CFR 1225.12(e).)

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, lists the organizational unit(s) accumulating the records or lists that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency); provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction); and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it also includes information about the records. You may request additional information about the disposition process at the addresses above.

**Schedules Pending**

1. Department of Agriculture, Farm Service Agency (DAA–0145–2015–0006, 9 items, 8 temporary items). Records related to the Production Adjustment Program to include farm history cards, allotments, reconstitutions, and general management files, as well as producer, farm tract, and crop records. Proposed for permanent retention are significant farm history records.

2. Department of Agriculture, Natural Resources Conservation Service (DAA–0114–2016–0001, 6 items, 1 temporary

item). Duplicate copies of aerial photographic imagery. Proposed for permanent retention are original analog negative film, digital imagery that does not exist in analog format, negative imagery indices, and film reports.

3. Department of Defense, Defense Health Agency (DAA–0330–2015–0008, 1 item, 1 temporary item). Master files of an electronic information system used in the determination of the medical acceptability of applicants to any of the United States Service Academies, the Uniformed Services University of the Health Sciences, and Reserve Officer Training Corps Scholarship Programs.

4. Department of Defense, Defense Health Agency (DAA–0330–2016–0001, 3 items, 3 temporary items). Master files of an electronic information system used in blood donation activities of the Armed Services Blood Program.

5. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0019, 1 item, 1 temporary item). Records relating to quality assurance, inspections, and audits of weapons systems.

6. Department of Energy, Office of Energy Efficiency and Renewable Energy (DAA–0434–2015–0012, 5 items, 5 temporary items). Records relating to exclusions/waivers from the use of energy-efficient vehicles by state and municipal governments.

7. Department of Health and Human Services, Indian Health Service (DAA–0513–2015–0011, 2 items, 2 temporary items). Records, to include applications, correspondence, project papers, and achievement materials, that document applicants to an Indian Health Service educational or occupational program.

8. Department of Health and Human Services, National Institutes of Health (DAA–0443–2016–0001, 1 item, 1 temporary item). Intramural research records consisting of project documentation that supports patents or inventions rights that do not meet the criteria for permanent retention.

9. Department of Homeland Security, Federal Emergency Management Agency (DAA–0311–2016–0001, 1 item, 1 temporary item). Master files of an electronic information system used as a reference tool for after-action reports.

10. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0001, 2 items, 2 temporary items). Master file of an electronic information system used to track administrative review of case appeals.

11. Department of Homeland Security, United States Citizenship and Immigration Services (DAA–0566–2016–0002, 8 items, 2 temporary items). Applications for naturalization when rejected due to incorrect fees or non-sufficient funds, or due to being incomplete or missing signature(s). Proposed for permanent retention are all other naturalization applications (approved, denied, abandoned, withdrawn, terminated, and administratively closed).

12. Department of Labor, Employee Benefits Security Administration (DAA–0317–2015–0001, 2 items, 2 temporary items). Records include an email archive file and annual administrative report image files.

13. Department of State, Bureau of Conflict and Stabilization Operations (DAA–0059–2015–0006, 5 items, 5 temporary items). Records of the Office of Partnership and Strategic Communications including copies of briefing books, program records, and reference materials/background information on partners and engagements.

14. Department of Transportation, National Highway Traffic Safety Administration (DAA–0416–2015–0004, 2 items, 2 temporary items). Content records of agency social networking Web sites.

15. Department of the Treasury, Internal Revenue Service (DAA–0058–2015–0004, 1 item, 1 temporary item). Tax exempt and government entities compliance records to include case file management and workflow process tracking.

16. Department of Veterans Affairs, Veterans Health Administration (DAA–0015–2016–0001, 6 items, 6 temporary items). Database of patient-generated data including demographics, releases, assessments, and health or daily living information incorporated into electronic health records.

17. National Archives and Records Administration, Government-wide (DAA–GRS–2015–0005, 7 items, 7 temporary items). A revised General Records Schedule for non-mission employee training, including individual employee records and Senior Executive Service Development program records.

18. National Archives and Records Administration, Government-wide (DAA–GRS–2016–0001, 5 items, 5 temporary items). Additions and revisions to the General Records Schedule for records of financial management and reporting including unaccepted bids and proposals, vendor and bidder information, contract appeal records, and Federal Procurement Data System agency submissions.

19. National Archives and Records Administration, Government-wide (DAA–GRS–2016–0002, 4 items, 4 temporary items). Revisions to the General Records Schedule for information access and protection records clarifying coverage of records under previously approved items, and clarifying retention of otherwise disposable records until associated Freedom of Information Act, Privacy Act, and Mandatory Declassification Review requests are disposable.

20. National Archives and Records Administration, Government-wide (DAA–GRS–2016–0003, 4 items, 4 temporary items). Addition to the General Records Schedule for information access and protection records to include records related to Privacy Act System of Records Notices (SORNs), Privacy Threshold Analyses (PTAs), Initial Privacy Assessments (IPAs), Privacy Impact Assessments (PIAs), and computer matching programs.

Dated: March 9, 2016.

**Laurence Brewer,**

*Director, Records Management Operations.*

[FR Doc. 2016–05918 Filed 3–15–16; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Institute of Museum and Library Services

### Submission for OMB Review, Comment Request, Proposed Collection; Museum Assessment Program Evaluation

**AGENCY:** Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

**ACTION:** Submission for OMB review, comment request.

**SUMMARY:** The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **FOR FURTHER INFORMATION CONTACT** section below on or before April 10, 2016.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

**ADDRESSES:** Christopher J. Reich, Senior Advisor, Institute of Museum and Library Services, 1800 M St. NW., 9th Floor, Washington, DC 20036. Mr. Reich can be reached by Telephone: 202–653–4685, Fax: 202–653–4608, or by email at *creich@imls.gov,* or by teletype (TTY/TDD) at 202–653–4614.

**SUPPLEMENTARY INFORMATION:** The Institute of Museum and Library Services is the primary source of federal support for the Nation's 123,000 libraries and 35,000 museums. The Institute's mission is to inspire libraries and museums to advance innovation, learning, and civic engagement. The Institute works at the national level and in coordination with state and local organizations to sustain heritage, culture, and knowledge; enhance learning and innovation; and support professional development. IMLS is responsible for identifying national needs for and trends in museum, library, and information services; measuring and reporting on the impact and effectiveness of museum, library and information services throughout the United States, including programs conducted with funds made available by IMLS; identifying, and disseminating information on, the best practices of such programs; and developing plans to improve museum, library, and information services of the United States and strengthen national, State, local, regional, and international communications and cooperative networks (20 U.S.C. 72, 20 U.S.C. 9108).

The purpose of this survey is to gauge the effect of the Museum Assessment Program (MAP) on participating museums and the museum field at large. The survey will be used to measure the degree to which the program is meeting the needs and building the institutional capacity of individual museums, and its overall impact on the museum field nationwide. Methods will include web surveys and telephone interviews.

The web survey will consist of approximately 40 questions that will examine the participating museums' experience with the MAP program and the subsequent changes in its operations that can be attributed to the program, as well as basic institutional profile information. The web survey will require an average of 60 minutes to complete. The telephone interview guide will be organized into approximately four sections (*e.g.* institutional changes resulting from MAP participation; funding; professionalization; and future expectations) and is projected to average 30 minutes to complete.

*Current Actions:* This notice proposes clearance of the Museum Assessment Program (MAP) Evaluation. The 60-day notice for the Museum Assessment Program (MAP) Evaluation, was published in the **Federal Register** on July 10, 2015 (FR vol. 80, No. 152, pgs. 39805–39806). The agency has taken into consideration the one comment that was received under this notice.

The web survey will consist of approximately 40 questions that will examine the participating museums' experience with the MAP program and the subsequent changes in its operations that can be attributed to the program, as well as basic institutional profile information. The web survey will require an average of 60 minutes to complete. The telephone interview guide will be organized into approximately four sections (*e.g.* institutional changes resulting from MAP participation; funding; professionalization; and future expectations) and is projected to average 30 minutes to complete.

*Agency:* Institute of Museum and Library Services.

*Title:* Museum Assessment Program Evaluation.

*OMB Number:* To Be Determined.

*Frequency:* Anticipated for Every Five Years.

*Affected Public:* The target population is museums that have participated in the Museum Assessment Program during the past eight years, all of which are located in the United States.

*Number of Respondents:* 309.

*Estimated Average Burden per Response:* The burden per respondent is estimated to be an average of 30 minutes for the web survey and one hour for the telephone interview.

*Estimated Total Annual Burden:* 159 hours.

*Total Annualized Capital/Startup Costs:* $7,000.

*Total Annual Costs:* $3,388.29.

**FOR FURTHER INFORMATION CONTACT:** Comments should be sent to Office of Information and Regulatory Affairs, *Attn.:* OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: March 10, 2016.

**Kim A. Miller,**

*Management Analyst.*

[FR Doc. 2016–05919 Filed 3–15–16; 8:45 am]

**BILLING CODE 7036–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes; Renewal

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has determined that the renewal of the Charter for the Advisory Committee on the Medical Uses of Isotopes for the 2 year period commencing on March 10, 2016, is in the public interest, in connection with duties imposed on the Commission by law. This action is being taken in accordance with the Federal Advisory Committee Act, after consultation with the Committee Management Secretariat, General Services Administration.

**FOR FURTHER INFORMATION CONTACT:** Sophie Holiday, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 415–7865; email *Sophie.Holiday@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The purpose of the ACMUI is to provide advice to NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on current and proposed NRC regulations and regulatory guidance concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and evaluating training and experience of proposed authorized users. The members are involved in preliminary discussions of major issues in determining the need for changes in NRC policy and regulation to ensure the continued safe use of byproduct

material. Each member provides technical assistance in his/her specific area(s) of expertise, particularly with respect to emerging technologies. Members also provide guidance as to NRC's role in relation to the responsibilities of other Federal agencies as well as of various professional organizations and boards.

Members of this Committee have demonstrated professional qualifications and expertise in both scientific and non-scientific disciplines including nuclear medicine; nuclear cardiology; radiation therapy; medical physics; nuclear pharmacy; State medical regulation; patient's rights and care; health care administration; and Food and Drug Administration regulation.

Dated at Rockville, Maryland, this 10th day of March 2016.

For the Nuclear Regulatory Commission.

**Andrew L. Bates,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2016–05944 Filed 3–15–16; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–010, 50–237, 50–249, and 72–37; NRC–2016–0046]**

## Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 1, 2, and 3; Independent Spent Fuel Storage Installation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Exemption; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from certain requirements regarding the storage of a thoria rod canister in response to a request submitted by Exelon Generation Company, LLC (EGC) on January 29, 2015, for its general license to operate an independent spent fuel storage installation (ISFSI) at the Dresden Nuclear Power Station (DNPS). This exemption would permit EGC to load and store the DNPS Unit 1 thoria rod canister containing 18 DNPS Unit 1 thoria rods in a Holtec International, Inc., HI–STORM 100 multi-purpose canister (MPC)-68M using Certificate of Compliance (CoC) No. 1014, Amendment No. 8, Rev. 1.[1]

**DATES:** March 16, 2016.

**ADDRESSES:** Please refer to Docket ID NRC–2016–0046 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0046. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the ''Availability of Documents'' section of this document.
- *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:** Bernard White, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6577; email: *Bernard.White@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

Dresden Unit 1 produced power commercially from 1960 to October 31, 1978. The plant shut down in October 1978 and is currently in SAFSTOR. The decommissioning plan was approved in September 1993. No significant dismantlement activities are underway. Isolation of Units 1, 2, and 3 is complete.

Consistent with subpart K of part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), a general license is issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR part 50. EGC is currently authorized to store spent fuel at the DNPS ISFSI under the 10 CFR part 72 general license provisions. The DNPS ISFSI is currently loading and storing spent fuel in Holtec HI–STORM 100 storage casks, approved by the NRC under CoC No. 1014.

### II. Request/Action

By letter dated January 29, 2015, as supplemented on June 8, 2015, EGC submitted a request for an exemption from 10 CFR 72.212(b)(3) and the portion of 10 CFR 72.212(b)(11) that requires compliance with the terms, conditions, and specifications of CoC No. 1014, Amendment No. 8, for the Holtec HI–STORM 100 with the MPC–68M, to the extent necessary for EGC to load and store one DNPS Unit 1 thoria rod canister containing 18 DNPS Unit 1 thoria rods. Upon review, the NRC added the following requirements for the proposed action pursuant to its authority under 10 CFR 72.7: 10 CFR 72.212(a)(2), which limits storage of spent fuel in casks approved under part 72; 72.212(b)(5)(i), which states a ''cask, once loaded with spent fuel . . . will conform to the terms, conditions and specifications of a CoC or an amended CoC listed in § 72.214''; and 10 CFR 72.214, ''List of approved spent fuel storage casks.''

### III. Discussion

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

*A. Authorized by Law*

This exemption would permit the applicant to load and store the DNPS Unit 1 thoria rod canister containing 18 DNPS Unit 1 thoria rods in the HI–STORM 100 MPC–68M CoC 1014, Amendment No. 8, Rev. 1, which otherwise would not permit the storage of thoria rods. The provisions from which the NRC is granting the exemption require the licensee to comply with the terms, conditions, and specifications of the CoCs for the approved cask model it uses. Section 72.7 allows the Commission to grant exemptions from the requirements of 10 CFR part 72 if the exemption is authorized by law, will not endanger life or property or the common defense

[1] The licensee's application referred to Amendment 8; since that time, Amendment 8 has been revised. (On February 16, 2016, Amendment 8, Rev. 1 to CoC 1014 became effective.) The revision does not impact the exemption request that is the subject of this exemption because none of the changes in the revision revised the thoria contents or the physical characteristics of the storage cask.

and security, and is otherwise in the public interest. As explained in the following discussion, the proposed exemption will not endanger life or property, or the common defense and security, and is otherwise in the public interest. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and not otherwise inconsistent with NRC's regulations or other applicable laws. Therefore, issuance of the exemption is authorized by law.

*B. Will Not Endanger Life or Property or the Common Defense and Security*

Approval of this exemption request will allow EGC to load and store the 18 thoria rods in the DNPS Unit 1 thoria rod canister within a Holtec HI–STORM 100 MPC–68M. As discussed in the following section, the NRC staff finds that EGC's proposal to load and store thoria rods is acceptable and will not endanger life or property or common defense and security.

Review of the Requested Exemption

The addition of the MPC–68M to the list of approved storage cask designs for the Holtec HI–STORM 100 system was reviewed previously and approved by the NRC. The CoC and safety evaluation report (SER) for Amendment 8 were issued on May 10, 2012, corrected on November 12, 2012, and revised on February 16, 2016. Amendment No. 8 added the MPC–68M canister, two new boiling water reactor (BWR) fuel assembly/array classes, a new pressurized-water reactor fuel assembly/array class, and revised Condition No. 3 in the certificate to include leak testing of the confinement boundary base material in addition to confinement welds. Amendment 8 also made other administrative changes. Thoria rods/assemblies were not considered in Amendment No. 8 for the MPC–68M, however they have been approved for storage in the MPC–68, MPC–68F and MPC–68FF in Amendment No. 1.

The applicant stated that the design characteristics of the thoria rods in the exemption request are the same as those approved for storage in the MPC–68, MPC–68F and MPC–68FF. The characteristics of these rods are specified in CoC No. 1014, Amendment No. 8, Revision No. 1, Appendix B, Table 2.1–1, Section II, ''MPC MODEL: MPC–68F,'' Item A.7 and Section III, ''MPC MODEL: MPC–68 and MPC–68FF,'' Item A.3. In addition, the applicant cited the Safety Analysis Report (SAR) for CoC No. 1014, Amendment No. 8, and the NRC staff's corresponding SER dated May 10, 2012, which documented the NRC staff's basis for approval of Amendment No. 8, to support the exemption request.

The NRC staff reviewed the requested exemption and determined that it does not change the fundamental design, components, or safety features of the storage system. The NRC staff evaluated the applicable potential safety impacts of granting the exemption to assess the potential for any danger to life or property or the common defense and security. Specifically, the NRC staff reviewed the applicant's structural integrity, thermal, confinement, shielding, and criticality evaluations for the proposed exemption.

*Structural Review for the Requested Exemption:* The NRC staff reviewed the exemption request including the documents referenced by the applicant. Specifically, the NRC staff reviewed the design characteristics of thoria rods and canister limits provided by the applicant in its June 8, 2015, response to NRC's request for additional information (RAI) dated May 8, 2015, and verified that the thoria rods and canister limits are the same as those previously approved in Amendment No. 1 to CoC 1014. In its review of Amendment No. 8, the NRC staff determined that the structural analysis presented in ''HI–STORM Topical Safety Analysis Report (TSAR),'' Holtec Report HI–951312, Rev. 11, as supplemented on July 3, 2001, August 13 and 17, and October 5, 12, and 19, 2001, demonstrated that the thoria rod canister was structurally adequate to support the loads during normal lifting operations, normal and off-normal conditions, as well as during postulated-accident conditions.

Based on the NRC staff's review of the physical characteristics of the thoria rods, thoria canister and MPC–68M canister, the NRC staff concludes that the proposed storage of thoria rods in an MPC–68M will be bounded by the previously approved structural analysis for MPC–68M because the thoria rods and canister limits are the same as those previously approved in Amendment No. 1 to CoC 1014. Therefore, the NRC staff has reasonable assurance that the structural adequacy of the MPC–68M for the intended purpose will be maintained, as documented in the NRC staff's SER for Amendment No. 8 to CoC 1014.

*Thermal Review for the Requested Exemption:* The decay heat per DNPS Unit 1 thoria rod canister is less than or equal to 115 watts, which is significantly lower than the maximum allowable decay heat limit of 393 watts per fuel storage location for damaged fuel and fuel debris, as specified in Amendment No. 8 to CoC 1014. In addition, the exemption, does not change the cask decay heat distribution due to the lower decay heat of the DNPS Unit 1 thoria rod canister. Accordingly, the decay heat analyses reviewed and approved by the NRC staff in Amendment 8 are bounding.

The applicant referenced the previous Holtec thermal evaluation of the MPC–68M for Amendment No. 8 to CoC 1014 to show that it has lower maximum temperatures (*i.e.,* fuel cladding, basket, and MPC shell) than the maximum temperatures of Holtec's thermal evaluation for the MPC–68 canister. Holtec stated that this is due to the higher thermal conductivity of the Metamic-HT basket material, the use of full length aluminum basket shims, and the higher emissivities of the basket and basket shims. Based on the NRC staff's review of the exemption request and the references cited therein, the NRC staff finds acceptable the small decay heat contribution of the thoria rods, when compared with the design basis-heat load for failed fuel. In addition, the NRC staff finds that the thermal effects of an MPC–68M basket design loaded with one DNPS Unit 1 thoria rod canister is bounded by previous thermal analysis. Therefore, if one DNPS Unit 1 thoria rod canister is included in an MPC–68M, the NRC staff concludes that the fuel cladding temperature of the MPC–68M and its contents are bounded by those NRC reviewed and approved for CoC 1014, Amendment No. 8.

The applicant stated that the cladding hoop stress for the thoria rods, during vacuum drying, is similar to the stresses expected in uranium dioxide ($UO_2$) rods stored in an MPC–68M. The applicant also stated it does not plan to load high burnup fuel, *i.e.,* fuel with an average burnup exceeding 45,000 MWD/MTU, in the MPC–68M that contains the thoria rod canister. The applicant stated that this would result in a decay heat below the design basis decay heat and, therefore a lower design basis fuel temperature compared to the value reported in Table 4.III.5 of the HI–STORM 100 FSAR, Revision 11, during vacuum drying operations. Based on the lower decay heat and similar expected cladding hoop stress for the thoria rods during vacuum drying, the NRC staff finds that the vacuum drying time limits in CoC 1014, Amendment No. 8, Revision No. 1, Technical Specifications, which were not necessary for the MPC–68M in CoC 1014, Amendment No. 8, Revision No. 1, are also not necessary for the MPC–68M with the inclusion of the DNPS Unit 1 thoria rod canister. Consistent with EGC's request, this exemption does not authorize the loading and storage of

high burnup fuel in the MPC–68M if the DNPS Unit 1 thoria rod canister is loaded in the MPC–68M. Accordingly, the NRC staff finds that the cask loaded with 1 thoria rod canister will continue to meet applicable thermal requirements.

*Confinement Review for the Requested Exemption:* EGC stated that the design of the MPC–68M confinement boundary, which includes the vent and drain ports, is unchanged by the exemption request. In addition, EGC stated that the exemption would not change the short-term cask operations, including draining of the MPC, welding of the lid, drying and backfilling with inert gas, and handling of the MPC that were approved in Amendment No. 8 to CoC No. 1014. Since this exemption would not change the design aspects, including a leak tight confinement boundary (leak tight is defined as $\leq 1 \times 1^{-7}$ ref-cc/sec, as defined by American National Standards Institute (ANSI) N14.5, ''Radioactive Materials—Leakage Tests on Packages for Shipment''), from those previously reviewed and approved by the NRC, the confinement characteristics will continue to be adequately maintained.

*Shielding Review for the Requested Exemption:* The NRC staff reviewed the exemption request and the applicant's RAI response. EGC is relying on NRC's previous approval of Amendment Nos. 1 and 8 to CoC No. 1014 to conclude that offsite doses from a storage cask containing a single thoria rod canister along with 67design basis 6x6 Dresden Unit 1 fuel assemblies are is the same as or bounded by previous analyses and did not perform any additional analysis for this exemption. The applicant cites the shielding analysis of the thoria rods as previously documented in ''HI–STORM TSAR,'' HOLTEC Report HI–951312, Rev. 11, and approved by the NRC staff in CoC 1014, Amendment No. 1 and documented in the NRC staff's SER dated July 18, 2002. Sections 5.2.6 and 5.4.8 of the Holtec TSAR includes Holtec's analysis of the thoria rods, and presents a summary of the neutron and photon sources in Tables 5.2–7, 5.2–19, 5.2–37, and 5.2–38. EGC stated that the neutron source for the thoria rods remains below that of the design basis fuel assembly. EGC also stated that the photon source for the thoria rods is bounded by the design basis fuel assembly except in the 2.5–3.0 MeV energy range. To demonstrate that the gamma dose rate from the thoria rods is bounded by the design-basis BWR fuel, EGC referred to Holtec's TSAR for Amendment No. 1, which, according to Holtec, conservatively assumed 68 thoria rod canisters were present in the MPC, even though only one thoria rod canister exists on the DNPS site. Holtec's dose rate evaluation showed that the external dose rate for a HI–STORM 100 cask loaded with 68 thoria rod canisters, each with 18 Thoria rods, was 17 percent higher than a canister filled with design-basis fuel. In its SER for approval of Amendment No. 1, the NRC staff considered the conservatisms built into Holtec's dose rate analysis and concluded that a single thoria rod canister would not likely result in a dose rate increase for a MPC–68M canister loaded with 67 BWR spent fuel assemblies and a single thoria rod canister containing up to 18 thoria rods.

Subsequently, in its review of Amendment 8, the NRC staff reviewed the impact from the MPC–68M basket on external dose rates compared to the borated baskets for the other MPC–68 canisters. Considering that the outer loaded assemblies provide significant shielding of the innermost assemblies, the NRC staff determined that the dose rate is dominated by the peripherally loaded assemblies. The NRC staff, using MicroShield®, calculated dose rates with the two different basket materials. Based on the results of this calculation, the NRC staff found that the canister and overpack were the components most critical to shielding. Additionally, in the SER for Amendment No. 8, NRC staff concluded that Holtec showed that the shielding provided by the MPC–68M did not significantly change from the MPC–68 canister, since neither the canister shell nor the overpack changed and the Metamic-HT basket would have negligible impact on external dose rates.

In prior NRC staff reviews of Amendment Nos. 1 and 8, the NRC staff concluded that the Metamic-HT basket in the MPC–68M has very little effect on the external dose rate; and a single thoria rod canister, while unbounded in the 2.5–3.0 MeV energy range, will not impact cask external dose rates. Accordingly, NRC staff has reasonable assurance that off-site doses from the presence of a single, thoria rod canister in an MPC–68M loaded with design-basis fuel with the same characteristics as those approved for the MPC–68, MPC–68F and MPC–68FF will not increase when compared to a canister loaded with 68 design-basis fuel assemblies. Therefore, such a canister will continue to meet applicable offsite dose requirements.

*Criticality Review for the Requested Exemption:* The NRC staff reviewed the exemption request and the applicant's RAI response. The applicant initially only cited the criticality analysis of the thoria rods previously documented in ''HI–STORM TSAR'', Holtec Report HI–951312, Rev. 11, and documented in the NRC staff's SER dated July 18, 2002, which was the basis for approval of Amendment No. 1 to CoC No. 1014. In Section 6.4.6 of the TSAR, Holtec shows that the reactivity of the thoria rods remains below that of the design-basis fuel assembly reactivity, which is summarized in Holtec TSAR Tables 6.1.7 and 6.1.8. The NRC staff did not analyze any impact the thoria rods might have on criticality during its review of the Holtec TSAR as the components important to criticality control in the MPC–68 and MPC–68FF remained unchanged from its prior review of the HI–STAR Amendment No. 1. This is not the case with the MPC–68M.

In its June 8, 2015 response to additional information, the applicant cited the NRC staff's basis for approval of CoC 1014, Amendment No. 8 in its SER dated May 10, 2012, to support this exemption request. The applicant noted several advantages that Metamic-HT has over older basket designs. Among them are the inability of the neutron absorber material to detach or relocate, and the presence of absorber material along the entire length of the basket, rather than a fixed, discrete section. During its review of Amendment No. 8, NRC staff noted that the applicant's analysis resulted in a large margin to criticality and concluded that the use of the existing fuel assemblies authorized in the CoC within the Metamic-HT basket in the MPC–68M would remain subcritical.

Two prior NRC staff reviews of amendments (HI–STORM Amendment Nos. 1 and 8) have found the Metamic-HT basket in the MPC–68M to be at least as effective as those in the MPC–68 and MPC–68FF. In addition, these reviews found that a thoria rod canister is less reactive than the spent fuel assemblies currently authorized in CoC 1014. Based on its consideration of these previous approvals, NRC staff concludes that the presence of a single, thoria rod canister in an MPC–68M is bounded by prior analyses of existing, authorized contents.

*Review of Common Defense and Security:* The NRC staff also considered potential impacts of granting the exemption on the common defense and security. The requested exemption is not related to any security or common defense aspect of the DNPS ISFSI, therefore granting the exemption would not result in any potential impacts to common defense and security.

Based on its review, the NRC staff has reasonable assurance that in granting the exemption, the storage system will

continue to meet the requirements of 10 CFR part 72 and the offsite dose limits of 10 CFR part 20 and, therefore, will not endanger life or property. The NRC staff also finds that the exemption would not endanger common defense and security.

*C. Otherwise in the Public Interest*

In considering whether granting the exemption is in the public interest, the NRC staff considered the alternative of not granting the exemption. If the exemption was not granted, in order to comply with the CoC, the DNPS Unit 1 thoria rod canister containing the 18 thoria rods would not be loaded during the 2016 spent fuel loading campaign (SFLC). The applicant maintains that loading the thoria rod canister during the 2016 DNPS SFLC is part of a program to ensure full core discharge capability.

EGC stated that granting the exemption is in the public interest since it will permit storage of the thoria rods in an inherently safe and passive system. Additionally, EGC stated that granting the exemption would permit this storage without the burden and impact of requesting an amendment to the CoC. Not granting the exemption would require Holtec to submit an amendment to the CoC, which would delay the DNPS program to ensure full core discharge capability and impact future loadings. In addition to allowing DNPS to continue with its program to ensure full core discharge capability on schedule, based on its review of EGC's request, the NRC staff concludes that allowing thoria rods with the same characteristics as those approved for the MPC–68, MPC–68F and MPC–68FF as an approved content in the MPC–68M would continue to provide adequate protection of public health and safety. Therefore, granting the exemption is otherwise in the public interest.

*D. Environmental Considerations*

The NRC staff also considered whether there would be any significant environmental impacts associated with the exemption. For this proposed action, the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The environmental assessment concluded that the proposed action would not significantly impact the quality of the human environment. The NRC staff concluded that the proposed action would not result in any changes in the types or amounts of any radiological or non-radiological effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure because of the proposed action. The Environmental Assessment and the Finding of No Significant Impact was published on March 4, 2016 (81 FR 11603).

## IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 72.7, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants EGC an exemption from 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(3), 10 CFR 72.212(b)(5)(i), 10 CFR 72.214, and the portion of 10 CFR 72.212(b)(11) that requires compliance with terms, conditions, and specifications of the CoC only with regard to storage of DNPS Unit 1 thoria rods with the same characteristics as those specified for storage in the MPC–68, MPC–68F and MPC–68FF in CoC No. 1014, Amendment No. 8, Revision No. 1, Appendix B, Table 2.1–1, Section II, ''MPC MODEL: MPC–68F,'' Item A.7 and Section III, ''MPC MODEL: MPC–68 and MPC–68FF,'' Item A.3 in the MPC–68M using the Holtec® CoC No. 1014, Amendment No. 8, Revision No. 1. This exemption does not authorize loading in a canister with other spent fuel which has an average burnup exceeding 45,000 MWD/MTU.

## V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the methods indicated in the **ADDRESSES** section.

| Document | ADAMS Accession No. |
|---|---|
| Exelon Generation Company (EGC) application dated January 29, 2015 | ML15029A334. |
| EGC supplement dated June 8, 2015 | ML15159A745. |
| CoC 1014 Amendment 8, Revision 1 | ML16041A233. |
| Amendment No. 8 CoC and SER issued on May 10, 2012 | ML12132A028. |
| Amendment No 8 correction (CoC and SER) issued on November 12, 2012 | ML12213A203. |
| Amendment No. 8, Revision No. 1 issued on February 10, 2016 | ML16041A233. |
| ''HI–STORM Topical Safety Analysis Report (TSAR),'' Holtec Report HI–951312, Rev. 11 (Holtec amendment 1 request) dated August 31, 2000. | ML003748149, ML072420266, ML003748010, ML003747975, and ML003747995. |
| July 3, 2001 supplement to Holtec amendment 1 request | ML011900259. |
| August 13, 2001 supplement to Holtec amendment 1 request | ML012260436. |
| August 17, 2001 supplement to Holtec amendment 1 request | ML012330523. |
| October 5, 2001, supplement to Holtec amendment 1 request | ML012830522. |
| October 12, 2001, supplement to Holtec amendment 1 request | ML012900007. |
| October 19, 2001, supplement to Holtec amendment 1 request | ML020150094. |
| NRC's request for additional information dated May 8, 2015 | ML15128A088. |
| Amendment No. 1 to CoC 1014 | ML022000176. |
| HI–STORM 100 FSAR, Revision 11 | ML13246A040. |
| ANSI N14.5, ''Radioactive Materials—Leakage Tests on Packages for Shipment'' | Accessible from American National Standards Institute. |
| HI–STAR Amendment No. 1 | ML003780760. |

The exemption is effective upon issuance.

Dated at Rockville, Maryland, this 8th day of March, 2016.

For the Nuclear Regulatory Commission.

**Steve Ruffin,**

*Acting Branch Chief, Spent Fuel Licensing Branch, Division of Spent Fuel Management, Office of Nuclear Material Safetyand Safeguards.*

[FR Doc. 2016–05955 Filed 3–15–16; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0011]**

### Criteria and Design Features for Inspection of Water-Control Structures Associated With Nuclear Power Plants; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Regulatory Guide; issuance; correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on February 18, 2016, regarding the issuance of Revision 2 of Regulatory Guide (RG) 1.127, ''Criteria and Design Features for Inspection of Water-Control Structures Associated with Nuclear Power Plants.'' This action is necessary to correct an ADAMS accession number.

**DATES:** The correction is effective March 16, 2016.

**ADDRESSES:** Please refer to Docket ID NRC–2011–0011 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0011. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Robert Pettis, Office of Nuclear Reactor Regulation, telephone: 301–415–3214; email: *Robert.Pettis@nrc.gov;* Kenneth Karwoski, Office of Nuclear Reactor Regulation, telephone: 301–415–2752; email: *Kenneth.Karwoski@nrc.gov;* or Mark Orr, Office of Nuclear Regulatory Research, telephone: 301–415–6003; email: *Mark.Orr@nrc.gov.* All are on the staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:** In the FR on February 18, 2016, in FR Doc. 2016–03346, on page 8254, in the third column, the last line of the first paragraph, correct ''ML093060317'' to read ''ML102380594.''

Dated at Rockville, Maryland this 10th day of March, 2016.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guidance and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.*

[FR Doc. 2016–05909 Filed 3–15–16; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review, Request for Comments

*Summary:* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) the practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

*1. Title and purpose of information collection:* Employer Reporting; 3220–0005. Under Section 9 of the Railroad Retirement Act (RRA), and Section 6 of the Railroad Unemployment Insurance Act (RUIA), railroad employers are required to submit reports of employee service and compensation to the RRB as needed for administering the RRA and RUIA. To pay benefits due on a deceased employee's earnings records or determine entitlement to, and amount of annuity applied for, it is necessary at times to obtain from railroad employers current (lag) service and compensation not yet reported to the RRB through the annual reporting process. The reporting requirements are specified in 20 CFR 209.6 and 209.7.

The RRB currently utilizes Form G–88A.1, Notice of Retirement and Verification of Date Last Worked, Form G–88A.2, Notice of Retirement and Request for Service Needed for Eligibility, and Form AA–12, Notice of Death and Compensation, to obtain the required lag service and related information from railroad employers. Form G–88A.1 is sent by the RRB via a computer-generated listing or transmitted electronically via the RRB's Employer Reporting System (ERS) to employers. ERS consists of a series of screens with completion instructions and collects essentially the same information as the approved manual version. Form G–88A.1 is used for the specific purpose of verifying information previously provided to the RRB regarding the date last worked by an employee. If the information is correct, the employer need not reply. If the information is incorrect, the employer is asked to provide corrected information. Form G–88A.2 is used by the RRB to secure lag service and compensation information when it is needed to determine benefit eligibility. Form AA–12 obtains a report of lag service and compensation from the last railroad employer of a deceased employee. This report covers the lag period between the date of the latest record of employment processed by the RRB and the date an employee last worked, the date of death or the date the employee may have been entitled to benefits under the Social Security Act.

The information is used by the RRB to determine benefits due on the deceased employee's earnings record.

In addition, 20 CFR 209.12(b) requires all railroad employers to furnish the RRB with the home addresses of all employees hired within the last year (new-hires). Form BA–6a, *Form BA–6 Address Report,* is used by the RRB to obtain home address information of employees from railroad employers who do not have the home address information computerized and who submit the information in a paper format. The form also serves as an instruction sheet to railroad employers who submit the information electronically by magnetic tape, cartridge, or CD–ROM.

Completion of the forms is mandatory. Multiple responses may be filed by respondent.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (80 FR 81381 on December 29, 2015) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Employer Reporting.

*OMB Control Number:* 3220–0005.

*Form(s) submitted:* AA–12, G–88A.1, G–88A.2, BA–6a, BA–6a (Internet), and BA–6a (Email).

*Type of request:* Extension without change of a currently approved collection.

*Affected public:* Private sector; Businesses or other for-profits.

*Abstract:* Under the Railroad Retirement Act and the Railroad Unemployment Insurance Act, railroad employers are required to report service and compensation for employees needed to determine eligibility to and the amounts of benefits paid.

*Changes proposed:* The RRB proposes no changes to the forms in the collection.

The burden estimate for the ICR is as follows:

| Form No. | Annual | Time (minutes) | Burden (hours) |
|---|---|---|---|
| AA–12 | 60 | 5 | 5 |
| G–88A.1 | 100 | 5 | 8 |
| G–88A.1 Internet | 260 | 4 | 17 |
| G–88A.1 Internet (Class 1 railroads) | 144 | 16 | 38 |
| G–88A.2 | 100 | 5 | 8 |
| G–88A.2 (Internet) | 1,200 | 2.5 | 50 |
| BA–6a Electronic Equivalent* | 14 | 15 | 4 |
| BA–6a (Email) | 30 | 15 | 8 |
| BA–6a (File Transfer Protocol) | 10 | 15 | 3 |
| BA–6a Internet (RR initiated) | 250 | 17 | 71 |
| BA–6a Internet (RRB initiated) | 250 | 12 | 50 |
| BA–6a Paper (RR initiated) | 80 | 32 | 43 |
| BA–6a Paper (RRB initiated) | 250 | 32 | 133 |
| Total | 2,748 | ..... | 438 |

*2. Title and purpose of information collection:* Employee Representative's Status and Compensation Reports; OMB 3220–0014.

Under Section 1(b)(1) of the Railroad Retirement Act (RRA), the term ''employee'' includes an individual who is an employee representative. As defined in Section 1(c) of the RRA, an employee representative is an officer or official representative of a railway labor organization other than a labor organization included in the term ''employer,'' as defined in the RRA, who before or after August 29, 1935, was in the service of an employer under the RRA and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act, or, any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his or her office. The requirements relating to the application for employee representative status and the periodic reporting of the compensation resulting from such status is contained in 20 CFR 209.10.

The RRB utilizes Forms DC–2a, *Employee Representative's Status Report,* and DC–2, *Employee Representative's Report of Compensation,* to obtain the information needed to determine employee representative status and to maintain a record of creditable service and compensation resulting from such status. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (80 FR 81382 on December 29, 2015) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Employee Representative's Status and Compensation Reports.

*OMB Control Number:* 3220–0014.

*Form(s) submitted:* DC–2 and DC–2a.

*Type of request:* Revision of a currently approved collection of information.

*Affected public:* Private Sector; Businesses or other for-profits.

*Abstract:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the RRA. The collection obtains information regarding the status of such individuals and their compensation.

*Changes proposed:* The RRB proposes to remove Form DC–2a from the information collection due to receiving less than 10 responses a year.

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| DC–2 | 82 | 30 | 41 |
| Total | 82 | ..... | 41 |

*3. Title and purpose of information collection:* Survivor Questionnaire; OMB 3220–0032.

Under Section 6 of the Railroad Retirement Act (RRA), benefits that may be due on the death of a railroad employee *or* a survivor annuitant include (1) a lump-sum death benefit (2) a residual lump-sum payment (3) accrued annuities due but unpaid at death, and (4) monthly survivor insurance payments. The requirements for determining the entitlement of possible beneficiaries to these benefits are prescribed in 20 CFR 234.

When the RRB receives notification of the death of a railroad employee or survivor annuitant, an RRB field office utilizes Form RL–94–F, Survivor Questionnaire, to secure additional information from surviving relatives needed to determine if any further benefits are payable under the RRA. Completion is voluntary. One response is requested of each respondent.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (80 FR 81383 on December 29, 2015) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Survivor Questionnaire.
*OMB Control Number:* 3220–0032.
*Form(s) submitted:* RL–94–F.
*Type of request:* Revision of a currently approved collection.

*Affected public:* Individuals or Households.

*Abstract:* Under Section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information used to determine if and to whom benefits are payable; such as a widow(er) due survivor benefits, an executor of the estate, or a payer of burial expenses.

*Changes proposed:* The RRB proposes adding new Item 8d, Divorced Spouse's Date of Divorce from Employee; minor non-burden impacting changes; and editorial changes to Form RL–94–F.

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| RL–94–F Items 5–10, and 18 | 50 | 9 | 8 |
| RL–94–F, Items 5–18 | 7,200 | 11 | 1,320 |
| RL–94–F, Item 18 only | 750 | 5 | 63 |
| Total | 8,000 | | 1,391 |

*4. Title and purpose of information collection:* Employer's Deemed Service Month Questionnaire; OMB 3220–0156.

Section 3 (i) of the Railroad Retirement Act (RRA), as amended by P.L. 98–76, provides that the Railroad Retirement Board (RRB), under certain circumstances, may deem additional months of service in cases where an employee does not actually work in every month of the year, provided the employee satisfies certain eligibility requirements, including the existence of an employment relation between the employee and his or her employer. The procedures pertaining to the deeming of additional months of service are found in the RRB's regulations at 20 CFR 210, Creditable Railroad Service.

The RRB utilizes Form GL–99, Employer's Deemed Service Months Questionnaire, to obtain service and compensation information from railroad employers to determine if an employee can be credited with additional deemed months of railroad service. Completion is mandatory. One response is required for each RRB inquiry.

*Previous Requests for Comments:* The RRB has already published the initial 60-day notice (80 FR 81383 on December 29, 2015) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

**Information Collection Request (ICR)**

*Title:* Employer's Deemed Service Month Questionnaire.
*OMB Control Number:* 3220–0156.
*Form(s) submitted:* GL–99.
*Type of request:* Revision of a currently approved collection.

*Affected public:* Individuals or Households.

*Abstract:* Under Section 3(i) of the Railroad Retirement Act, the Railroad Retirement Board may deem months of service in cases where an employee does not actually work in every month of the year. The collection obtains service and compensation information from railroad employers needed to determine if an employee may be credited with additional months of railroad service.

*Changes proposed:* The RRB proposes non-burden impacting editorial changes to Form GL–99.

*The burden estimate for the ICR is as follows:*

| Form No. | Annual responses | Time (minutes) | Burden (hours) |
|---|---|---|---|
| GL–99 | 2,000 | 2 | 67 |

*Additional Information or Comments:* Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

**Charles Mierzwa,**

*Chief of Information Resources Management.*

[FR Doc. 2016–05892 Filed 3–15–16; 8:45 am]

**BILLING CODE 7905–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77338; File No. SR–NASDAQ–2016–030]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the Shares of the Elkhorn Dorsey Wright Commodity Rotation Portfolio of Elkhorn ETF Trust

March 10, 2016.

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 February 26, 2016, The NASDAQ Stock Market LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in in Items I and II below, which Items have been prepared by Nasdaq. 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

Nasdaq proposes to list and trade the shares of the Elkhorn Dorsey Wright Commodity Rotation Portfolio (the ''Fund'') of Elkhorn ETF Trust (the ''Trust'') under Nasdaq Rule 5735 (''Managed Fund Shares''). The shares of the Fund are collectively referred to herein as the ''Shares.''

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at Nasdaq's principal office, 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, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares [3] on the Exchange.[4] The Fund will be an actively-managed exchange-traded fund (''ETF''). The Shares will be offered by the Trust, which was established as a Massachusetts business trust on December 12, 2013.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.[6] The Fund will be a series of the Trust. The Fund will invest in, among other things, exchange-traded commodity futures contracts and exchange-traded commodity-linked instruments held indirectly through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands (referred to herein as the ''Subsidiary'').

Elkhorn Investments, LLC will be the investment adviser (the ''Adviser'') to the Fund and will monitor the Fund's investment portfolio. It is currently anticipated that day-to-day portfolio management for the Fund will be provided by the Adviser. However, the Fund and the Adviser may contract with an investment sub-adviser (a ''Sub-Adviser'') to provide day-to-day portfolio management for the Fund. ALPS Distributors, Inc. (the ''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. The Fund will contract with unaffiliated third parties to provide administrative, custodial and transfer agency services to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''firewall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[7] In addition, paragraph (g) further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the open-end fund's portfolio. Rule 5735(g) is similar to Nasdaq Rule 5705(b)(5)(A)(i); however, paragraph (g) in connection with the establishment of a ''firewall'' between the investment adviser and the broker-dealer reflects

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the ''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR–NASDAQ–2008–039). The Fund would not be the first actively-managed fund listed on the Exchange; *see* Securities Exchange Act Release No. 66489 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR–NASDAQ–2012–004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund) and Securities Exchange Act Release No. 72728 (July 31, 2014) 79 FR 45852 (August 6, 2014) (SR–NASDAQ–2014–059) (order approving listing and trading of Global X Commodities Strategy ETF). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

[5] The Trust has obtained from the Commission an order granting certain exemptive relief to the Trust under the 1940 Act (File No. 812–14262). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

[6] *See* Registration Statement on Form N–1A for the Trust dated February 18, 2016 (File Nos. 333–201473 and 811–22926).

[7] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and any Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a broker-dealer, although it is affiliated with a broker-dealer. The Adviser has implemented a firewall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.

In addition, personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio. In the event (a) the Adviser or a Sub-Adviser becomes, or becomes newly affiliated with, a broker-dealer or registers as 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 firewall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, 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.

Elkhorn Dorsey Wright Commodity Rotation Portfolio

The Fund's investment objective will be to provide total return which exceeds that of the DWA Commodity Rotation Index (the ''Benchmark'').[8] The Fund will seek excess return above the Benchmark solely through the active management of a short duration portfolio of highly liquid, high quality bonds.

The Fund will be an actively-managed ETF that seeks to achieve its investment objective by, under normal market conditions,[9] investing in exchange-traded commodity futures contracts, exchange-cleared and non-exchange-cleared swaps,[10] exchange-traded options on futures contracts and exchange-traded commodity-linked instruments[11] (collectively, ''Commodities'') through the Subsidiary, thereby obtaining exposure to the commodities markets.

The Fund's Commodities investments, in part, will be comprised of exchange-traded futures contracts on commodities that comprise the Benchmark. Although the Fund, through the Subsidiary, will generally hold many of the futures contracts included in the Benchmark, the Fund and the Subsidiary will be actively managed and will not be obligated to invest in all the futures contracts on commodities that comprise the Benchmark. In addition, with respect to investments in exchange-traded futures contracts, the Fund and the Subsidiary will not be obligated to invest in the same amount or proportion as the Benchmark, or be obligated to track the performance of the Benchmark. In addition to exchange-traded futures contracts, the Fund's Commodities investments will also be comprised of exchange-cleared and non-exchange-cleared swaps on commodities, exchange-traded options on futures contracts that provide exposure to the investment returns of the commodities markets, and exchange-traded commodity-linked instruments, without investing directly in physical commodities.

The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. In addition to Commodities, the Fund may invest its assets in (1) the following short-term debt instruments:[12] Fixed rate and floating rate U.S. government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. government agencies or instrumentalities;[13] certificates of deposit issued against funds deposited in a bank or savings and loan association; bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; repurchase agreements,[14] which involve purchases of debt securities; bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; and commercial paper, which are short-term unsecured promissory notes (collectively, ''Short-Term Debt Instruments);[15] (2) corporate debt obligations;[16] (3) money market instruments;[17] (4) investment companies (other than those that are commodity-linked instruments),[18]

[8] The Benchmark is developed, maintained and sponsored by Dorsey, Wright & Associates, LLC (''Dorsey Wright'').

[9] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets, futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[10] Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets. When investing in non-exchange-cleared swaps, the Subsidiary will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser and/or a Sub-Adviser will evaluate the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, the Adviser's and/or a Sub-Adviser's analysis will evaluate each approved counterparty using various methods of analysis and may consider such factors as the counterparty's liquidity, its reputation, the Adviser's and/or Sub-Adviser's past experience with the counterparty, its known disciplinary history and its share of market participation.

[11] Exchange-traded commodity-linked instruments include: (1) ETFs that provide exposure to commodities as would be listed under Nasdaq Rules 5705 and 5735; and (2) pooled investment vehicles that invest primarily in commodities and commodity-linked instruments as would be listed under Nasdaq Rules 5710 and 5711(b), (d), (f), (g), (h), (i) and (j). Such pooled investment vehicles are commonly referred to as ''exchange-traded funds'' but they are not registered as investment companies because of the nature of their underlying assets.

[12] Short-term debt instruments are issued by issuers having a long-term debt rating of at least A by Standard & Poor's Ratings Services, a Division of The McGraw-Hill Companies, Inc. (''S&P Ratings''), Moody's Investors Service, Inc. (''Moody's'') or Fitch Ratings (''Fitch'') and have a maturity of one year or less.

[13] Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

[14] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser and/or a Sub-Adviser to present minimal credit risks in accordance with criteria approved by the Board of Trustees of the Trust (the ''Board''). The Adviser and/or a Sub-Adviser will review and monitor the creditworthiness of such institutions. The Adviser and/or a Sub-Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[15] The Fund may additionally invest in commercial paper only if it has received the highest rating from at least one nationally recognized statistical rating organization or, if unrated, has been judged by the Adviser and/or a Sub-Adviser to be of comparable quality.

[16] At least 75% of corporate debt obligtions will have a minimum principal amount outstanding of $100 million or more.

[17] For the Fund's purposes, money market instruments will include only the following instruments: Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a–7 under the 1940 Act; and money market mutual funds.

[18] The Fund may invest in the securities of certain other investment companies in excess of the limits imposed under the 1940 Act pursuant to an exemptive order obtained by the Trust and the

Continued

including both exchange-traded and non-exchange traded investment companies, that provide exposure to commodities, equity securities and fixed income securities to the extent permitted under the 1940 Act and any applicable exemptive relief; [19] and (5) cash and other cash equivalents (collectively, ''Other Investments''). The Fund will use the Other Investments as investments, to provide liquidity and to collateralize the Subsidiary's commodity exposure on a day-to-day basis.

The Fund's investment in the Subsidiary will be designed to help the Fund achieve exposure to commodity returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies.

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.[20]

Subsidiary's Investments

The Subsidiary will generally seek to make investments in Commodities and its portfolio will be managed by the Adviser or a Sub-Adviser.[21] The Adviser or a Sub-Adviser will use its discretion to determine the percentage of the Fund's assets allocated to the Commodities held by the Subsidiary that will be invested in exchange-traded commodity futures contracts, exchange-cleared and non-exchange-cleared swaps, exchange-traded options on futures contracts and exchange-traded commodity-linked instruments. Generally, the Adviser or a Sub-Adviser will take various factors into account on a periodic basis in allocating the assets of the Subsidiary, including, but not limited to the results of the Benchmark's proprietary model developed by Dorsey Wright that is discussed further below, the performance of commodity indexes relative to each other, relative price differentials for a range of commodity futures for current delivery as compared to similar commodity futures for future delivery, and other market conditions. The weightings of the Fund's portfolio will be reviewed and updated at least annually.

In connection with the Benchmark's proprietary model, Dorsey Wright applies a relative strength methodology to rank twenty-five to thirty single commodity futures, each represented by single commodity futures index with an embedded dynamic roll strategy, and selects a subset of commodity futures that demonstrate relative strength characteristics. The methodology takes into account, among other characteristics, the performance of a commodity as compared to the broad commodity market, the relative performance of each single commodity versus all of the other commodities, and the liquidity of the underlying commodities.

The Fund will not be sponsored, endorsed, sold or promoted by Dorsey Wright. Dorsey Wright's only relationship to the Fund will be the licensing of certain service marks and service names of Dorsey Wright. Dorsey Wright will have no obligation to take the needs of the Adviser, any Sub-Adviser or the Fund into consideration in connection with the Benchmark's proprietary model or its application of the related methodology.

The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments. The Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities. The Subsidiary's investments will provide the Fund with exposure to domestic and international markets.

The Subsidiary will initially consider investing in futures contracts set forth in the following table. The table also provides each instrument's trading hours, exchange and ticker symbol. The table is subject to change.

| Commodity | Exchange code | Exchange name [22] | Trading hours electronic (E.T.) | Contract symbol(s) |
|---|---|---|---|---|
| SRW Wheat | CBT | Chicago Board of Exchange | Sun–F 20:00–08:45<br>M–F 09:30–14:15 | W; ZW |
| HRW Wheat | CBT | Chicago Board of Exchange | Sun–F 20:00–08:45<br>M–F 09:30–14:15 | KW; KE |
| Corn | CBT | Chicago Board of Trade | Sun–F 20:00–08:45<br>M–F 09:30–14:15 | C; ZC |
| Soybeans | CBT | Chicago Board of Trade | Sun–F 20:00–08:45<br>M–F 09:30–14:15 | S; ZS |
| Coffee ''C'' Arabica | NYB | ICE Futures US | 04:15–13:30 | KC |
| Sugar #11 | NYB | ICE Futures US | 03:30–13:00 | SB |
| Cocoa | NYB | ICE Futures US | 04:45–13:30 | CC |
| Cotton | NYB | ICE Futures US | 21:00–14:20 | CT |
| Live Cattle | CME | Chicago Mercantile Exchange | M 10:05–F 14:55<br>(Halts 17:00–18:00) | LC; LE |
| Lean Hogs | CME | Chicago Mercantile Exchange | M 10:05–F 14:55<br>(Halts 17:00–18:00) | LH; HE |
| NY Harbor ULSD | NYM | New York Mercantile Exchange | 18:00–17:15 | HO |
| Gasoil | ICE | ICE Futures Europe | 20:00–18:00 | G |

Adviser from the Commission. *See* Investment Company Act Release No. 31401 (December 29, 2014) (File No. 812–14264). The exchange-traded investment companies in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depository Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). The non-exchange-traded investment companies in which the Fund may invest include all non-exchange-traded investment companies that are not money market instruments, as described above. While the Fund and the Subsidiary may invest in inverse commodity-linked instruments, the Fund and the Subsidiary will not invest in leveraged or inverse leveraged (*e.g.,* 2X or −3X) commodity-linked instruments.

[19] The exchange-traded investment companies in which the Fund invests will be listed and traded in the U.S. on registered exchanges.

[20] 26 U.S.C. 851.

[21] The Subsidiary will not be registered under the 1940 Act and will not be directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary will be wholly-owned and controlled by the Fund. Therefore, the Fund's ownership and control of the Subsidiary will prevent the Subsidiary from taking action contrary to the interests of the Fund or its shareholders. The Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

| Commodity | Exchange code | Exchange name [22] | Trading hours electronic (E.T.) | Contract symbol(s) |
|---|---|---|---|---|
| WTI Crude Oil | NYM | New York Mercantile Exchange | 18:00–17:15 | CL |
| Brent Crude Oil | ICE | ICE Futures Europe | 20:00–18:00 | B |
| Natural Gas | NYM | New York Mercantile Exchange | 18:00–17:15 | NG |
| Aluminum primary | LME | London Metal Exchange | 20:00–14:00 | AH |
| Copper grade A | LME | London Metal Exchange | 20:00–14:00 | CA |
| Zinc high grade | LME | London Metal Exchange | 20:00–14:00 | ZS |
| Gold | CMX | Commodity Exchange | 18:00–17:15 | GC |
| Silver | CMX | Commodity Exchange | 18:00–17:15 | SI |
| RBOB Gasoline | NYM | New York Mercantile Exchange | 18:00–17:15 | RB |

[22] All of the exchanges are Intermarket Surveillance Group (''ISG'') members except for the London Metal Exchange (''LME''), ICE Futures Europe and Commodity Exchange. The LME falls under the jurisdiction of the Financial Conduct Authority (''FCA''). The FCA is responsible for ensuring the financial stability of the exchange members' businesses, whereas the LME is largely responsible for the oversight of day-to-day exchange activity, including conducting the arbitration proceedings under the LME arbitration regulations. With respect to the futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary in the aggregate shall consist of instruments 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 Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange, futures contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a), above. In addition, at least 90% of the Fund's net assets that are invested in exchange-traded options on futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

As the U.S. and foreign exchanges noted above list additional contracts, as currently listed contracts on those exchanges gain sufficient liquidity or as other exchanges list sufficiently liquid contracts, the Adviser and/or any Sub-Adviser will include those contracts in the list of possible investments of the Subsidiary. The list of commodities futures and commodities markets considered for investment can and will change over time.

In addition to investing in Commodities, the Subsidiary, like the Fund, may invest in Other Investments (*e.g.,* as investments or to serve as margin or collateral or otherwise support the Subsidiary's positions in Commodities).

Commodities Regulation

The Commodity Futures Trading Commission (''CFTC'') has adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be indirectly held by the Fund, the Adviser will register as a commodity pool operator [23] and will also be a member of the National Futures Association (''NFA''). Any Sub-Adviser will register as a commodity pool operator or commodity trading adviser, as required by CFTC regulations. The Fund and the Subsidiary will be subject to regulation by the CFTC and NFA and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools.

Investment Restrictions

While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will be consistent with the Fund's investment objective and will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and -3X) of an index.

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.[24]

The Subsidiary's shares will be offered only to the Fund and the Fund will not sell shares of the Subsidiary to other investors. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary). The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act or any applicable exemptive relief.[25]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser.[26] 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 assets. Illiquid assets 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.[27]

Net Asset Value

The Fund's net asset value (''NAV'') will be determined as of the close of trading (normally 4:00 p.m., Eastern time (''E.T.'')) on each day the New York Stock Exchange (''NYSE'') is open for

[23] As defined in Section 1a(11) of the Commodity Exchange Act.

[24] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[25] *See* note 18.

[26] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[27] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

business. The NAV of the Fund will be calculated by dividing the value of the net assets of such Fund (*i.e.* the value of its total assets, less total liabilities) by the total number of outstanding Shares, generally rounded to the nearest cent.

The Fund's and the Subsidiary's investments will be generally valued using market valuations. A market valuation generally means a valuation (i) obtained from an exchange, a pricing service, or a major market maker (or dealer), (ii) based on a price quotation or other equivalent indication of value supplied by an exchange, a pricing service, or a major market maker (or dealer), or (iii) based on amortized cost. The Fund and the Subsidiary may use various pricing services or discontinue the use of any pricing service. A price obtained from a pricing service based on such pricing service's valuation matrix may be considered a market valuation.

If available, Short-Term Debt Instruments (other than certificates of deposits, bank time deposits and repurchase agreements), corporate debt obligations, other cash equivalents and money market instruments (other than money market mutual funds) with maturities of more than 60 days will typically be priced based on valuations provided by independent, third-party pricing agents. Such values will generally reflect the last reported sales price if the instrument is actively traded. The third-party pricing agents may also value debt instruments at an evaluated bid price by employing methodologies that utilize actual market transactions, broker-supplied valuations, or other methodologies designed to identify the market value for such instruments. Short-Term Debt Instruments (other than certificates of deposit, bank time deposits and repurchase agreements), corporate debt obligations, other cash equivalents and money market instruments (other than money market mutual funds) with remaining maturities of 60 days or less may be valued on the basis of amortized cost, which approximates market value. If such prices are not available, the instrument will be valued based on values supplied by independent brokers or by fair value pricing, as described below.

Certificates of deposit and bank time deposits will typically be valued at cost.

Repurchase agreements will typically be valued as follows: Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.,* those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers.

Futures contracts will be valued at the settlement price established each day by the board or exchange on which they are traded.

Exchange-traded options will be valued at the closing price in the market where such contracts are principally traded.

Swaps will be valued based on valuations provided by independent, third-party pricing agents.

Securities of non-exchange-traded investment companies will be valued at the investment company's applicable NAV.

Equity securities (including exchange-traded commodity-linked instruments and exchange-traded investment companies other than exchange-traded commodity-linked instruments) listed on a securities exchange, market or automated quotation system for which quotations are readily available (except for securities traded on the Exchange) will be valued at the last reported sale price on the primary exchange or market on which they are traded on the valuation date (or at approximately 4:00 p.m., E.T. if a security's primary exchange is normally open at that time). For a security that trades on multiple exchanges, the primary exchange will generally be considered to be the exchange on which the security generally has the highest volume of trading activity. If it is not possible to determine the last reported sale price on the relevant exchange or market on the valuation date, the value of the security will be taken to be the most recent mean between the bid and asked prices on such exchange or market on the valuation date. Absent both bid and asked prices on such exchange, the bid price may be used. For securities traded on the Exchange, the Exchange official closing price will be used. If such prices are not available, the security will be valued based on values supplied by independent brokers or by fair value pricing, as described below.

The prices for foreign instruments will be reported in local currency and converted to U.S. dollars using currency exchange rates. Exchange rates will be provided daily by recognized independent pricing agents.

In the event that current market valuations are not readily available or such valuations do not reflect current market values, the affected investments will be valued using fair value pricing pursuant to the pricing policy and procedures approved by the Board in accordance with the 1940 Act. The frequency with which the Fund's and the Subsidiary's investments are valued using fair value pricing will be primarily a function of the types of securities and other assets in which they invest pursuant to their respective investment objectives, strategies and limitations.

Creation and Redemption of Shares

The Fund will issue and redeem Shares on a continuous basis at NAV[28] only in large blocks of Shares (''Creation Units'') in transactions with authorized participants, generally including broker-dealers and large institutional investors (''Authorized Participants''). Creation Units are not expected to consist of less than 25,000 Shares. The Fund will issue and redeem Creation Units in exchange for an in-kind portfolio of instruments and/or cash in lieu of such instruments (the ''Creation Basket''). In addition, if there is a difference between the NAV attributable to a Creation Unit and the market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will pay to the other an amount in cash equal to the difference (referred to as the ''Cash Component'').

Creations and redemptions must be made by or through an Authorized Participant that has executed an agreement that has been agreed to by the Distributor with respect to creations and redemptions of Creation Units. All standard orders to create Creation Units must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) (the ''Closing Time'') in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares as next determined on such date after receipt of the order in proper form. Shares may be redeemed only in Creation Units at their NAV next determined after receipt not later than the Closing Time of a redemption request in proper form by the Fund through the Distributor and only on a business day.

On each business day, prior to the opening of business of the Exchange, the Fund will cause to be published through the National Securities Clearing Corporation the list of the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Component (if any), for that day. The published Creation Basket will apply until a new Creation Basket

[28] The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the NYSE, generally 4:00 p.m., E.T. (the ''NAV Calculation Time''). NAV per Share will be calculated by dividing the Fund's net assets by the number of Fund Shares outstanding.

is announced on the following business day.

Availability of Information

The Fund's Web site (*www.elkhorn.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include the Shares' ticker, CUSIP and exchange information along with additional quantitative information updated on a daily basis, including, for the Fund: (1) Daily trading volume, the prior business day's reported NAV and closing price, mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price'') [29] and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Regular Market Session [30] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities, Commodities and other assets (the ''Disclosed Portfolio'' as defined in Nasdaq Rule 5735(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.[31] The Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding such as the type of swap), the identity of the security, commodity or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the Fund's portfolio. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio (including the Subsidiary's portfolio), will be disseminated. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service [32] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Intra-day executable price quotations on the securities and other assets held by the Fund and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by Authorized Participants and other investors. More specifically, pricing information for exchange-traded commodity futures contracts, exchange-traded options on futures contracts, exchange-traded commodity-linked instruments and exchange-traded investment companies (other than exchange-traded commodity-linked instruments) will be available on the exchanges on which they are traded and through subscription services. Pricing information for non-exchange-traded U.S. registered open-end investment companies will be available through the applicable fund's Web site or major market data vendors. Pricing information for swaps, corporate debt obligations, money market instruments (other than money market mutual funds), other cash equivalents and Short-Term Debt Instruments will be available through subscription services and/or broker-dealer firms and/or pricing services. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for certain fixed income securities held by the Fund.

Investors will also be able to obtain the Fund's Statement of Additional Information (''SAI''), the Fund's annual and semi-annual reports (together, ''Shareholder Reports''), and its Form N–CSR and Form N–SAR, filed twice a year. The Fund's SAI and Shareholder Reports will be available free upon request from the Fund, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. 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. The previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares.

Initial and Continued Listing

The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund and the Subsidiary must be in compliance with Rule 10A–3 [33] under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. 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.

[29] The Bid/Ask Price of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[30] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4 a.m. to 9:30 a.m., E.T.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m., E.T.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m., E.T.).

[31] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[32] Currently, the NASDAQ OMX Global Index Data Service (''GIDS'') is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

[33] *See* 17 CFR 240.10A–3.

Trading Halts

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. Nasdaq will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities, Commodities and other assets constituting the Disclosed Portfolio of the Fund and the Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares from 4:00 a.m. until 8:00 p.m., E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Nasdaq Rule 5735(b)(3), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[34] The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the exchange-traded Commodities and exchange-traded investment companies not included within the definition of ''Commodities'' (such investment companies, together with exchange-traded Commodities, are referred to as ''Exchange-Traded Instruments'') held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG [35] and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

With respect to the futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary in the aggregate shall consist of instruments 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 Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange, futures contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a), above. In addition, at least 90% of the Fund's net assets that are invested in exchange-traded options on futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how and by whom information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

Additionally, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV Calculation Time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act in general and Section 6(b)(5) of the Act in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

[34] 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.

[35] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Nasdaq Rule 5735. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and also FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

The Adviser is not registered as a broker-dealer, although it is affiliated with a broker-dealer, and is therefore required to implement a ''firewall'' with respect to such broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, paragraph (g) of Nasdaq Rule 5735 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.

With respect to the futures contracts in which the Subsidiary invests, not more than 10% of the weight (to be calculated as the value of the contract divided by the total absolute notional value of the Subsidiary's futures contracts) of the futures contracts held by the Subsidiary in the aggregate shall consist of instruments 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 Commodity Exchange pursuant to the ISG memberships of the Chicago Mercantile Exchange, the Chicago Board of Trade and the New York Mercantile Exchange, futures contracts whose principal trading market is the Commodity Exchange shall not be subject to the prohibition in (a), above. In addition, at least 90% of the Fund's net assets that are invested in exchange-traded options on futures contracts will be invested in instruments that trade in markets that are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. Investments in non-exchange-cleared swaps (through the Subsidiary) will not represent more than 20% of the Fund's net assets.

The Fund's investment objective will be to provide total return which exceeds that of the Benchmark. The Fund will invest in Commodities through investments in the Subsidiary and will not invest directly in physical commodities. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets. While the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and −3X) of an index. The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities deemed illiquid by the Adviser. The Fund and the Subsidiary will not invest in any non-U.S. equity securities (other than shares of the Subsidiary).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in 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. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service, will be widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio of the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day. 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, and quotation and last sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares.

Intra-day executable price quotations on the securities and other assets held by the Fund and the Subsidiary will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable. Intra-day price information on the securities and other assets held by the Fund and the Subsidiary will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by Authorized Participants and other investors. More specifically, pricing information for exchange-traded commodity futures contracts, exchange-traded options on futures contracts, exchange-traded commodity-linked instruments and exchange-traded investment companies other than exchange-traded commodity-linked instruments will be available on the exchanges on which they are traded and through subscription services. Pricing information for non-exchange-traded investment companies will be available through the applicable fund's Web site or major market data vendors. Pricing information for swaps, corporate debt obligations, money market instruments (other than money market mutual funds), other cash equivalents and Short-Term Debt Instruments will be available through subscription services and/or broker-dealer firms and/or pricing services. Additionally, FINRA's TRACE will be a source of price information for certain fixed income securities held by the Fund.

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. Trading in Shares of the

Fund will be halted under the conditions specified in Nasdaq Rules 4120 and 4121 or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to Nasdaq Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary with other markets and other entities that are members of the ISG and FINRA may obtain trading information regarding trading in the Shares and in the Exchange-Traded Instruments held by the Fund and the Subsidiary from such markets and other entities. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, Nasdaq believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded fund that will enhance competition among market participants, to the benefit of investors and the marketplace.

*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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(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. 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–2016–030 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–030. 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 will also 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–NASDAQ–2016–030 and should be submitted on or before April 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05853 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Form S–6, SEC File No. 270–181, OMB Control No. 3235–0184.

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 (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Form S–6 (17 CFR 239.16), for Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2 (17 CFR 274.13).'' Form S–6 is a form used for registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) (''Securities Act'') of securities of any unit investment trust (''UIT'') registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act'') on Form N–8B–2. Section 5 of the Securities Act (15 U.S.C. 77e) requires the filing of a registration statement prior to the offer of securities to the public and that the statement be

[36] 17 CFR 200.30–3(a)(12).

effective before any securities are sold. Section 5(b) of the Securities Act requires that investors be provided with a prospectus containing the information required in a registration statement prior to the sale or at the time of confirmation or delivery of the securities.

Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. As a result, most UITs update their registration statements under the Securities Act on an annual basis in order that their sponsors may continue to maintain a secondary market in the units. UITs that are registered under the Investment Company Act on Form N–8B–2 file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses.

The purpose of Form S–6 is to meet the filing and disclosure requirements of the Securities Act and to enable filers to provide investors with information necessary to evaluate an investment in the security. This information collection differs significantly from many other federal information collections, which are primarily for the use and benefit of the collecting agency. The information required to be filed with the Commission permits verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

The Commission estimates that there are approximately 1,340 initial registration statements filed on Form S–6 annually and approximately 1,158 annual post-effective amendments to previously effective registration statements filed on Form S–6. The Commission estimates that the hour burden for preparing and filing an initial registration statement on Form S–6 is 45 hours and for preparing and filing a post-effective amendment to a previously effective registration statement filed on Form S–6 is 40 hours. Therefore, we estimate that the total hour burden of preparing and filing registration statements on Form S–6 for all affected UITs is 106,620 hours. We estimate that the cost burden of preparing and filing an initial registration statement on Form S–6 is $33,104 and for preparing and filing a post-effective amendment is $19,862. Therefore, we estimate that the total cost burden of preparing and filing registration statements on Form S–6 for all affected UITs is $67,359,556.

Estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. Compliance with the collection of information requirements of Form S–6 is mandatory. Responses to the collection of information 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) Pamela Dyson, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 11, 2016.

**Lynn M. Powalski,**

*Deputy Secretary.*

[FR Doc. 2016–05878 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–549, OMB Control No. 3235–0610]**

### Proposed Collection; Comment Request

*Upon Written Request, Copy Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*

Rule 248.30.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 248.30 (17 CFR 248.30), under Regulation S–P is titled ''Procedures to Safeguard Customer Records and Information; Disposal of Consumer Report Information.'' Rule 248.30 (the ''safeguard rule'') requires brokers, dealers, investment companies, and investment advisers registered with the Commission (''registered investment advisers'') (collectively ''covered institutions'') to adopt written policies and procedures for administrative, technical, and physical safeguards to protect customer records and information. The safeguards must be reasonably designed to ''insure the security and confidentiality of customer records and information,'' ''protect against any anticipated threats or hazards to the security and integrity'' of those records, and protect against unauthorized access to or use of those records or information, which ''could result in substantial harm or inconvenience to any customer.'' The safeguard rule's requirement that covered institutions' policies and procedures be documented in writing constitutes a collection of information and must be maintained on an ongoing basis. This requirement eliminates uncertainty as to required employee actions to protect customer records and information and promotes more systematic and organized reviews of safeguard policies and procedures by institutions. The information collection also assists the Commission's examination staff in assessing the existence and adequacy of covered institutions' safeguard policies and procedures.

We estimate that as of the end of 2015, there are 4,176 broker-dealers, 4,041 investment companies, and 11,956 investment advisers registered with the Commission, for a total of 20,173 covered institutions. We believe that all of these covered institutions have already documented their safeguard policies and procedures in writing and therefore will incur no hourly burdens related to the initial documentation of policies and procedures.

Although existing covered institutions would not incur any initial hourly burden in complying with the safeguards rule, we expect that newly registered institutions would incur some hourly burdens associated with documenting their safeguard policies and procedures. We estimate that approximately 1200 broker-dealers, investment companies, or investment advisers register with the Commission annually. However, we also expect that approximately 70% of these newly registered covered institutions (840) are affiliated with an existing covered institution, and will rely on an

organization-wide set of previously documented safeguard policies and procedures created by their affiliates. We estimate that these affiliated newly registered covered institutions will incur a significantly reduced hourly burden in complying with the safeguards rule, as they will need only to review their affiliate's existing policies and procedures, and identify and adopt the relevant policies for their business. Therefore, we expect that newly registered covered institutions with existing affiliates will incur an hourly burden of approximately 15 hours in identifying and adopting safeguard policies and procedures for their business, for a total hourly burden for all affiliated new institutions of 12,600 hours. We expect that half of this time would be incurred by inside counsel at an hourly rate of $380, and half would be by a compliance officer at an hourly rate of $334, for a total cost of $4,498,200.

Finally, we expect that the 360 newly registered entities that are not affiliated with an existing institution will incur a significantly higher hourly burden in reviewing and documenting their safeguard policies and procedures. We expect that virtually all of the newly registered covered entities that do not have an affiliate are likely to be small entities and are likely to have smaller and less complex operations, with a correspondingly smaller set of safeguard policies and procedures to document, compared to other larger existing institutions with multiple affiliates. We estimate that it will take a typical newly registered unaffiliated institution approximately 60 hours to review, identify, and document their safeguard policies and procedures, for a total of 21,600 hours for all newly registered unaffiliated entities. We expect that half of this time would be incurred by inside counsel at an hourly rate of $380, and half would be by a compliance officer at an hourly rate of $334, for a total cost of $7,711,200.

Therefore, we estimate that the total annual hourly burden associated with the safeguards rule is 34,200 hours at a total hourly cost of $12,209,400. We also estimate that all covered institutions will be respondents each year, for a total of 20,173 respondents.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number. The safeguard rule does not require the reporting of any information or the filing of any documents with the Commission. The collection of information required by the safeguard rule is mandatory.

Written 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 of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F St. NE., Washington DC, 20549 to: *PRA_Mailbox@sec.gov.*

Dated: March 10, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05858 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–292, OMB Control No. 3235–0330]**

### Proposed Collection; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

*Extension:*
Form N–SAR.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Form N–SAR (OMB Control No. 3235–0330, 17 CFR 249.330) is the form used by all registered investment companies with the exception of face amount certificate companies, to comply with the periodic filing and disclosure requirements imposed by Section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (''Investment Company Act''), and of rules 30a–1 and 30b1–1 thereunder (17 CFR 270.30a–1 and 17 CFR 270.30b1–1). The information required to be filed with the Commission assures the public availability of the information and permits verification of compliance with Investment Company Act requirements. Registered unit investment trusts are required to provide this information on an annual report filed with the Commission on Form N–SAR pursuant to rule 30a–1 under the Investment Company Act, and registered management investment companies must submit the required information on a semi-annual report on Form N–SAR pursuant to rule 30b1–1 under the Investment Company Act.

The Commission estimates that the total number of respondents is 3,168 and the total annual number of responses is 5,564 ((2,396 management investment company respondents × 2 responses per year) + (772 unit investment trust respondents × 1 response per year)). The Commission estimates that each registrant filing a report on Form N–SAR would spend, on average, approximately 14.21 hours in preparing and filing reports on Form N–SAR and that the total hour burden for all filings on Form N–SAR would be 79,064 hours.

The collection of information under Form N–SAR is mandatory. Responses to the collection of information 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 control number.

Written 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 of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Pamela Dyson, 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.*

Dated: March 10, 2016.

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05857 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77336; File No. SR–OCC–2016–005]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Simplify the Options Clearing Corporation's Schedule of Fees

March 10, 2016.

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 May 2, 2016, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of this proposed rule change by (''OCC'') is to amend OCC's Schedule of Fees in order to simplify OCC's fee structure.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

[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).

*(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to amend OCC's Schedule of Fees in order to simplify OCC's fee structure. The proposed changes to OCC's Schedule of Fees would be effective as of May 2, 2016.

OCC is proposing to simply [sic] its fee structure through: (i) The adoption of a flat clearing fee per contract with a fixed dollar cap and (ii) the elimination of the ''scratch'' fee.[5]

Flat Fee Schedule

Currently, OCC utilizes a tiered pricing model whereby the clearing fee per contract is reduced as the number of contracts in a given trade increases (subject to a $46 cap for trades equal to or greater than 2,001 contracts). OCC recently compared its clearing fee structure to those of its peer institutions (*i.e.,* other clearinghouses) and found that OCC's current fee structure is more complex than those of its peers. OCC's Capital Plan,[6] and specifically the Fee Policy (which governs the process by which OCC determines its fee structure and was filed as part of the Capital Plan), requires OCC to set clearing fees to cover OCC's operating expenses plus a Business Risk Buffer[7] of 25%. OCC believes that it can adopt a clearing fee structure that is less complex while continuing to meet the requirements of the Capital Plan. Therefore, OCC is proposing to adopt a flat, per contract, clearing fee subjected to a fixed dollar cap. OCC believes all users of its services and the public would benefit by the simplicity and transparency that a flat fee structure with a fixed dollar cap would provide. Additionally, OCC believes that a flat fee with a fixed dollar cap would allow users of OCC's services to execute trades without regard to the size of such trades, which would, in turn, promote more open and equal access to clearance and settlement services provided by OCC.

Elimination of Scratch Fee

Further, and in order to provide additional simplicity, OCC would eliminate the ''scratch'' fee. The ''scratch'' fee applies to a limited subset of trades cleared by OCC[8] and OCC believes that the operational processing associated with the ''scratch'' fee is unnecessarily complex for both OCC and its clearing members. Therefore, OCC is proposing to eliminate the ''scratch'' fee so that OCC and its members' operations, as they relate to processing of clearing fees, would be more streamlined and efficient.

OCC'S REVISED SCHEDULE OF FEES IS SET FORTH BELOW[9]

| Trades with contracts of: | Proposed fee |
|---|---|
| 0–1370 | $0.041/contract. |
| >1370 | $55 per trade. |

The new fee structure is designed to be revenue neutral when compared to its existing fee structure.[10]

OCC will publish an Information Memo on its public Web site to inform clearing members, exchanges and the public of the changes to OCC's Schedule of Fees that would become effective May 2, 2016. OCC is not aware of any clearing member concerns or issues with the proposed changes to OCC's

[5] The ''scratch'' fee is charged, per side, when a market maker buys and sells the same symbol, series and strike on the same day.

[6] In 2015, the Commission approved (''Approval Order'') OCC's plan for raising additional capital (''Capital Plan''), which was put in place in light of proposed regulatory capital requirements applicable to systemically important financial market utilities, such as OCC. *See* Securities Exchange Act Release No. 74452 (March 6, 2015) 80 FR 13058 (March 12, 2015) (SR–OCC–2015–02). OCC also filed proposals in the Capital Plan filing as an advance notice under Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010. 12 U.S.C. 5465(e)(1). On February 26, 2015, the Commission issued a notice of no objection to the advance notice filing. *See* Securities Exchange Act Release No. 74387 (February 26, 2015), 80 FR 12215 (March 6, 2015) (SR–OCC–2014–813). Following petitions for review of the approval order of the proposed rule change filed by BATS Global Markets, Inc., BOX Options Exchange LLC, KCG Holdings, Inc., Miami International Securities Exchange, LLC, and Susquehanna International Group, LLP, the Commission set aside the approval order of the proposed rule change, reviewed the record *de novo,* and issued another approval of the Capital Plan on February 11, 2016. *See* Securities Exchange Act Release No. 77112 (February 11, 2016), 81 FR 8294 (February 18, 2016) (SR–OCC–2015–02).

[7] Business Risk Buffer is equal to net income before refunds, dividends and taxes/total revenue. In accordance with its Fee Policy, OCC monitors cleared contract volume and operating expenses to determine if revisions to OCC's Schedule of Fees are required so that monies received from clearing fees cover OCC's operating expenses [sic] this Business Risk Buffer. Any subsequent changes to OCC's Schedule of Fees would be the subject of a subsequent proposed rule change filed with the Commission.

[8] Approximately 2.6% of trades cleared by OCC are market maker scratch trades.

[9] These changes are also reflected in Exhibit 5.

[10] In accordance with its Fee Policy, OCC monitors projected revenue (based on anticipated cleared contract volume) and operating expenses to determine if revisions to OCC's Schedule of Fees are required so that monies received from clearing fees cover OCC's operating expenses plus the Business Risk Buffer. Assuming the same anticipated cleared contract volume, OCC would accumulate the same amount of revenue under the proposed fee structure when compared to the existing fee structure.

Schedule of Fees described in this proposed rule change.

2. Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) [11] of the Act, because it provides for the equitable allocation of reasonable dues, fees and charges among its participants in that all clearing members would be charged the same per contract clearing fee per trade (subject to a fixed dollar cap) notwithstanding the size of such trade. OCC believes that charging clearing members a flat trade fee subject to a fixed dollar cap more equitably allocates the cost of providing clearance and settlement services for a given trade. The proposed rule change is not inconsistent with the existing rules of OCC including any other rules proposed to be amended.

*(B) Clearing Agency's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.[12] Although this proposed rule change affects clearing members, their customers and the markets that OCC serves, OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because clearing fees apply equally to all users of OCC. Moreover, the proposed changes to the structure of OCC's Schedule of Fees are revenue neutral and would not affect one set of users of OCC's services in favor of another. For the foregoing reasons, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing [13] pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and Rule 19b–4(f)(2) thereunder [15] because it constitutes a change in fees imposed by OCC on its clearing members and other market participants using OCC's services. 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–OCC–2016–005 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2016–005. 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 OCC and on OCC's Web site at *http://www.theocc.com/components/docs/legal/rules_and_bylaws/sr_occ_16_005.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2016–005 and should be submitted on or before April 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05850 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78q–1(b)(3)(D).

[12] 15 U.S.C. 78q–1(b)(3)(I).

[13] Notwithstanding the immediate effectiveness of the proposed rule change and OCC's anticipated implementation date of May 2, 2016, implementation of this rule change is also contingent on it being deemed certified under CFTC Regulation § 40.6.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77337; SR–NYSEArca–2015–76]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Withdrawal of a Proposed Rule Change To List and Trade Shares of the Global Currency Gold Fund Under NYSE Arca Equities Rule 8.201

March 10, 2016.

On August 28, 2015, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the Global Currency Gold Fund under NYSE Arca Equities Rule 8.201. The proposed rule change was published for comment in the **Federal Register** on September 16, 2015.[3] On September 29, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] On October 28, 2015, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 75900 (Sep. 11, 2015), 80 FR 55674.

[4] In Amendment No. 1, the Exchange: (1) Identified weightings of each currency referenced in the Index; (2) supplemented its description of the method of calculation for the Spot Rate; (3) clarified when the Fund may suspend the right of redemption or postpone the redemption settlement date. Amendment No. 1 is available at: *http://www.sec.gov/rules/sro/nysearca/2015/34-75900-amendment1.pdf.*

[5] 15 U.S.C. 78s(b)(2).

to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On December 11, 2015, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] The Commission has not received any comments on the proposal, as modified by Amendment No. 1.

On March 7, 2016, the Exchange withdrew the proposed rule change (SR–NYSEArca–2015–76).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05851 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77339; File No. SR–BX–2016–016]**

## Self-Regulatory Organizations; NASDAQ BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Rebates To Adopt the Select Symbols Options Tier Schedule

March 10, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2016, NASDAQ BX, Inc. (''BX'' or ''Exchange'')[3] 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 Substance of the Proposed Rule Change

The Exchange proposes to amend its Options Pricing at Chapter XV Section 2, entitled ''BX Options Market—Fees and Rebates,'' which governs pricing for BX members using the BX Options Market (''BX Options''). The Exchange proposes to modify certain fees and rebates (per executed contract) to adopt the Select Symbol Options Tier Schedule for certain Penny Pilot[4] Options (each a ''Select Symbol'' and together the ''Select Symbols'').

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxbx.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 Exchange proposes to amend its Chapter XV, Section 2, to modify certain fees and rebates[5] to adopt the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed Select Symbol Options Tier Schedule would apply to Customers,[6] BX Options Market Makers,[7] Non-Customers,[8] and Firms.[9]

Currently, Chapter XV, Section 2, subsection (1), contains a SPY[10] Options Tier Schedule (''SPY Schedule'') that has four tiers. The Exchange proposes to convert the SPY Schedule into the Select Symbols Options Tier Schedule, as discussed in detail below.

Change 1—Penny Pilot Options: Modify Fees and Rebates To Add the Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes modifications to convert its current SPY Schedule to the Select Symbols Options Tier Schedule. The proposed change keeps the great majority of the current SPY Schedule fees and rebates assessments (twelve out of sixteen) and tiers (three out of four) exactly the same in the new Select Symbols Options Tier Schedule; and updates the fees and rebates schedule to indicate ''Select Symbols'' rather than ''SPY.''

Specifically, the Exchange proposes, commensurate with renaming the SPY Options Tier Schedule the Select Symbols Options Tier Schedule, to set forth the BX Options Select Symbol List. The Select Symbols[11] on this list represent, similarly to SPY, some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S. The proposed Select Symbols are similar to those of other options exchanges (*e.g.,* the MIAX Options Exchange (''MIAX'').[12] Like the SPY

[6] *See* Securities Exchange Act Release No. 76291, 80 FR 67827 (Nov. 3, 2015). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it had sufficient time to consider the proposed rule change. Accordingly, the Commission designated December 15, 2015 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 76630, 80 FR 78791 (Dec. 17, 2015).

[9] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it has legally changed its name to NASDAQ BX, Inc. with the state of Delaware and filed Form 1 reflecting the change, and is in the process of changing its rules to reflect the new name.

[4] The Penny Pilot was established in June 2012 and extended in 2015. *See* Securities Exchange Act Release Nos. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (order approving BX option rules and establishing Penny Pilot); and 75326 (June 29, 2015), 80 FR 38481 (July 6, 2015) (SR–BX–2015–037) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016).

[5] Fees and rebates are per executed contract. BX Chapter XV, Section 2(1).

[6] The term ''Customer'' or (''C'') applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)). BX Chapter XV.

[7] BX Options Market Makers may also be referred to as ''Market Makers''. The term ''BX Options Market Maker'' or (''M'') means a Participant that has registered as a Market Maker on BX Options pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive Market Maker pricing in all securities, the Participant must be registered as a BX Options Market Maker in at least one security. BX Chapter XV.

[8] Note 1 to Chapter XV, Section 2, states: ''[1] A Non-Customer includes a Professional, Broker-Dealer and Non-BX Options Market Maker.''

[9] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC. BX Chapter XV.

[10] ''SPY'' or Standard and Poor's Depositary Receipts/SPDRs options are Penny Pilot Options that are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500.

[11] The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT.

[12] *See* MIAX fee schedule at *http://www.miaxoptions.com/sites/default/files/fee-schedules/MIAX_Options_Fee_Schedule_10012015.pdf.*

Options Tier Schedule, the Select Symbols Options Tier Schedule will have four tiers.

Proposed Tier 1 in the Select Symbols Options Tier Schedule, which has the same requirements as the current Tier I in the SPY Options Tier Schedule will be where a BX Participant (''Participant'') executes less than 0.05% of total industry customer equity and exchange traded fund (''ETF'') option average daily volume (''ADV'') contracts per month. Proposed Tier 1 will range from a $0.00 rebate to a $0.44 fee:

—The Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.00 (no rebate will be paid); [13]

—the Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.44; [14]

—the Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.00; [15] and

—the Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.42.[16]

Proposed Tier 2 in the Select Symbols Options Tier Schedule, which has the same requirements as current Tier 2 in the SPY Options Tier Schedule, will be where Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 2 will range from a $0.25 rebate to a $0.44 fee:

—The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.10; [17]

—the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.44; [18]

—the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.25; [19] and

—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.42.[20]

Proposed Tier 3 in the Select Symbols Options Tier Schedule, which has the same requirements the current Tier 3 in the SPY Options Tier Schedule, will be where Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. Proposed Tier 3 will range from a $0.37 rebate to a $0.40 fee:

—The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.20; [21]

—the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.40; [22]

—the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.37; [23] and

—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.39.[24]

Proposed Tier 4 in the Select Symbols Options Tier Schedule, which is modified from the current Tier 4 in the SPY Options Tier Schedule, will be where Participant executes more than 10,000 BX Price Improvement Auction (''PRISM'') [25] Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month. If a Participant qualifies for Tier 4 the rates applicable to this tier will supersede any other Select Symbols tier rates that the Participant may qualify for. Proposed Tier 4 will range from a $0.37 rebate to a $0.29 fee:

—The new Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm will be $0.25; [26]

—the new Fee to Add Liquidity when BX Options Market Maker trading with Customer will be $0.29; [27]

—the new Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm will be $0.37; [28] and

—the new Fee to Remove Liquidity when BX Options Market Maker trading with Customer will be $0.25.[29]

In addition, there are currently six explanatory notes in the SPY Options Tier Schedule. In each such note the Exchange will, as elsewhere in the fees and rebates schedule, replace ''SPY'' with ''Select Symbols.'' The Exchange proposes to also establish a fee on one note that is not currently fee liable in the SPY Options Tier Schedule. Specifically, the Exchange proposes to state that BX Options Market Maker fee to add liquidity in SPY [sic] Options will be $0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.

Chapter XV, Section 2 subsection (1) reflecting the proposed Select Symbols Options Tier Schedule will read as follows:

Sec. 2 BX Options Market—Fees and Rebates

The following charges shall apply to the use of the order execution and routing services of the BX Options market for all securities.

(1) Fees for Execution of Contracts on the BX Options Market:

* * * * *

[13] This is the same as the rebate in the current SPY Options Tier Schedule.

[14] Proposed $0.44 is a modest fee increase from the current SPY Options Tier Schedule, which is $0.42.

[15] This is the same as the rebate in the current SPY Options Tier Schedule.

[16] This is the same as the fee in the current SPY Options Tier Schedule.

[17] This is the same as the rebate in the current SPY Options Tier Schedule.

[18] Proposed $0.44 is a modest fee increase from the current SPY Options Tier Schedule, which is $0.42.

[19] This is the same as the rebate in the current SPY Options Tier Schedule.

[20] This is the same as the fee in the current SPY Options Tier Schedule.

[21] This is the same as the rebate in the current SPY Options Tier Schedule.

[22] Proposed $0.40 is a modest fee increase from the current SPY Options Tier Schedule, which is $0.39.

[23] This is the same as the rebate in the current SPY Options Tier Schedule.

[24] This is the same as the fee in the current SPY Options Tier Schedule.

[25] PRISM is a Price Improvement Mechanism for all-electronic BX Options whereby a buy and sell order may be submitted in one order message to initiate an auction at a stop price and seek potential price improvement. Options are traded electronically on BX Options, and all options participants may respond to a PRISM Auction, the duration of which is set at 200 milliseconds. PRISM includes auto-match functionality in which a Participant (an ''Initiating Participant'') may electronically submit for execution an order it represents as agent on behalf of customer, broker dealer, or any other entity (''PRISM Order'') against principal interest or against any other order it represents as agent (an ''Initiating Order'') provided it submits the PRISM Order for electronic execution into the PRISM Auction pursuant [sic]. *See* Chapter VI, Section 9; and Securities Exchange Act Release No. 76301 (October 29, 2015), 80 FR 68347 (November 4, 2015) (SR–BX–2015–032) (order approving BX PRISM).

[26] This is the same as the rebate in the current SPY Options Tier Schedule.

[27] Proposed $0.29 is, in order to further promote liquidity on the Exchange, a modest fee decrease from the current SPY Options Tier Schedule, which is $0.32.

[28] This is the same as the rebate in the current SPY Options Tier Schedule.

[29] This is the same as the fee in the current SPY Options Tier Schedule.

SELECT SYMBOLS OPTIONS TIER SCHEDULE

| | Rebate to add liquidity | Fee to add liquidity | Rebate to remove liquidity | Fee to remove liquidity |
|---|---|---|---|---|
| When: | Customer | BX Options market maker | Customer | BX Options market maker |
| Trading with: | Non-Customer, BX options market maker, or firm | Customer | Non-Customer, BX options market maker, customer, or firm | Customer |
| Tier 1: | | | | |
| Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month | $0.00 | $0.44 | $0.00 | $0.42 |
| Tier 2: | | | | |
| Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month | 0.10 | 0.44 | 0.25 | 0.42 |
| Tier 3: | | | | |
| Participant executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month | 0.20 | 0.40 | 0.37 | 0.39 |
| Tier 4: | | | | |
| Participant executes more than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month | 0.25 | 0.29 | 0.37 | 0.25 |

BX Options Select Symbol List

The following are Select Symbols: ASHR, DIA, DXJ, EEM, EFA, EWJ, EWT, EWW, EWY, EWZ, FAS, FAZ, FXE, FXI, FXP, GDX, GLD, HYG, IWM, IYR, KRE, OIH, QID, QLD, QQQ, RSX, SDS, SKF, SLV, SPY, SRS, SSO, TBT, TLT, TNA, TZA, UNG, URE, USO, UUP, UVXY, UYG, VXX, XHB, XLB, XLE, XLF, XLI, XLK, XLP, XLU, XLV, XLY, XME, XOP, XRT

- BX Options Market Maker fee to add liquidity in Select Symbols Options will be $0.04 when trading with Firm, Non-Customer, or BX Options Market Maker.
- Firm fee to add liquidity and fee to remove liquidity in Select Symbols Options will be $0.33 per contract, regardless of counterparty.
- Non-Customer fee to add liquidity and fee to remove liquidity in Select Symbols Options will be $0.46 per contract, regardless of counterparty.
- BX Options Market Maker fee to remove liquidity in Select Symbols Options will be $0.46 per contract when trading with Firm, Non-Customer, or BX Options Market Maker.
- Customer fee to add liquidity in Select Symbols Options when contra to another Customer is $0.33 per contract.
- Volume from all products listed on BX Options will apply to the Select Symbols Options Tiers.

* * * * *

The Exchange is proposing fees and rebate changes and adopting the Select Symbols Options Tier Schedule at this time because it believes that this will provide incentives for execution of contracts, and in particular Select Symbols Options contracts, on the BX Options Market.

The Exchange also believes that its proposal should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act,[30] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) of the Act,[31] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [32]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [33] (''NetCoalition'') the DC Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[34] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [35]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker

[30] 15 U.S.C. 78f(b).

[31] 15 U.S.C. 78f(b)(4), (5).

[32] Securities Exchange Act Release No. 51808 at 37499 (June 9, 2005) (''Regulation NMS Adopting Release'').

[33] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[34] *See id.* at 534–535.

[35] *See id.* at 537.

dealers'. . . .'' [36] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange proposes to amend its Chapter XV, Section 2 to modify certain fees and rebates to adopt the Select Symbol Options Tier Schedule for certain Penny Pilot Options. The proposed modified fees and rebates and new Select Symbols Options Tier Schedule would, as discussed, apply to Customers, BX Options Market Makers, Non-Customers, and Firms. The Exchange believes that its proposal is reasonable, equitable, and not unfairly discriminatory and should provide increased opportunities for participation in executions on the Exchange, facilitating the ability of the Exchange to bring together participants and encourage more robust competition for orders.

Change 1—Penny Pilot Options: Modify Fees and Rebates To Add the Select Symbols Options Tier Schedule

In Change 1, the Exchange proposes to convert its current SPY Options Tier Schedule to the Select Symbols Options Tier Schedule and to set forth the BX Options Select Symbol List. The Select Symbols on this list represent, similarly to SPY, some of the highest volume Penny Pilot Options traded on the Exchange and in the U.S and are similar to those of other options exchanges (*e.g.,* the MIAX).

As discussed, the proposed change updates the fees and rebates schedule to indicate ''Select Symbols'' rather than ''SPY'' and keeps the great majority of the current SPY Schedule fees and rebates assessments and tiers exactly the same in the new Select Symbols Options Tier Schedule. The proposed fee changes are in respect of the Fee to Add Liquidity when BX Options Market Maker trades with Customer. Each of the Tier 1, 2, and 3 changes is a modest fee increase from the current schedule, not exceeding two pennies. The Tier 4 change is a fee decrease from the current fee schedule in order to further promote liquidity on the Exchange.[37] The Exchange also proposes to change one explanatory note applicable to the Select Symbols to make it fee liable.

The proposed rule change is reasonable because it continues to encourage market participant behavior through the fees and rebates system, which is an accepted methodology among options exchanges.[38] Converting SPY Options Tier Schedule to the Select Symbols Options Tier Schedule is reasonable because of the nature of Select Symbol options, which are the most heavily traded options on the Exchange as well as in the industry. By expanding from SPY Options to Select Symbol Options, the Exchange is further promoting options liquidity [sic] the Exchange.

The Exchange believes that the proposed Select Symbol Options Tier Schedule is reasonable because it is not a novel, untested structure but rather is similar to what is offered by other options markets, such as MIAX, and is based on the Exchange's existing SPY Options Tier Schedule. The proposed Tiers in the Select Symbols Options Tier Schedule clearly reflect the progressively increasing nature of Participant executions structured for the purpose of attracting order flow to the Exchange. This encourages market participant behavior through progressive tiered fees and rebates using an accepted methodology among options exchanges.[39]

Tier 1 in the Select Symbols Options Tier Schedule is, similarly to Tier 1 in the current SPY Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in Select Symbols where the Participant executes less than 0.05% of total industry customer equity and ETF option ADV contracts per month.

Tier 2 in the Select Symbols Options Tier Schedule is, similarly to Tier 2 in the current SPY Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in the Select Symbols where the Participant executes 0.05% to less than 0.15% of total industry customer equity and ETF option ADV contracts per month.

And Tier 3 in the Select Symbols Options Tier Schedule is, similarly to Tier 3 in the SPY Options Tier Schedule, set up to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in the Select Symbols to Participant [sic] executes 0.15% or more of total industry customer equity and ETF option ADV contracts per month. The fees and rebates that BX Options Market Makers and Customers are assessed are, as has been discussed, almost all comparable to the fees and rebates in the SPY Options Tier Schedule.

The Exchange believes that it is reasonable to also adjust the current Tier 4 in the SPY Options Tier Schedule as reflected in the new Tier 4 in the Select Symbols Options Tier Schedule, in order to enable a Participant to earn a Rebate to Add Liquidity or pay a Fee to Add Liquidity in Select Symbols where the Participant executes more than 10,000 PRISM Agency Contracts per month; or Participant executes BX Options Market Maker volume of 0.30% or more of total industry customer equity and ETF options ADV per month. By so doing, the Exchange encourages Participants to trade PRISM and/or make markets on the exchange.

In addition, the Exchange believes that making changes to add the Select Symbols Options Tier Schedule in terms of Rebate to Add Liquidity and Fee to Add Liquidity, and Rebate to Remove Liquidity and Fee to Remove Liquidity, is reasonable because it encourages the desired Customer behavior by attracting Customer interest in Select Symbols to the Exchange. Customer activity enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Select Symbols Options Tier Schedule is reasonable in that it is, similarly to the current SPY Options Tier Schedule, set up to incentivize Participants to direct liquidity to the Exchange; using volume from all products listed on BX Options will further incentivize Participants. As Participants execute more of total industry customer equity and ETF option ADV contracts per month on the Exchange, they can in certain categories earn higher rebates and be assessed lower fees. For example, in the Select Symbols Options Tier Schedule the Tier 3 Rebate to Add Liquidity when Customer trading with Non-Customer, BX Options Market Maker, or Firm is higher ($0.20) than the Tier 1 Rebate to Add Liquidity ($0.00); and the Tier 3 Rebate to Remove Liquidity when Customer trading with Non-Customer, BX Options Market Maker, Customer, or Firm is higher ($0.37) that the Tier 2 Rebate to Remove Liquidity ($0.25).

Similarly, the proposed Fee to Add Liquidity when BX Option Market Maker trading with Customer is lower for Tier 3 ($0.40) than for Tier 1 ($0.44);

[36] *See id.* at 539 (quoting Securities Exchange [sic] Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) at 73 FR at 74782–74783).

[37] Tier 4 is updated from the current SPY Options Tier Schedule to give additional ways to achieve the tier requirements through specified PRISM volume as well as options volume.

[38] *See, e.g.,* fee and rebate schedules of other options exchanges, including, but not limited to, NASDAQ Options Market (''NOM''), NASDAQ PHLX LLC (''Phlx''), and Chicago Board Options Exchange (''CBOE'').

[39] *Id.*

and, the Fee to Remove Liquidity when BX Option Market Maker trading with Customer is lower for Tier 3 ($0.39) than for Tier 1 ($0.42).

The Exchange believes that it is reasonable to indicate a $0.04 fee assessment in the discussed BX Options Market Maker explanatory note. This explanatory note, which is currently not fee liable for options on SPY, will be fee liable for Select Symbols. The Exchange believes that this is in line with its continued effort to promote liquidity on the Exchange while covering costs through fees and rebates.

Establishing the Select Symbol Options Tier Schedule is equitable and not unfairly discriminatory. This is because the Exchange's proposal to assess fees and pay rebates according to Tiers 1, 2, 3, and 4 as proposed to be amended will apply uniformly to all similarly situated Participants. Customers would earn a Rebate to Add Liquidity and a Rebate to Remove Liquidity according to the Tiers,[40] and BX Market Makers would be assessed a Fee to Add Liquidity and a Fee to Remove Liquidity according to the same Tiers per the Select Symbols Options Tier Schedule; and certain fees would be the same regardless of counterparty. The fee and rebate schedule as proposed continues to reflect differentiation among different market participants. The Exchange believes that the differentiation is equitable and not unfairly discriminatory, as well as reasonable, because transactions of a BX Options Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and BX Options Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all BX Options Market Makers are designated as specialists on BX for all purposes under the Act or rules thereunder.[41]

The Exchange believes that by making the proposed changes it is continuing to incentivize Participants to execute more volume on the Exchange to further enhance liquidity in this market.

*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 Exchange does not believe that its proposal to make changes to its Penny Pilot Options to establish a Select Symbols Options Tiers Schedule will impose any undue burden on competition, as discussed below.

The Exchange operates in a highly competitive market in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. Additionally, new competitors have entered the market and still others are reportedly entering the market shortly. These market forces ensure that the Exchange's fees and rebates remain competitive with the fee structures at other trading platforms. In that sense, the Exchange's proposal is actually pro-competitive because the Exchange is simply continuing its fees and rebates for Penny Pilot Options and establishing a Select Symbols Options Tiers Schedule in order to remain competitive in the current environment.

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. In terms of inter-market competition, 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, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In terms of intra-market competition, the Exchange notes that price differentiation among different market participants operating on the Exchange (*e.g.,* Customer and BX Options Market Maker) is reasonable. Customer activity, for example, enhances liquidity on the Exchange for the benefit of all market participants and benefits all market participants by providing more trading opportunities, which attracts market makers. An increase in the activity of these market participants (particularly in response to pricing) in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

Moreover, unlike others market participants each BX Options Market Maker commits to various obligations. These obligations include, for example, transactions of a BX Market Maker must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings.[42] In this instance, the proposed changes to the fees and rebates to establish a Select Symbols Options Tiers Schedule, does not impose a burden on competition because the Exchange's execution and routing services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Additionally, the changes proposed herein are pro-competitive to the extent that they continue to allow the Exchange to promote and maintain order executions.

*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**

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[43] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the

[40] Per a note to the Select Symbol Options Tier Schedule, Customer fee to add liquidity in Select Symbols Options when contra to another Customer is $0.33 per contract. The only change in this note, which is currently applicable to the SPY Options Tier Schedule, is that the note will be applicable to the Select Symbol Options Tier Schedule.

[41] *See* Chapter VII, Section 5, entitled ''Obligations of Market Makers.''

[42] *See* Chapter VII, Section 5.

[43] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2016–016 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2016–016. 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–BX–2016–016 and should be submitted on or before April 6, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05854 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77341; File No. SR–Phlx–2015–94]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, to Make Permanent the Pilot Program Eliminating Minimum Value Sizes for Opening Transactions in New Series of FLEX Options

March 10, 2016.

## I. Introduction

On November 25, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to make permanent its pilot program (''Pilot Program'') eliminating minimum value sizes for requests for quotes (''RFQs'') for opening transactions in new series of flexible exchange options (''FLEX Options'' or ''FLEX''). The proposed rule change was published for comment in the **Federal Register** on December 14, 2015.[3] The Commission received no comments on the proposal. On January 28, 2016, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] The Exchange filed Amendment No. 1 to the proposed rule change on February 22, 2016, in order to transmit an updated pilot report that supplements Exhibit 3 to the filing, and to provide additional information regarding transactions covered by the Pilot Program and FLEX Option trading on the Exchange.[5] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Amended Proposal

FLEX Options, unlike traditional standardized options, allow investors to customize basic option terms, including size, expiration date, exercise style, and certain exercise prices.[6] Pursuant to Commentary .01 to Rule 1079, the Exchange currently has in place a Pilot Program under which the minimum size requirements set forth in Rules 1079(a)(8)(A)(i) and (ii), which apply to RFQs for opening transactions in new series of FLEX Options, are eliminated.[7] Prior to the Pilot Program, pursuant to Rules 1079(a)(8)(A)(i) and (ii), the minimum value size for a RFQ for an

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[44] 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 No. 76593 (December 8, 2015), 80 FR 77399 (''Notice'').

[4] *See* Securities Exchange Act Release No. 76989, 81 FR 5811 (February 3, 2016). The Commission designated March 13, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[5] The Exchange attached an Exhibit 3 to its proposed rule change that contains an initial report summarizing pilot data collected for the period December 1, 2014 through July 31, 2015. Specifically, the report summarizes the trading volume and underlying value of opening transactions in new series of FLEX Options with a size below the minimum value thresholds in force before the pilot, as well as the types of customers initiating such transactions. In Amendment No. 1, the Exchange submitted an updated report as an amendment to Exhibit 3 that supplements the original Exhibit 3 with summary pilot data for the period August 1, 2015 through December 31, 2015 (together with the initial report, ''Pilot Report''). In addition, in Amendment No. 1 the Exchange compares the total volume and value of opening transactions in new series of FLEX Options covered by the Pilot Program during the period December 2014 through December 2015 to the total volume and value of all opening FLEX Option transactions in new series during the same period. Further, in Amendment No. 1 the Exchange also compares the Exchange's FLEX Option trading volume to the Exchange's overall, combined trading volume for standardized options and FLEX Options.

[6] *See* Notice; *see also* Phlx Rule (''Rule'') 1079. FLEX equity, FLEX index, and FLEX currency options are traded on the Exchange, but the Pilot Program encompasses only FLEX equity and FLEX index options, and does not encompass FLEX currency options. *See* Notice; Commentary .01 to Rule 1079; References to ''FLEX Options'' or ''FLEX'' for purposes of this filing are meant to refer only to FLEX equity and FLEX index options.

[7] *See* Commentary .01 to Rule 1079; *see also* Securities Exchange Act Release Nos. 62900 (September 13, 2010), 75 FR 57098 (September 17, 2010) (SR–Phlx–2010–123) (establishing Pilot Program); and 77153 (February 17, 2016) 81 FR 9039 (February 23, 2016) (SR–Phlx–2016–19) (extending Pilot Program until the earlier of March 15, 2016, or approval of the Pilot Program on a permanent basis). The term ''request for quotes'' is defined in Rule 1079(a)(11).

opening transaction in a FLEX series in which there was no open interest at the time the RFQ was submitted was: (i) For FLEX index options, $10 million underlying equivalent value with respect to FLEX market index options and $5 million underlying equivalent value with respect to FLEX industry index options; and (ii) for FLEX equity options, the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities.[8]

By proposing to make the Pilot Program permanent, the Exchange is seeking to establish a one-contract minimum size for RFQs for opening transactions in new series of FLEX Options.[9] Specifically, the Exchange's proposal would make the Pilot Program permanent by amending Rules 1079(a)(8)(A)(i) and (ii) to replace the current minimum sizes specified therein with a one contract minimum size for all FLEX Options,[10] and by eliminating the Pilot Program rule text set forth in Commentary .01 to Rule 1079.[11] In connection with its proposal to make the Pilot Program permanent, the Exchange submitted to the Commission a Pilot Report summarizing Pilot Program data collected for the period December 2014 through December 2015.[12] In addition, the Exchange states that its proposal to make the Pilot Program permanent and thereby eliminate the minimum size requirements applicable to RFQs for opening transactions in new FLEX series on the Exchange is similar to rule changes by NYSE Arca and CBOE adopting similar pilot programs on a permanent basis.[13]

## III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

FLEX Options were originally designed for use by institutional and high net worth customers, rather than retail investors.[16] In approving CBOE's pilot eliminating minimum value sizes for FLEX Options, which was the first such pilot to be approved on a permanent basis, the Commission noted that it had received several comment letters stating that the proposal would assist institutional customers, but it also noted that the elimination of the minimum value size requirements raised the possibility that retail customers would access the FLEX Options market.[17] One of the risks to retail investors outlined in the ODD[18] is that, because of the customized nature of FLEX Options and lack of continuous quotes, trading in FLEX Options is often less deep and liquid than trading in standardized options on the same underlying interest.[19] Additionally, the Commission notes in the CBOE Permanent Approval Order that reducing the minimum value size for opening FLEX Option transactions increases the potential for the FLEX Options market to act as a surrogate for the standardized options market, and expressed concern in this regard because the standardized market contains certain protections for investors not present in the FLEX Options market.[20] The Commission stated that, in the event CBOE proposed making its pilot program permanent, information regarding the types of customers initiating opening FLEX Option transactions during the pilot would enable the Commission to evaluate how market participants have responded to CBOE's pilot program and what types of customers are using the FLEX Options market.[21] For these same reasons, at the Commission's request, the Exchange included in its Pilot Report information regarding the types of customers that initiated opening FLEX Option transactions under its Pilot Program.[22]

The Commission believes that these considerations and concerns that informed its analysis of whether to permanently approve CBOE's pilot are

[8] *See* Rules 1079(a)(8)(A)(i) and (ii). The term ''underlying equivalent value'' is defined in Rule 1079(a)(8)(D).

[9] The Commission notes, as originally proposed, that the pilot program set forth no minimum contract sizes for opening transactions. In proposing to permanently approve the pilot, the Exchange is adopting a one contract size minimum, which essentially is the same as having no minimum contract size.

[10] The new one contract minimum size would apply to FLEX market index options (which are designed to be representative of a stock market as a whole or a range of companies in unrelated industries), FLEX industry index options (which are designed to be representative of a particular industry or a group of related industries), and FLEX equity options. *See* Rule 1000A (providing definitions for market and industry indexes). Because, as noted above (*see supra* note 6), the Pilot Program did not encompass FLEX currency options, such options would continue to have the 50-contract minimum size requirement set forth in Rule 1079(a)(8)(A)(iii). *See* Notice.

[11] *See* Notice; *see also* proposed Rules 1079(a)(8)(A)(i) and (ii).

[12] *See supra* note 5. Specifically, as noted above, the Pilot Report contains data and analysis on open interest and trading volume, and as well as on the types of investors that initiated opening FLEX Options transactions (*i.e.,* institutional, high net worth, or retail) in new FLEX Option series. *Id.* As is also noted above, Amendment No. 1 contains additional data regarding transactions covered by the Pilot Program and FLEX Option trading on the Exchange. *Id.*

[13] *See* Notice (citing Securities Exchange Act Release Nos. 72537 (July 3, 2014), 79 FR 39442 (July 10, 2014) (SR–NYSEArca–2014–25) (order approving NYSE Arca's proposal to make permanent its pilot program eliminating minimum value sizes for FLEX Options) and 67624 (August 8, 2012), 77 FR 48580 (August 14, 2012) (order approving CBOE's proposal to make permanent its pilot program eliminating minimum value sizes for FLEX Options)).

[14] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Notice; *see also* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (order approving SR–PSE–95–24). As noted in the Options Disclosure Document (''ODD''), which explains the characteristics and risks of exchange-traded options, flexibly structured options may be useful to sophisticated investors seeking to manage particular portfolio and trading risks. Rule 9b–1 under the Act requires that broker-dealers furnish the ODD to a customer before accepting an order from the customer to purchase or sell an option contract relating to an options class that is the subject of the ODD, or approving the customer's account for the trading of such option. *See* 17 CFR 240.9b–1(d).

[17] *See* Securities Exchange Act Release No. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (order approving SR–CBOE–2009–087) (''CBOE Permanent Approval Order'').

[18] *See supra* note 16.

[19] In particular, the ODD states that because many of the terms of FLEX Options are not standardized, it is less likely that there will be an active secondary market in which holders and writers of such options will be able to close out their positions by offsetting sales and purchases. Also, the ODD states that certain margin requirements for positions in flexibly structured options may be significantly greater than the margin requirements applicable to similar positions in other options on the same underlying interest.

[20] *See* CBOE Permanent Approval Order, *supra* note 17. In particular, the Commission noted that continuous quotes may not always be available in the FLEX Options market and that FLEX Options do not have trading rotations at either the opening or closing of trading. *Id.*

[21] *Id.* The Exchange has submitted a Pilot Report to the Commission as Exhibit 3 to its filing, as well as other, confidential reports of data collected during the Pilot Program.

[22] *See* Exhibit 3 to the Exchange's rule filing, as amended by Amendment No. 1, *supra* note 5.

equally germane to its analysis here. As such, the Commission has carefully reviewed the Pilot Report data and other information that the Exchange provided to the Commission as Exhibit 3 to its rule filing, as amended by Amendment No. 1.[23] The Pilot Report reflects that, for the period December 1, 2014 through December 31, 2015, there were 457 opening transactions in new series of FLEX equity options initiated on the Exchange with small minimum value sizes made possible by the Pilot Program, 12 of which were initiated by retail customers, 37 of which were initiated by high net worth customers, and 409 of which were initiated by institutional customers.[24] In addition, the Pilot Report reflects that there were 12 opening transactions in new series of FLEX index options initiated on the Exchange pursuant to the Pilot Program, none of which were initiated by retail customers, 5 of which were initiated by high net worth customers, and 7 of which were initiated by institutional customers.[25] Overall, only a limited number of retail customers, as defined by the Exchange, appear to have availed themselves of the pilot and entered into opening transactions in new series of FLEX Options with small minimum value sizes. Moreover, the Exchange has stated that, during the period December 2014 through December 2015, the 457 opening transactions in new series of FLEX equity options covered by the Pilot Program accounted for approximately 6.3% of the total volume and approximately 3.7% of the total value of all opening FLEX equity options transactions in new series—*i.e.,* opening transactions covered by the Pilot Program as well as opening transactions with value sizes above the pre-pilot minimum.[26] The Exchange has also stated that, during the period December 2014 through December 2015, the 12 opening transactions in new series of FLEX index options covered by the Pilot Program accounted for approximately 8.8% of the total volume and approximately 4.1% of the total value of all opening FLEX index option transactions in new series.[27] Furthermore, it is the Commission's understanding that FLEX Option trading on the Exchange accounts for less than 1.37% of the Exchange's combined trading volume for standardized and FLEX options.[28] Notably, the Exchange represents that it has not experienced any adverse market effects with respect to the Pilot Program.[29]

On balance, the Commission believes that it is consistent with the Act to make the Pilot Program permanent and thus eliminate, on a permanent basis, the minimum value size requirements currently set forth in Rules 1079(a)(8)(A)(i) and (ii) for RFQs for opening transactions in new series of FLEX Options. The protections noted below, including heightened options suitability requirements, should help to address any concerns about the potential for retail participation in the Exchange's FLEX Options market in the future. Moreover, the Commission is not aware of any data or analysis to date suggesting that the trading of FLEX Options has acted as a surrogate for the trading of standardized options on the Exchange as a result of the Pilot Program. Indeed, as is stated above, the Commission understands that FLEX Option trading on the Exchange accounts for less than 1.37% of the Exchange's combined trading volume for standardized and FLEX options.[30] In addition, the Exchange has indicated that Pilot Program FLEX Option trades account for a very small proportion of the total volume and total value of all FLEX Option trades.[31] Thus, it appears that the Pilot Program has not caused significant trading interest to migrate from the Exchange's standardized options market to its FLEX Options market, nor caused, to the best of our knowledge, a large number of investors to use FLEX Options to avoid certain requirements in the standardized market. Based on the current data and size of the FLEX Options market, and the lack of any evidence to the contrary, it would appear that investors are using the FLEX Options market for its intended purpose—to be able to customize certain terms not available in the standardized options market. Further, the Commission notes that it is not aware of any problems resulting from the permanent approval of NYSE Arca's and CBOE's similar pilots eliminating FLEX Option minimum value sizes. As a result, the Commission believes that it is appropriate under the Act, and would promote just and equitable principles of trade, as well as remove impediments to and perfect the mechanism of a free and open market and a national market system, to permanently eliminate the current minimum value size requirements for RFQs for opening transactions in new series of FLEX Options and replace them with a one-contract minimum size.

Existing safeguards—such as position reporting requirements and margin requirements—will continue to apply to FLEX Options.[32] Further, as noted above, under Rule 9b–1 under the Act,[33] all customers of a broker-dealer with options accounts approved to trade FLEX Options must receive the ODD, which contains specific disclosures about the characteristics and special risks of trading FLEX Options.[34] In addition, similar to other options, FLEX Options are subject to Trading Permit Holder supervision and suitability requirements, such as in Rules 1025 and 1026, respectively.[35] In addition to ensuring that FLEX Options are suitable for their customers, broker-dealers also must take into account the characteristics of the FLEX market, as compared to the standardized market, when satisfying their best execution obligations. The Commission believes that the safeguards in place are reasonably designed to help mitigate potential risks for retail investors and other market participants investing in FLEX Options.

The Exchange believes that permanently removing the minimum value size requirements for RFQs for opening transactions in new series of FLEX Options and replacing them with a one-contract minimum size will give investors a more viable, exchange-traded alternative to customized options in the OTC market, which are not subject to minimum value size requirements.[36] Furthermore, the Exchange has represented that broker-dealers have indicated to the Exchange that the minimum value size requirements have prevented them from bringing transactions on the Exchange that are already taking place in the OTC

[23] *Id.*

[24] *Id.* The Exchange categorized a trade as initiated by a retail customer if the option premium was less than $5,000, as initiated by a high net worth customer if the option premium was between $5,000 and $49,000, and as initiated by an institutional customer if the option premium was greater than $50,000. *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.* The Exchange notes that the Pilot Report covers only RFQs for opening transactions in new series of FLEX Options, as per the Pilot Program. The Pilot Report does not cover RFQs for transactions in currently-opened FLEX Option series or responsive quotes for FLEX Options pursuant to Rules 1079(a)(8)(B) or (C), respectively, as transactions in currently-opened FLEX Option series and responsive quotes were not part of the Pilot Program. *See* Notice.

[28] *See* Exhibit 3 to the Exchange's rule filing, as amended by Amendment No. 1, *supra* note 5.

[29] *Id.*

[30] *Id.*

[31] *Id.*

[32] Certain position limit, aggregation and exercise limit requirements continue to apply to FLEX Options in accordance with Rule 1079(d) (Position Limits) and Rule 1079(e) (Exercise Limits). But the Commission notes that certain FLEX Options do not have position or exercise limits.

[33] 17 CFR 240.9b–1.

[34] *See supra* notes 16 and 19.

[35] *See* Notice.

[36] *Id.*

market.[37] Therefore, it appears possible that eliminating the minimum value sizes for RFQs for opening transactions in new series of FLEX Options could further incent trading interest in customized options to move from the OTC market to the Exchange. To the extent investors choose to trade FLEX Options on the Exchange in lieu of the OTC market as a result of the permanent removal of the minimum value size requirements, such action should benefit investors. As the Commission has previously noted, there are certain benefits to trading on an exchange, such as enhanced efficiency in initiating and closing out positions, increased market transparency, and heightened contra-party creditworthiness due to the role of the Options Clearing Corporation as issuer and guarantor of FLEX Options.[38]

## IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to 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–2015–94 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2015–94. 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–2015–94 and should be submitted on or before April 6, 2016.

## V. Accelerated Approval of Proposal, as Modified by Amendment No. 1

In Amendment No. 1, the Exchange submitted additional Pilot Program data to supplement Exhibit 3 to the Exchange's rule filing, which initially contained a report of Pilot Program data for the period December 2014 through July 2015. Amendment No. 1 contains an updated pilot report that provides data regarding FLEX Option transactions under the Pilot Program for the period August 2015 through December 2015, as well as additional information regarding transactions covered by the Pilot Program and FLEX Option trading on the Exchange.[39] The Commission believes that the supplemental Pilot Program data set forth in Amendment No. 1 further supports approval of the Pilot Program because, collectively with the Pilot Program data initially submitted as Exhibit 3 to the rule filing, the data reflects that there is minimal usage of FLEX Options by retail customers on the Exchange, and that market participants appear to be utilizing FLEX Options for their intended purpose—*i.e.,* customization of certain terms not available in the standardized options market—and not as a surrogate for standardized option trading. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[40] for approving the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the **Federal Register**.

## VI. Conclusion

In summary, the Commission believes, for the reasons noted above, that the proposed rule change to permanently approve the Pilot Program, thereby permanently implementing a one-contract minimum size requirement in place of the pre-existing minimum size requirements for RFQs for opening transactions in new series of FLEX Options on the Exchange, is consistent with the Act and Section 6(b)(5) thereunder in particular, and should be approved, as amended. The Exchange has committed, and the Commission expects the Exchange, to continue to monitor the usage of FLEX Options, whether changes need to be made to its rules or the ODD to address any changes in retail FLEX Option participation, and for any other issues that may occur as a result of the elimination of the minimum value sizes on a permanent basis, including whether FLEX Option trades are being used as a surrogate for trading options in the standardized market.[41]

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change (SR–Phlx–2015–94) be, and it hereby is, approved, on an accelerated basis, as amended.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05856 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–77340; File No. SR–NYSEArca–2015–93]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating To Listing and Trading of Shares of the Cumberland Municipal Bond ETF Under NYSE Arca Equities Rule 8.600

March 10, 2016.

## I. Introduction

On November 24, 2015, NYSE Arca, Inc. (''Exchange'') filed with the Securities and Exchange Commission

[37] *Id.*

[38] *See* Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008) (order approving SR–CBOE–2006–36).

[39] *See* Exhibit 3 to the Exchange's rule filing, as amended by Amendment No. 1, *supra* note 5.

[40] 15 U.S.C. 78s(b)(2).

[41] *See* Notice (Exchange representing that it will continue to monitor the usage of FLEX Options and whether any changes to its rules or the ODD are necessary).

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

(''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 Cumberland Municipal Bond ETF (''Fund''), a series of the ETFis Series Trust I (''Trust''). The proposed rule change was published for comment in the **Federal Register** on December 14, 2015.[3] On December 29, 2015, the Exchange submitted Amendment No. 1 to the proposed rule change.[4] On January 21, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] The Commission received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.

## II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund, an actively managed exchange-traded fund (''ETF''), under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund is a series of the Trust.[8] The investment adviser to the Fund will be Virtus ETF Advisers LLC (''Adviser''), and the Fund's sub-adviser will be Cumberland Advisors Inc. (''Sub-Adviser'').[9] Virtus ETF Solutions LLC will serve as the Fund's operational administrator. ETF Distributors LLC will serve as the distributor of the Shares on an agency basis. The Bank of New York Mellon (''Administrator'') will serve as the administrator, custodian, transfer agent and fund accounting agent for the Fund. The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.[10]

### *A. Exchange's Description of the Fund's Principal Investments*

The Fund will seek to provide a competitive level of current income exempt from federal income tax, while preserving capital. The Fund, under normal market conditions,[11] will invest at least 80% of its net assets in debt securities whose interest is, in the opinion of bond counsel for the issuer at the time of issuance, exempt from U.S. federal income tax (''Municipal Bonds''). The Sub-Adviser will invest the Fund's assets using a barbell strategy, which means that the Sub-Adviser will overweight the Fund's investments in Municipal Bonds with maturities on the short and long ends of the fixed income yield curve, while underweighting exposure to Municipal Bonds with intermediate maturities.

Municipal Bonds in which the Fund may invest include one or more of the following: General obligation bonds, which are typically backed by the full faith, credit, and taxing power of the issuer; revenue bonds, which are typically secured by revenues generated by the issuer; discount bonds, which may be originally issued at a discount to par value or sold at market price below par value; premium bonds, which are sold at a premium to par value; zero coupon bonds, which are issued at an original issue discount, with the full value, including accrued interest, paid at maturity; and private activity bonds, which are typically issued by or on behalf of local or state government for the purpose of financing the project of a private user.

The Fund will have no target duration for its investment portfolio, and the Sub-Adviser may target a shorter or longer average portfolio duration based on the Sub-Adviser's forecast of interest rates and view of fixed-income markets generally.[12] The Sub-Adviser will generally apply a heavier weight toward Municipal Bonds with shorter maturities during periods of high interest rates and longer maturities during periods of lower interest rates.[13]

With respect to credit quality, under normal market conditions, at least 90% of the Fund's assets invested in Municipal Bonds will be in Municipal Bonds rated ''A'' or better by at least one major credit rating agency or, if unrated, deemed to be of comparable quality by the Sub-Adviser. From time to time, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76590 (Dec. 8, 2015), 80 FR 77384 (''Notice'').

[4] In Amendment No. 1, the Exchange clarified that each Municipal Bond (as defined herein) held by the Fund must be a constituent of a deal where the deal's original offering amount was at least $100 million, clarified whether certain securities would be exchange-traded or over-the-counter (''OTC''), deleted a statement relating to redemption of Shares, clarified pricing information for certain assets, and corrected a typographical error. Because Amendment No. 1 to the proposed rule change is technical in nature and does not materially alter the substance of the proposed rule change or raise any novel regulatory issues, it is not subject to notice and comment. Amendment No. 1, which amended and replaced the original proposal in its entirety, is available on the Commission's Web site at: *http://www.sec.gov/comments/sr-nysearca-2015-93/nysearca201593-1.pdf.*

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 76955, 81 FR 4724 (Jan. 27, 2016). The Commission designated March 11, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. *See* Securities Exchange Act Release No. 76955A (Mar. 2, 2016), 81 FR 12174 (Mar. 8, 2016) (correcting the date to ''March 11, 2016'' as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The Exchange represents that the Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On May 20, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–187668 and 811–22819) (''Registration Statement''). The Exchange further states that the Trust has obtained certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 30607 (Jul. 23, 2013) (File No. 812–14080).

[9] According to the Exchange, the Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser (but not the Sub-Adviser) is affiliated with one or more broker-dealers, and the Adviser has implemented and will maintain a fire wall with respect to each broker-dealer affiliate regarding access to information concerning the composition and changes to the portfolio. In the event (a) the Adviser or Sub-Adviser become registered broker-dealers or 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 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.

[10] The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value (''NAV''), distributions, and taxes, among other things, can be found in the Notice, Amendment No. 1 to the proposed rule change, and the Registration Statement, as applicable. *See supra* notes 3, 4, and 8, respectively.

[11] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] Duration measures the interest rate sensitivity of a debt security by assessing and weighting the present value of the security's payment pattern. Generally, the longer the maturity, the greater the duration and, therefore, the greater effect interest rate changes have on the price of the security.

[13] According to the Exchange, under normal market conditions, each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least $100 million. In addition, no Municipal Bond held by the Fund will exceed 30% of the Fund's net assets, and the five most heavily weighted Municipal Bonds held by the Fund will not in the aggregate account for more than 50% of the Fund's assets. Further, the Fund will hold Municipal Bonds of a minimum of 13 non-affiliated issuers.

Fund may concentrate (*i.e.,* invest more than 25% of its total assets) in particular sectors. The Fund may sell investments for a variety of reasons, such as to adjust the portfolio's average maturity, duration, or overall credit quality, or to shift assets into and out of higher-yielding or lower-yielding securities or certain sectors.

According to the Exchange, under normal market conditions, at least 80% of the Fund's income will be exempt from federal income taxes. However, a significant portion of the Fund's income could be derived from securities subject to the alternative minimum tax.

*B. Exchange's Description of the Fund's Other Investments*

While the Fund, under normal market conditions, will invest at least 80% of its assets in Municipal Bonds, as described above, the Fund may invest its remaining assets in other assets and financial instruments, as described below.

The Fund may invest in equity securities, both directly and indirectly through investment in shares of ETFs,[14] other investment companies, and other types of securities and instruments described below. The equity portion of the Fund's portfolio may include common stocks traded on securities exchanges or in the OTC market. In addition to common stocks, the equity portion of the Fund's portfolio may also include exchange-traded and OTC preferred stocks, and exchange-traded and OTC warrants.[15]

The Fund may purchase taxable municipal bonds when the Sub-Adviser believes they offer opportunities for the Fund, or variable rate demand notes (''VRDNs'') that pay interest monthly or quarterly based on a floating rate that is reset daily or weekly based on an index of short-term municipal rates. The Fund also may invest in exchange-traded and OTC securities convertible into common stock. These securities will be convertible bonds and convertible preferred stocks.[16]

The Fund may invest directly and indirectly in cash equivalents, namely, money market instruments that are the following: U.S. Government obligations or corporate debt obligations (including those subject to repurchase agreements), banker's acceptances [17] and certificates of deposit [18] of domestic branches of banks, commercial paper,[19] and master notes.[20]

In order to maintain sufficient liquidity, to implement investment strategies, or for temporary defensive purposes, the Fund may invest a significant portion of its assets in shares of one or more money market funds. The Fund may also invest in the securities of other non-exchange-traded investment company securities in compliance with the 1940 Act and the rules thereunder.

The Fund may write U.S. exchange-traded call and put options on securities, ETFs, or security indexes to seek income, or may purchase or write U.S. exchange-traded put or call options for hedging purposes.

The Fund may purchase securities on a when-issued basis or for settlement at a future date (forward commitment), if the Fund holds sufficient liquid assets to meet the purchase price.

*C. Exchange's Description of the Fund's Investment Restrictions*

The Fund may, from time to time, take temporary defensive positions that are inconsistent with its principal investment strategies in an attempt to respond to adverse market, economic, political, or other conditions. In such circumstances, the Fund may hold up to 100% of its portfolio in cash and cash equivalent positions.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), consistent with Commission guidance. 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 assets. Illiquid assets 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's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

## II. Proceedings to Determine Whether to Approve or Disapprove SR–NYSEArca–2015–93 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [21] to determine whether the proposed rule change, as modified by Amendment No. 1 thereto, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[22] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and

[14] The ETFs in which the Fund may invest will be registered under the 1940 Act and include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). Such ETFs all will be listed and traded in the U.S. on registered exchanges.

[15] With respect to its exchange-traded equity securities investments, the Fund will normally invest in equity securities that are listed and traded on a U.S. exchange or in markets that are members of the Intermarket Surveillance Group (''ISG'') or parties to a comprehensive surveillance sharing agreement with the Exchange. In any case, not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (except for non-exchange-traded investment company securities) will consist of equity securities whose principal market is not a member of ISG or a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

[16] The criteria above also will apply to exchange-traded convertible preferred stocks and exchange-traded stocks into which convertible bonds may be converted. *See supra* note 15.

[17] Banker's acceptances are time drafts drawn on and ''accepted'' by a bank. When a bank ''accepts'' such a time draft, it assumes liability for its payment. When the Fund acquires a banker's acceptance, the bank that ''accepted'' the time draft is liable for payment of interest and principal when due. The banker's acceptance carries the full faith and credit of such bank.

[18] A certificate of deposit is an unsecured, interest bearing debt obligation of a bank.

[19] Commercial paper is an unsecured, short-term debt obligation of a bank, corporation, or other borrower. Commercial paper maturity generally ranges from two to 270 days and is usually sold on a discounted basis rather than as an interest-bearing instrument. The Fund will invest directly in commercial paper only if it is rated in one of the top two rating categories by Moody's, S&P or Fitch or, if not rated, is of equivalent quality in the Adviser's opinion. Commercial paper may include master notes of the same quality. Master notes are unsecured obligations which are redeemable upon demand of the holder and which permit the investment of fluctuating amounts at varying rates of interest.

[20] Master notes may be acquired by the Fund through the master note program of the Fund's custodian bank.

[21] 15 U.S.C. 78s(b)(2)(B).

[22] *Id.*

manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [23]

**III. Procedure: Request for Written Comments**

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[24]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by April 6, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 20, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice [25] and in Amendment No. 1 to the proposed rule change,[26] in addition to any other comments they may wish to submit about the proposed rule change.

The Exchange provides that the Fund may invest in one or more of the following broad categories of Municipal Bonds: (a) General obligation bonds; (b) revenue bonds; (c) discount bonds; (d) premium bonds; (e) zero coupon bonds; and (f) private activity bonds. Moreover, the Exchange represents that: (i) Each Municipal Bond held by the Fund must be a constituent of a deal where the deal's original offering amount was at least $100 million; (ii) no Municipal Bond held by the Fund will exceed 30% of the Fund's net assets, and the five most heavily weighted Municipal Bonds held by the Fund will not in the aggregate account for more than 50% of the Fund's assets; and (iii) the Fund will hold Municipal Bonds of a minimum of 13 non-affiliated issuers. Apart from these broad representations, the Exchange provides no other information about the kinds of municipal bonds in which the Fund may invest. Accordingly, the Commission seeks comment on whether the Exchange's representations relating to the Municipal Bonds to be held by the Fund are sufficiently clear in their application to municipal bonds, specifically, and are consistent with the requirements of Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices.

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–2015–93 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2015–93. 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 these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–93 and should be submitted on or before April 6, 2016. Rebuttal comments should be submitted by April 20,2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016–05855 Filed 3–15–16; 8:45 am]

**BILLING CODE 8011–01–P**

[23] 15 U.S.C. 78f(b)(5).

[24] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[25] *See supra* note 3.

[26] *See supra* note 4.

[27] 17 CFR 200.30–3(a)(57).

## SOCIAL SECURITY ADMINISTRATION

**[Docket No. SSA–2015–0055]**

### Social Security Ruling 16–3p; Titles II and XVI: Evaluation of Symptoms in Disability Claims

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling (SSR).

**SUMMARY:** We are providing notice of SSR 16–3p. This Ruling supersedes SSR 96–7p. This Ruling provides guidance about how we evaluate statements regarding the intensity, persistence, and limiting effects of symptoms in disability claims under Titles II and XVI of the Social Security Act (Act) and blindness claims under Title XVI of the Act.

**DATES:** *Effective Date:* March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Elaine Tocco, Office of Disability Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–6356. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:** Although 5 U.S.C. 552(a)(1) and (a)(2) do not require us to publish this SSR, we are doing so in accordance with 20 CFR 402.35(b)(1).

Through SSRs, we convey to the public SSA precedential decisions relating to the Federal old age, survivors, disability, supplemental security income, and special veterans benefits programs. We may base SSRs

on determinations or decisions made at all levels of administrative adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, or other interpretations of the law and regulations.

Although SSRs do not have the same force and effect as statutes or regulations, they are binding on all components of the Social Security Administration. 20 CFR 402.35(b)(1).

This SSR will remain in effect until we publish a notice in the **Federal Register** that rescinds it, or we publish a new SSR that replaces or modifies it.

(Catalog of Federal Domestic Assistance, Programs Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006—Supplemental Security Income.)

Dated: March 9, 2016.

**Carolyn W. Colvin,**

*Acting Commissioner of Social Security.*

**Policy Interpretation Ruling**

*Titles II and XVI: Evaluation of Symptoms in Disability Claims*

This SSR supersedes SSR 96–7p: Policy Interpretation Ruling Titles II and XVI: Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements.

*Purpose:*

We are rescinding SSR 96–7p: Policy Interpretation Ruling Titles II and XVI Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual's Statements and replacing it with this Ruling. We solicited a study and recommendations from the Administrative Conference of the United States (ACUS) on the topic of symptom evaluation. Based on ACUS's recommendations [1] and our adjudicative experience, we are eliminating the use of the term ''credibility'' from our sub-regulatory policy, as our regulations do not use this term. In doing so, we clarify that subjective symptom evaluation is not an examination of an individual's character. Instead, we will more closely follow our regulatory language regarding symptom evaluation.

Consistent with our regulations, we instruct our adjudicators to consider all of the evidence in an individual's record when they evaluate the intensity and persistence of symptoms after they find that the individual has a medically determinable impairment(s) that could reasonably be expected to produce those symptoms. We evaluate the intensity and persistence of an individual's symptoms so we can determine how symptoms limit ability to perform work-related activities for an adult and how symptoms limit ability to function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI disability claim.

*Citations (Authority):*

Sections 216(i), 223(d), and 1614(a)(3) of the Social Security Act as amended; Regulations no. 4, sections 404.1508, 404.1512(d), 404.1513, 404.1520, 404.1526, 404.1527, 404.1528, 404.1529, 404.1545 and 404.1594; and Regulations No. 16 sections 416.908, 416.912(d), 416.913, 416.920, 416.924(c), 416.924a(b)(9)(ii–iii), 416.926a, 416.927, 416.928, 416.929, 416.930(c), 416.945, 416.994, and 416.994a.

*Background:*

In determining whether an individual is disabled, we consider all of the individual's symptoms, including pain, and the extent to which the symptoms can reasonably be accepted as consistent with the objective medical and other evidence in the individual's record. We define a symptom as the individual's own description or statement of his or her physical or mental impairment(s).[2] Under our regulations, an individual's statements of symptoms alone are not enough to establish the existence of a physical or mental impairment or disability. However, if an individual alleges impairment-related symptoms, we must evaluate those symptoms using a two-step process set forth in our regulations.[3]

First, we must consider whether there is an underlying medically determinable physical or mental impairment(s) that could reasonably be expected to produce an individual's symptoms, such as pain. Second, once an underlying physical or mental impairment(s) that could reasonably be expected to produce an individual's symptoms is established, we evaluate the intensity and persistence of those symptoms to determine the extent to which the symptoms limit an individual's ability to perform work-related activities for an adult or to function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI disability claim.

This ruling clarifies how we consider:

- The intensity, persistence, and functionally limiting effects of symptoms,
- Objective medical evidence when evaluating symptoms,
- Other evidence when evaluating symptoms,
- The factors set forth in 20 CFR 404.1529(c)(3) and 416.929(c)(3),
- The extent to which an individual's symptoms affect his or her ability to perform work-related activities or function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI disability claim, and
- Adjudication standards for evaluating symptoms in the sequential evaluation process.

*Policy Interpretation:*

We use a two-step process for evaluating an individual's symptoms.

*The two-step process:*

Step 1: We Determine Whether the Individual Has a Medically Determinable Impairment (MDI) That Could Reasonably be Expected To Produce the Individual's Alleged Symptoms

An individual's symptoms, such as pain, fatigue, shortness of breath, weakness, nervousness, or periods of poor concentration will not be found to affect the ability to perform work-related activities for an adult or to function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI disability claim unless medical signs or laboratory findings show a medically determinable impairment is present. *Signs* are anatomical, physiological, or psychological abnormalities established by medically acceptable clinical diagnostic techniques that can be observed apart from an individual's symptoms.[4] *Laboratory findings* are anatomical, physiological, or psychological phenomena, which can be shown by the use of medically

[1] ACUS made several recommendations in its March 12, 2015 final report, ''Evaluating Subjective Symptoms in Disability Claims.'' Among other things, ACUS recommended we consider amending SSR 96–7p to clarify that subjective symptom evaluation is not an examination of an individual's character, but rather is an evidence-based analysis of the administrative record to determine whether the nature, intensity, frequency, or severity of an individual's symptoms impact his or her ability to work. In any revised SSR, ACUS also recommended we more closely follow our regulatory language about symptom evaluation, which does not use the term ''credibility'' and instead directs adjudicators to consider medical and other evidence to evaluate the intensity and persistence of symptoms to determine how the individual's symptoms limit capacity for work if he or she is an adult, or for a child with a title XVI disability claim, how symptoms limit ability to function. ACUS further recommended when revising SSR 96–7p, we offer additional guidance to adjudicators on regulatory implementation problems that have been identified since we published SSR 96–7p.

[2] See 20 CFR 404.1528(a) and 416.928(a) for how our regulations define symptoms.

[3] See 20 CFR 404.1529 and 416.929 for how we evaluate statements of symptoms.

[4] See 20 CFR 404.1528(b) and 416.928(b) for how our regulations define signs.

acceptable laboratory diagnostic techniques.[5] We call the medical evidence that provides signs or laboratory findings *objective medical evidence.* We must have objective medical evidence from an acceptable medical source[6] to establish the existence of a medically determinable impairment that could reasonably be expected to produce an individual's alleged symptoms.[7]

In determining whether there is an underlying medically determinable impairment that could reasonably be expected to produce an individual's symptoms, we do not consider whether the severity of an individual's alleged symptoms is supported by the objective medical evidence. For example, if an individual has a medically determinable impairment established by a knee x-ray showing mild degenerative changes and he or she alleges extreme pain that limits his or her ability to stand and walk, we will find that individual has a medically determinable impairment that could reasonably be expected to produce the symptom of pain. We will proceed to step two of the two-step process, even though the level of pain an individual alleges may seem out of proportion with the objective medical evidence.

In some instances, the objective medical evidence clearly establishes that an individual's symptoms are due to a medically determinable impairment. At other times, we may have insufficient evidence to determine whether an individual has a medically determinable impairment that could potentially account for his or her alleged symptoms. In those instances, we develop evidence regarding a potential medically determinable impairment using a variety of means set forth in our regulations. For example, we may obtain additional information from the individual about the nature of his or her symptoms and their effect on functioning. We may request additional information from the individual about other testing or treatment he or she may have undergone for the symptoms. We may request clarifying information from an individual's medical sources, or we may send an individual to a consultative examination that may include diagnostic testing. We may use our agency experts to help us determine whether an individual's medically determinable impairment could reasonably be expected to produce his or her symptoms. At the administrative law judge hearing level or the Appeals Council level of the administrative review process, we may ask for and consider evidence from a medical or psychological expert to help us determine whether an individual's medically determinable impairment could reasonably be expected to produce his or her symptoms. If an individual alleges symptoms, but the medical signs and laboratory findings do not substantiate any medically determinable impairment capable of producing the individual's alleged symptoms, we will not evaluate the individual's symptoms at step two of our two-step evaluation process.

We will not find an individual disabled based on alleged symptoms alone. If there is no medically determinable impairment, or if there is a medically determinable impairment, but the impairment(s) could not reasonably be expected to produce the individual's symptoms, we will not find those symptoms affect the ability to perform work-related activities for an adult or ability to function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI disability claim.

Step 2: We Evaluate the Intensity and Persistence of an Individual's Symptoms Such as Pain and Determine the Extent to Which an Individual's Symptoms Limit His or Her Ability To Perform Work-Related Activities for an Adult or To Function Independently, Appropriately, and Effectively in an Age-Appropriate Manner for a Child With a Title XVI Disability Claim

Once the existence of a medically determinable impairment that could reasonably be expected to produce pain or other symptoms is established, we recognize that some individuals may experience symptoms differently and may be limited by symptoms to a greater or lesser extent than other individuals with the same medical impairments, the same objective medical evidence, and the same non-medical evidence. In considering the intensity, persistence, and limiting effects of an individual's symptoms, we examine the entire case record, including the objective medical evidence; an individual's statements about the intensity, persistence, and limiting effects of symptoms; statements and other information provided by medical sources and other persons; and any other relevant evidence in the individual's case record.

We will not evaluate an individual's symptoms without making every reasonable effort to obtain a complete medical history[8] unless the evidence supports a finding that the individual is disabled. We will not evaluate an individual's symptoms based solely on objective medical evidence unless that objective medical evidence supports a finding that the individual is disabled. We will evaluate an individual's symptoms based on the evidence in an individual's record as described below; however, not all of the types of evidence described below will be available or relevant in every case.

1. Consideration of Objective Medical Evidence

Symptoms cannot always be measured objectively through clinical or laboratory diagnostic techniques. However, objective medical evidence is a useful indicator to help make reasonable conclusions about the intensity and persistence of symptoms, including the effects those symptoms may have on the ability to perform work-related activities for an adult or to function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI claim.[9] We must consider whether an individual's statements about the intensity, persistence, and limiting effects of his or her symptoms are consistent with the medical signs and laboratory findings of record.

The intensity, persistence, and limiting effects of many symptoms can be clinically observed and recorded in the medical evidence. Examples such as reduced joint motion, muscle spasm, sensory deficit, and motor disruption illustrate findings that may result from, or be associated with, the symptom of pain.[10] These findings may be consistent with an individual's statements about symptoms and their functional effects. However, when the results of tests are not consistent with other evidence in the record, they may be less supportive of an individual's statements about pain or other symptoms than test results and statements that are consistent with other evidence in the record.

For example, an individual with reduced muscle strength testing who indicates that for the last year pain has limited his or her standing and walking

[5] See 20 CFR 404.1528(c) and 416.928(c) for how our regulations define laboratory findings.

[6] See 20 CFR 404.1513(a) and 416.913(a) for a list of acceptable medical sources.

[7] See 20 CFR 404.1508 and 416.908 for what is needed to show a medically determinable impairment.

[8] By ''complete medical history,'' we mean the individual's complete medical history for at least the 12 months preceding the month in which he or she filed an application, unless there is a reason to believe that development of an earlier period is necessary or the individual says that his or her alleged disability began less than 12 months before he or she filed an application. 20 CFR 404.1512(d) and 416.912(d).

[9] See 20 CFR 404.1529(c)(2) and 416.929(c)(2).

[10] See 20 CFR 404.1529(c)(2) and 416.929(c)(2).

to no more than a few minutes a day would be expected to have some signs of muscle wasting as a result. If no muscle wasting were present, we might not, depending on the other evidence in the record, find the individual's reduced muscle strength on clinical testing to be consistent with the individual's alleged impairment-related symptoms.

However, we will not disregard an individual's statements about the intensity, persistence, and limiting effects of symptoms solely because the objective medical evidence does not substantiate the degree of impairment-related symptoms alleged by the individual.[11] A report of minimal or negative findings or inconsistencies in the objective medical evidence is one of the many factors we must consider in evaluating the intensity, persistence, and limiting effects of an individual's symptoms.

2. Consideration of Other Evidence

If we cannot make a disability determination or decision that is fully favorable based solely on objective medical evidence, then we carefully consider other evidence in the record in reaching a conclusion about the intensity, persistence, and limiting effects of an individual's symptoms. Other evidence that we will consider includes statements from the individual, medical sources, and any other sources that might have information about the individual's symptoms, including agency personnel, as well as the factors set forth in our regulations.[12] For example, for a child with a title XVI disability claim, we will consider evidence submitted from educational agencies and personnel, statements from parents and other relatives, and evidence submitted by social welfare agencies, therapists, and other practitioners.[13]

a. The Individual

An individual may make statements about the intensity, persistence, and limiting effects of his or her symptoms. If a child with a title XVI disability claim is unable to describe his or her symptoms adequately, we will accept a description of his or her symptoms from the person most familiar with the child, such as a parent, another relative, or a guardian.[14] For an adult whose impairment prevents him or her from describing symptoms adequately, we may also consider a description of his or her symptoms from a person who is familiar with the individual.

An individual may make statements about symptoms directly to medical sources, other sources, or he or she may make them directly to us. An individual may have made statements about symptoms in connection with claims for other types of disability benefits such as workers' compensation, benefits under programs of the Department of Veterans Affairs, or private insurance benefits.

An individual's statements may address the frequency and duration of the symptoms, the location of the symptoms, and the impact of the symptoms on the ability to perform daily living activities. An individual's statements may also include activities that precipitate or aggravate the symptoms, medications and treatments used, and other methods used to alleviate the symptoms. We will consider an individual's statements about the intensity, persistence, and limiting effects of symptoms, and we will evaluate whether the statements are consistent with objective medical evidence and the other evidence.

b. Medical Sources

Medical sources may offer diagnoses, prognoses, and opinions as well as statements and medical reports about an individual's history, treatment, responses to treatment, prior work record, efforts to work, daily activities, and other information concerning the intensity, persistence, and limiting effects of an individual's symptoms.

Important information about symptoms recorded by medical sources and reported in the medical evidence may include, but is not limited to, the following:

- Onset, description of the character and location of the symptoms, precipitating and aggravating factors, frequency and duration, change over a period of time (*e.g.,* whether worsening, improving, or static), and daily activities. Very often, the individual has provided this information to the medical source, and the information may be compared with the individual's other statements in the case record. In addition, the evidence provided by a medical source may contain medical opinions about the individual's symptoms and their effects. Our adjudicators will weigh such opinions by applying the factors in *20 CFR 404.1527* and *416.927.*
- A longitudinal record of any treatment and its success or failure, including any side effects of medication.
- Indications of other impairments, such as potential mental impairments, that could account for an individual's allegations.

Medical evidence from medical sources that have not treated or examined the individual is also important in the adjudicator's evaluation of an individual's statements about pain or other symptoms. For example, State agency medical and psychological consultants and other program physicians and psychologists may offer findings about the existence and severity of an individual's symptoms. We will consider these findings in evaluating the intensity, persistence, and limiting effects of the individual's symptoms. Adjudicators at the hearing level or at the Appeals Council level must consider the findings from these medical sources even though they are not bound by them.[15]

c. Non-Medical Sources

Other sources may provide information from which we may draw inferences and conclusions about an individual's statements that would be helpful to us in assessing the intensity, persistence, and limiting effects of symptoms. Examples of such sources include public and private agencies, other practitioners, educational personnel, non-medical sources such as family and friends, and agency personnel. We will consider any statements in the record noted by agency personnel who previously interviewed the individual, whether in person or by telephone. The adjudicator will consider any personal observations of the individual in terms of how consistent those observations are with the individual's statements about his or her symptoms as well as with all of the evidence in the file.

d. Factors To Consider In Evaluating the Intensity, Persistence and Limiting Effects of an Individual's Symptoms

In addition to using all of the evidence to evaluate the intensity, persistence, and limiting effects of an individual's symptoms, we will also use the factors set forth in *20 CFR 404.1529(c)(3)* and *416.929(c)(3).* These factors include:

1. Daily activities;

2. The location, duration, frequency, and intensity of pain or other symptoms;

3. Factors that precipitate and aggravate the symptoms;

4. The type, dosage, effectiveness, and side effects of any medication an individual takes or has taken to alleviate pain or other symptoms;

[11] See 20 CFR 404.1529 and 416.929.

[12] See 20 CFR 404.1513 and 416.913.

[13] See 20 CFR 404.1529(c)(3) and 416.929(c)(3).

[14] See 20 CFR 416.928(a).

[15] See 20 CFR 404.1527 and 416.927.

5. Treatment, other than medication, an individual receives or has received for relief of pain or other symptoms;

6. Any measures other than treatment an individual uses or has used to relieve pain or other symptoms (*e.g.,* lying flat on his or her back, standing for 15 to 20 minutes every hour, or sleeping on a board); and

7. Any other factors concerning an individual's functional limitations and restrictions due to pain or other symptoms.

We will consider other evidence to evaluate only the factors that are relevant to assessing the intensity, persistence, and limiting effects of the individual's symptoms. If there is no information in the evidence of record regarding one of the factors, we will not discuss that specific factor in the determination or decision because it is not relevant to the case. We will discuss the factors pertinent to the evidence of record.

How We Will Determine if an Individual's Symptoms Affect the Ability To Perform Work-Related Activities for an Adult, or Age-Appropriate Activities for a Child With a Title XVI Disability Claim

If an individual's statements about the intensity, persistence, and limiting effects of symptoms are consistent with the objective medical evidence and the other evidence of record, we will determine that the individual's symptoms are more likely to reduce his or her capacities to perform work-related activities for an adult or reduce a child's ability to function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI disability claim.[16] In contrast, if an individual's statements about the intensity, persistence, and limiting effects of symptoms are inconsistent with the objective medical evidence and the other evidence, we will determine that the individual's symptoms are less likely to reduce his or her capacities to perform work-related activities or abilities to function independently, appropriately, and effectively in an age-appropriate manner.

We may or may not find an individual's symptoms and related limitations consistent with the evidence in his or her record. We will explain which of an individual's symptoms we found consistent or inconsistent with the evidence in his or her record and how our evaluation of the individual's symptoms led to our conclusions. We will evaluate an individual's symptoms considering all the evidence in his or her record.

In determining whether an individual's symptoms will reduce his or her corresponding capacities to perform work-related activities or abilities to function independently, appropriately, and effectively in an age-appropriate manner, we will consider the consistency of the individual's own statements. To do so, we will compare statements an individual makes in connection with the individual's claim for disability benefits with any existing statements the individual made under other circumstances.

We will consider statements an individual made to us at each prior step of the administrative review process, as well as statements the individual made in any subsequent or prior disability claims under titles II and XVI. If an individual's various statements about the intensity, persistence, and limiting effects of symptoms are consistent with one another and consistent with the objective medical evidence and other evidence in the record, we will determine that an individual's symptoms are more likely to reduce his or her capacities for work-related activities or reduce the abilities to function independently, appropriately, and effectively in an age-appropriate manner. However, inconsistencies in an individual's statements made at varying times does not necessarily mean they are inaccurate. Symptoms may vary in their intensity, persistence, and functional effects, or may worsen or improve with time. This may explain why an individual's statements vary when describing the intensity, persistence, or functional effects of symptoms.

We will consider an individual's attempts to seek medical treatment for symptoms and to follow treatment once it is prescribed when evaluating whether symptom intensity and persistence affect the ability to perform work-related activities for an adult or the ability to function independently, appropriately, and effectively in an age-appropriate manner for a child with a title XVI disability claim. Persistent attempts to obtain relief of symptoms, such as increasing dosages and changing medications, trying a variety of treatments, referrals to specialists, or changing treatment sources may be an indication that an individual's symptoms are a source of distress and may show that they are intense and persistent.[17]

In contrast, if the frequency or extent of the treatment sought by an individual is not comparable with the degree of the individual's subjective complaints, or if the individual fails to follow prescribed treatment that might improve symptoms, we may find the alleged intensity and persistence of an individual's symptoms are inconsistent with the overall evidence of record. We will not find an individual's symptoms inconsistent with the evidence in the record on this basis without considering possible reasons he or she may not comply with treatment or seek treatment consistent with the degree of his or her complaints. We may need to contact the individual regarding the lack of treatment or, at an administrative proceeding, ask why he or she has not complied with or sought treatment in a manner consistent with his or her complaints. When we consider the individual's treatment history, we may consider (but are not limited to) one or more of the following:

- An individual may have structured his or her activities to minimize symptoms to a tolerable level by avoiding physical activities or mental stressors that aggravate his or her symptoms.
- An individual may receive periodic treatment or evaluation for refills of medications because his or her symptoms have reached a plateau.
- An individual may not agree to take prescription medications because the side effects are less tolerable than the symptoms.
- An individual may not be able to afford treatment and may not have access to free or low-cost medical services.
- A medical source may have advised the individual that there is no further effective treatment to prescribe or recommend that would benefit the individual.
- An individual's symptoms may not be severe enough to prompt him or her to seek treatment, or the symptoms may be relieved with over the counter medications.
- An individual's religious beliefs may prohibit prescribed treatment.
- Due to various limitations (such as language or mental limitations), an individual may not understand the appropriate treatment for or the need for consistent treatment of his or her impairment.
- Due to a mental impairment (for example, individuals with mental impairments that affect judgment, reality testing, or orientation), an individual may not be aware that he or she has a disorder that requires treatment.
- A child may disregard the level and frequency of treatment needed to

[16] See 20 CFR 404.1529(c)(4) and 416.929(c)(4).

[17] See 20 CFR 404.1529(c) and 416.929(c).

maintain or improve functioning because it interferes with his or her participation in activities typical of other children his or her age without impairments.

The above examples illustrate possible reasons an individual may not have pursued treatment. However, we will consider and address reasons for not pursuing treatment that are pertinent to an individual's case. We will review the case record to determine whether there are explanations for inconsistencies in the individual's statements about symptoms and their effects, and whether the evidence of record supports any of the individual's statements at the time he or she made them. We will explain how we considered the individual's reasons in our evaluation of the individual's symptoms.

Adjudication—How We Will Use Our Evaluation of Symptoms in Our Five-Step Sequential Evaluation Process To Determine Whether an Individual Is Disabled

In evaluating an individual's symptoms, it is not sufficient for our adjudicators to make a single, conclusory statement that ''the individual's statements about his or her symptoms have been considered'' or that ''the statements about the individual's symptoms are (or are not) supported or consistent.'' It is also not enough for our adjudicators simply to recite the factors described in the regulations for evaluating symptoms. The determination or decision must contain specific reasons for the weight given to the individual's symptoms, be consistent with and supported by the evidence, and be clearly articulated so the individual and any subsequent reviewer can assess how the adjudicator evaluated the individual's symptoms.

Our adjudicators must base their findings solely on the evidence in the case record, including any testimony from the individual or other witnesses at a hearing before an administrative law judge or hearing officer. The subjective statements of the individual and witnesses obtained at a hearing should directly relate to symptoms the individual alleged. Our adjudicators are prohibited from soliciting additional non-medical evidence outside of the record on their own, except as set forth in our regulations and policies.

Adjudicators must limit their evaluation to the individual's statements about his or her symptoms and the evidence in the record that is relevant to the individual's impairments. In evaluating an individual's symptoms, our adjudicators will not assess an individual's overall character or truthfulness in the manner typically used during an adversarial court litigation. The focus of the evaluation of an individual's symptoms should not be to determine whether he or she is a truthful person. Rather, our adjudicators will focus on whether the evidence establishes a medically determinable impairment that could reasonably be expected to produce the individual's symptoms and given the adjudicator's evaluation of the individual's symptoms, whether the intensity and persistence of the symptoms limit the individual's ability to perform work-related activities or, for a child with a title XVI disability claim, limit the child's ability to function independently, appropriately, and effectively in an age-appropriate manner.

In determining whether an individual is disabled or continues to be disabled, our adjudicators follow a sequential evaluation process.[18] The first step of our five-step sequential evaluation process considers whether an individual is performing substantial gainful activity. If the individual is performing substantial gainful activity, we find him or her not disabled. If the individual is not performing substantial gainful activity, we proceed to step 2. We do not consider symptoms at the first step of the sequential evaluation process.

At step 2 of the sequential evaluation process, we determine whether an individual has a severe medically determinable physical or mental impairment or combination of impairments that has lasted or can be expected to last for a continuous period of at least 12 months or end in death.[19] A severe impairment is one that affects an individual's ability to perform basic work-related activities for an adult or that causes more than minimal functional limitations for a child with a title XVI disability claim.[20] At this step, we will consider an individual's symptoms and functional limitations to determine whether his or her impairment(s) is severe unless the objective medical evidence alone establishes a severe medically determinable impairment or combination of impairments that meets our duration requirement.[21] If an individual does not have a severe medically determinable impairment that meets our duration requirement, we will find the individual not disabled at step 2. If the individual has a severe medically determinable impairment that has met or is expected to meet our duration requirement, we proceed to the next step.

At step 3 of the sequential evaluation process, we determine whether an individual's impairment(s) meets or medically equals the severity requirements of a listed impairment. To decide whether the impairment meets the level of severity described in a listed impairment, we will consider an individual's symptoms when a symptom(s) is one of the criteria in a listing to ensure the symptom is present in combination with the other criteria. If the symptom is not one of the criteria in a listing, we will not evaluate an individual's symptoms at this step as long as all other findings required by the specific listing are present. Unless the listing states otherwise, it is not necessary to provide information about the intensity, persistence, or limiting effects of a symptom as long as all other findings required by the specific listing are present.[22] In considering whether an individual's symptoms, signs, and laboratory findings are medically equal to the symptoms, signs, and laboratory findings of a listed impairment, we will look to see whether the symptoms, signs, and laboratory findings are at least equal in severity to the listed criteria. However, we will not substitute the individual's allegations of pain or other symptoms for a missing or deficient sign or laboratory finding to raise the severity of the impairment(s) to that of a listed impairment.[23] If an individual's impairment meets or medically equals the severity requirements of a listing, we find him or her disabled. If an individual's impairment does not meet or medically equal a listing, we proceed to assess the individual's residual functional capacity at step 4 of the sequential evaluation process unless the individual is a child with a title XVI disability claim.

For a child with a title XVI disability claim whose impairment does not meet or medically equal the severity requirements of a listing, we consider whether his or her impairment functionally equals the listings. This means that the impairment results in ''marked'' limitations in two out of six domains of functioning or an ''extreme'' limitation in one of the six domains.[24] We will evaluate an individual's symptoms at this step when we rate

[18] See 20 CFR 404.1520 and 416.920. For continuing disability, see 404.1594, 416.994 and 416.994a.

[19] See 20 CFR 404.1520(a)(4)(ii) and 416.920(a)(4)(ii).

[20] See 20 CFR 416.924(c).

[21] See 20 CFR 416.920(c) for adults and 416.924(c) for children.

[22] See 20 CFR 404.1529(d)(2) and 416.929(d)(2).

[23] See 20 CFR 404.1529(d)(3) and 416.929(d)(3).

[24] See 20 CFR 416.926a.

how a child's impairment-related symptoms affect his or her ability to function independently, appropriately, and effectively in an age-appropriate manner in each functional domain. If a child's impairment functionally equals a listing, we find him or her disabled. If a child's impairment does not functionally equal the listings, we find him or her not disabled. For a child with a title XVI disability claim, the sequential evaluation process ends at this step.

If the individual's impairment does not meet or equal a listing, we will assess and make a finding about an individual's residual functional capacity based on all the relevant medical and other evidence in the individual's case record. An individual's residual functional capacity is the most the individual can still do despite his or her impairment-related limitations. We consider the individual's symptoms when determining his or her residual functional capacity and the extent to which the individual's impairment-related symptoms are consistent with the evidence in the record.[25]

After establishing the residual functional capacity, we determine whether an individual is able to do any past relevant work. At step 4, we compare the individual's residual functional capacity with the requirements of his or her past relevant work. If the individual's residual functional capacity is consistent with the demands of any of his or her past relevant work, either as the individual performed it or as the occupation is generally performed in the national economy, then we will find the individual not disabled. If none of the individual's past relevant work is within his or her residual functional capacity, we proceed to step 5 of the sequential evaluation process.

At step 5 of the sequential evaluation process, we determine whether the individual is able to adjust to other work that exists in significant numbers in the national economy. We consider the same residual functional capacity, together with the individual's age, education, and past work experience. If the individual is able to adjust to other work that exists in significant numbers in the national economy, we will find him or her not disabled. If the individual cannot adjust to other work that exists in significant numbers in the national economy, we find him or her disabled. At step 5 of the sequential evaluation process, we will not consider an individual's symptoms any further because we considered the individual's symptoms when we determined the individual's residual functional capacity.

Effective Date: This SSR is effective on March 16, 2016.

Cross-References: SSR 96–3p, ''Titles II and XVI: Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe,'' SSR 96–8p, ''Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims,'' SSR 96–6p, ''Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence;'' and Program Operations Manual System, sections DI 24515.061 and DI 24515.064.

[FR Doc. 2016–05916 Filed 3–15–16; 8:45 am]

**BILLING CODE 4191–02–P**

[25] See 20 CFR 404.1545 and 416.945.

## DEPARTMENT OF STATE

**[Public Notice: 9483]**

### 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 April 27, 2016 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, nonproliferation, 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 Christopher Herrick, Acting Executive Director of the International Security Advisory Board, U.S. Department of State, Washington, DC 20520, telephone: (202) 647–9683.

Dated: February 22, 2016.

**Christopher Herrick,**

*Acting Executive Director, International Security Advisory Board, U.S. Department of State.*

[FR Doc. 2016–05927 Filed 3–15–16; 8:45 am]

**BILLING CODE 4710–35–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. FD 36004]**

### Canadian Pacific Railway Limited—Petition for Expedited Declaratory Order

On March 2, 2016, Canadian Pacific Railway Limited (CPRL)[1] filed a petition requesting that the Board issue a declaratory order on two issues pertaining to CPRL's pursuit of a possible merger with Norfolk Southern Railway Company (NSR) whether: (1) ''A structure in which CPRL holds its current rail carrier subsidiaries in an independent, irrevocable voting trust while it acquires control of [NSR] and seeks STB merger authority potentially could be used to avoid the exercise of unlawful premature common control''; and (2) ''it would be potentially permissible for the chief executive officer of [CPRC] to terminate his position at [CPRC] entities in trust and then to take the comparable position at [NSR] pending merger approval.'' (Pet. 2.) CPRL has requested that the Board issue an expedited declaratory order by May 6, 2016.

On March 7, 2016, the Transportation Communications Union/IAM (TCU/IAM) requested that the Board provide interested parties 45 days to reply to the March 2 petition.[2] Also on March 7, 2016, CSX Corporation requested that the Board deny the March 2 petition, or, should the Board proceed, issue a procedural schedule that would allow parties 30 days from publication to submit comments and 15 days for the simultaneous submission of reply comments. On March 9, 2016, the Brotherhood of Maintenance of Way Employes Division/IBT, Brotherhood of Railroad Signalmen, and International

[1] CPRL is a noncarrier, publicly traded holding company that wholly owns directly or indirectly rail carriers in Canada and the United States that do business as ''CP'' or ''Canadian Pacific.'' ''CP'' or ''Canadian Pacific'' refers to the Canadian Pacific Railway Company (CPRC), the Canadian operating company and parent of the U.S. railroad operating subsidiaries Soo Line Railroad Company, Delaware and Hudson Railroad Company, and Dakota, Minnesota and Eastern Railroad Corporation.

[2] On March 7, 2016, CPRL filed a reply requesting that the Board deny TCU/IAM's extension request.

Association of Sheet Metal, Air, Rail and Transportation Workers/Mechanical Division jointly submitted a reply requesting until April 1, 2016, to reply to the March 2 petition and that no replies to replies be permitted. By comment filed on March 9, 2016, the Transportation Division of the Sheet Metal, Air, Rail and Transportation Workers Union joined in TCU/IAM's request for at least 45 days to reply to the March 2 petition.

Replies will be due by April 8, 2016, and should address the merits of CPRL's petition. CPRL will be permitted to file a rebuttal by April 13, 2016. Under the circumstances, this schedule will provide a sufficient opportunity for interested persons to present their views on the issues raised and for CPRL to respond.

*It is ordered:*

1. Substantive replies to CPRL's petition are due by April 8, 2016.

2. CPRL's rebuttal is due by April 13, 2016.

3. Notice of this action will be published in the **Federal Register**.

4. This decision is effective on its service date.

Decided: March 10, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kenyatta Clay,**

*Clearance Clerk.*

[FR Doc. 2016–05901 Filed 3–15–16; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Thirteenth Meeting: RTCA Tactical Operations Committee (TOC)

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

**ACTION:** Notice of Thirteenth RTCA Tactical Operations Committee (TOC) meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of the Thirteenth RTCA Tactical Operations Committee (TOC) meeting.

**DATES:** The meeting will be held April 4, 2016 from 2:00 p.m.–4:00 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036, Tel: (202) 330–0662.

**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* or Trin Mitra, TOC Secretary, RTCA, Inc., *tmitra@rtca.org,* (202) 330–0655.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Tactical Operations Committee (TOC). The agenda will include the following:

**Monday, April 4, 2016**

1. Opening of Meeting/Introduction of TOC Members—Co Chairs Dale Wright and Bryan Quigley
2. Official Statement of Designated Federal Official—Elizabeth Ray
3. Approval of March 3, 2016 Meeting Summary
4. FAA Update—Elizabeth Ray
5. Discussion on NATCA agreement on facility release policy
6. Recommendations to Consider for Approval from the Western Regional Task Group/NorCal feasibility study
7. Review Terms of Reference for PBN Route Structure Concept of Operations task
8. Other Business
9. 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. Plenary information will be provided upon request. Persons who wish 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 March 10, 2016.

**Latasha Robinson,**

*Management & Program Analyst, NextGen, Enterprise Support Services Division, Federal Aviation Administration.*

[FR Doc. 2016–05937 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Office of Commercial Space Transportation; Notice of Availability of the FAA's Finding of No Significant Impact (FONSI) for NASA's Final Supplemental Environmental Assessment for the Antares 200 Configuration Expendable Launch Vehicle at Wallops Flight Facility (SEA)

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

**ACTIONS:** Notice of availability of the FONSI.

**SUMMARY:** In accordance with the National Environmental Policy Act of 1969, as amended (NEPA; 42 United States Code 4321 *et seq.*), Council on Environmental Quality NEPA implementing regulations (40 Code of Federal Regulations parts 1500 to 1508), and FAA Order 1050.1E, Change 1, *Environmental Impacts: Policies and Procedures,* the FAA is announcing the availability of the FAA's FONSI for the SEA.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas W. Graham, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Ave. SW., Suite 325, Washington, DC 20591; email *Doug.Graham@faa.gov;* telephone (202) 267–8568.

**SUPPLEMENTARY INFORMATION:** The SEA was prepared by NASA to analyze the potential environmental impacts of the FAA modifying Orbital ATK's Launch Operator License to include launches of the modified Antares 200 medium lift launch vehicle from NASA's Wallops Flight Facility in Virginia. NASA issued a FONSI on August 29, 2015. Based on its independent review and consideration of the SEA, the FAA concurs with the analysis of impacts and findings in the SEA and formally adopts the SEA in its entirety. After reviewing and analyzing available data and information on existing conditions and potential impacts, including the SEA, the FAA has determined that its Proposed Action of modifying Orbital ATK's launch license to conduct 200 Configuration Antares launch operations at MARS Pad 0–A would not significantly affect the quality of the human environment within the meaning of NEPA. Therefore, the preparation of an environmental impact statement is not required, and the FAA is issuing this FONSI. The FAA made this determination in accordance with applicable environmental laws and FAA regulations.

The FAA has posted the FONSI on the FAA Office of Commercial Space Transportation Web site: *http://www.faa.gov/about/office_org/headquarters_offices/ast/environmental/nepa_docs/review/operator/*.

A copy of the SEA may be found at: *http://sites.wff.nasa.gov/code250/Antares_FSEA.html.*

A copy of the Biological Opinon issued by the Fish and Wildlife Service regarding this action may be found at: *http://www.faa.gov/about/office_org/headquarters_offices/ast/*

*environmental/nepa_docs/review/launch/*.

Issued in Washington, DC, on March 9, 2016.

**Daniel Murray,**

*Manager, Space Transportation Development Division.*

[FR Doc. 2016–05938 Filed 3–15–16; 8:45 am]

**BILLING CODE 4310–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2016–19]**

### Petition for Exemption; Summary of Petition Received; Boeing Military Aircraft, Vertical Lift Division

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 5, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2016–0833 using any of the following methods:

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

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Brent Hart (202) 267–4034, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 29, 2016.

**Lirio Liu,**

*Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2016–0833.

*Petitioner:* Boeing Military Aircraft, Vertical Lift Division.

*Section(s) of 14 CFR Affected:* §§ 21.9(a)(1)(2) and (c), and 21.25(a)(2).

*Description of Relief Sought:* Boeing is requesting an exemption to allow production and sale of new replacement parts for installation on CH–47D Chinook helicopters certificated under § 21.25(a)(2) and operated as restricted category civil helicopters, without meeting the requirements of § 21.9(a)(1), 21.9(a)(2) or 21.9(c).

[FR Doc. 2016–05864 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2016–26]**

### Petition for Exemption; Summary of Petition Received; Federal Express Corporation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 5, 2016.

**ADDRESSES:** Send comments identified by docket FAA–2016–1946 using any of the following methods:

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

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Nia Daniels, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–7626.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 8, 2016.

**Lirio Liu,**

*Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2016–1946.

*Petitioner:* Federal Express Corporation.

*Sections of 14 CFR Affected:* 121.438; 121.652.

*Description of Relief Sought:* Federal Express Corporation (FedEx) petitions for an exemption from § 121.438(b) to allow pilots who are dual qualified in the Boeing 757 (B757) and Boeing 767 (B767) aircraft to count the hours flown in both airplanes toward the 75 hours of flight time required by § 121.438(b). FedEx also petitions for an exemption from § 121.652(a) to combine pilot in command (PIC) flight times logged on either the B757 or B767 to meet the 100 hours PIC time required in order to avoid being subject to higher minimums in either aircraft type once the combined flight time exceeds 100 hours.

[FR Doc. 2016–05863 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Airport Grants Program

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to revise an information collection. The FAA collects data from airport sponsors and planning agencies to determine eligibility, and to ensure proper use of Federal Funds and project accomplishment for the Airports Grants Program.

**DATES:** Written comments should be submitted by April 15, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0569.

*Title:* Airport Grants Program.

*Form Numbers:* FAA Forms 5100–100, 5100–101, 5100–108, 5100–125, 5100–126, 5370–1, 5100–110, 5100–128, 5100–129, 5100–130, 5100–131, 5100–132, 5100–133, 5100–134, 5100–135, 5100–136, 5100–137, 5100–138, 5100–139, 5100–140, 5100–141, 5100–142.

*Type of Review:* Revision of an information collection.

*Background:* The **FEDERAL REGISTER** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 16, 2015 (80 FR 78284). No comments were received. Codification of Certain U.S. Transportation Laws at 49 U.S.C., repealed the Airport and Airway Improvement Act of 1982, as amended, and the Aviation Safety and Noise Abatement Act of 1979, as amended, and re-codified them without substantive change at Title 49, U.S.C., which is referred to as the ''Act''. The Act provides funding for airport planning and development projects at airports included in the National Plan of Integrated Airport Systems. The Act also authorizes funds for noise compatibility planning and to carry out noise compatibility programs. The information required by this program is necessary to protect the Federal interest in safety, efficiency, and utility of the Airport. Data is collected to meet report requirements of 2 CFR part 200 for certifications and representations, financial management and performance measurement.

*Respondents:* Approximately 12,607 applicants.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 9 hours.

*Estimated Total Annual Burden:* 117,699 hours.

Issued in Washington, DC, on March 9, 2016.

**Ronda Thompson,**

*FAA Information Collection Clearance Officer, Performance, Policy & Records Management Branch, ASP–110.*

[FR Doc. 2016–05828 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certificated Training Centers—Simulator Rule

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a currently approved information collection. To determine regulatory compliance, there is a need for airmen to maintain records of certain training and recency of experience; a training center has to maintain records of student's training, employee qualification and training, and training program approvals.

**DATES:** Written comments should be submitted by April 15, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited*: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency

will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0570.

*Title:* Certificated Training Centers—Simulator Rule.

*Form Numbers:* None.

*Type of Review:* Renewal of an information collection.

*Background:* The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 11, 2016 (81 FR 1279). There were no comments. 14 CFR 142.73 requires that training centers maintain records for a period of one year to show trainee qualifications for training, testing, or checking, training attempts, training checking, and testing results, and for one year following termination of employment the qualification of instructors and evaluators providing those services. The information is maintained by the certificate holder and subject to review by aviation safety inspectors (operations), designated to provide surveillance to training centers to ensure compliance with airman training, testing, and certification requirements specified in other parts of the 14 CFR.

*Respondents:* Approximately 113 training centers and associated satellite facilities.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 1,177.6 hours.

*Estimated Total Annual Burden:* 126,092 hours.

Issued in Washington, DC, on March 11, 2016.

**Ronda Thompson,**

*FAA Information Collection Clearance Officer, Performance, Policy & Records Management Branch, ASP–110.*

[FR Doc. 2016–05939 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2016–04]**

### Petition for Exemption; Summary of Petition Received; Burlington Northern Santa Fe Railway

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before April 5, 2016.

**ADDRESSES:** Send comments identified by docket number FAA–2016–0734 using any of the following methods:

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

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact Jake Troutman, (202–267–9521), 800 Independence Avenue SW, Washington, DC, 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on March 8, 2016.

**Lirio Liu,**

*Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2016–0734

*Petitioner:* Burlington Northern Santa Fe Railway

*Section(s) of 14 CFR Affected:* 61.113(a), 91.119(c), 91.121 and 91.151

*Description of Relief Sought:* Burlington Northern Santa Fe Railway (BNSF) seeks relief from the requirements of 14 CFR 61.113(a), 91.119(c), 91.121 and 91.151 to permit it to conduct sUAS operations beyond visual line of sight as part of the FAA/BNSF UAS Focus Area Pathfinder program. The purpose of the Pathfinder program [1] is to explore command-and-control challenges of using sUAS beyond visual line of sight for inspection of rail system infrastructure in rural/isolated areas.

[FR Doc. 2016–05865 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to revise an information collection. The FAA is developing an information system to collect certain frequency information currently being collected on form 7460–1, and to revise form 7460–1 to remove frequency information requests.

**DATES:** Written comments should be submitted by April 15, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed

[1] *https://www.faa.gov/uas/legislative_programs/pathfinders/.*

to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

**FOR FURTHER INFORMATION CONTACT:** Ronda Thompson at (202) 267–1416, or by email at: *Ronda.Thompson@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 2120–0001.

*Title:* Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report.

*Form Numbers:* FAA Form 7460–1.

*Type of Review:* Revision of an information collection.

*Background:* The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 4, 2016 (81 FR 139). 49 U.S.C. 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR part 77. The frequency information is currently collected via FAA forms 7460–1.

*Respondents:* Approximately 2400 annually.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* .2 hours.

*Estimated Total Annual Burden:* 480 hours.

Issued in Washington, DC, on March 9, 2016.

**Ronda Thompson,**

*FAA Information Collection Clearance Officer, Performance, Policy & Records Management Branch, ASP–110.*

[FR Doc. 2016–05826 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2016–0081]**

### Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Great Lakes Timber Professionals Association

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA requests public comment on an application for exemption from the Great Lakes Timber Professionals Association (GLTPA) to allow GLTPA motor carriers in Wisconsin to use cargo securement methods that do not comply with the Federal Motor Carrier Safety Regulations (FMCSRs) for securing shortwood logs transported lengthwise in crib-type vehicles that have been modified or manufactured without front structures, rear structures, or which have a center-mounted crane for loading and unloading. The GLTPA and the Wisconsin State Patrol Motor Carrier Enforcement Section partnered to conduct cargo securement testing on stacks of shortwood logs in a crib-type vehicle using different tiedown configurations. Based on this testing, GLTPA believes that the alternative cargo securement methods for securing shortwood logs loaded lengthwise proposed in its application will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption. The GLTPA is requesting this temporary exemption in advance of petitioning FMCSA to conduct a rulemaking to amend 49 CFR 393.116.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2016–0081 using any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1–202–493–2251.
- *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–Friday, except Federal holidays.

*Instructions:* All submissions 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, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

*Public participation:* The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You may find electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site as well as the DOT's *http://docketsinfo.dot.gov* Web site. If you would like notification that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) [Pub. L. 105–178, June 9, 1998, 112 Stat. 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule (69 FR 51589) implementing

section 4007. Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by the current regulation (49 CFR 381.305).

The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

**GLTPA Application for Exemption**

The GLTPA has applied for an exemption from 49 CFR 393.116 to allow GLTPA motor carriers in Wisconsin to transport shortwood logs in crib-type log trailers with fewer tiedowns than required by the regulation. A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.116 of the FMCSRs, ''What are the rules for securing logs?,'' provides commodity specific cargo securement requirements for the transportation of logs on trucks and trailers, and are in addition to the general cargo securement requirements specified in §§ 393.100—393.114 of the FMCSRs. Sections 393.116(b), ''Components of a securement system,'' and 393.116(c), ''Use of securement system'' provide general requirements for the securement of logs.

Specifically with respect to the securement of shortwood logs loaded lengthwise on flatbed and frame vehicles, § 393.116(e) of the FMCSRs requires—in addition to meeting the requirements of § 393.116(b) and (c)—each stack to be cradled in a bunk unit or contained by stakes, and (1) secured to the vehicle by at least two tiedowns, or (2) if all the logs in any stack are blocked in the front by a front-end structure strong enough to restrain the load, or by another stack of logs, and blocked in the rear by another stack of logs or vehicle end structure, the stack may be secured with one tiedown. If one tiedown is used, it must be positioned about midway between the stakes, or (3) be bound by at least two tiedown-type devices such as wire rope, used as wrappers that encircle the entire load at locations along the load that provide effective securement. If wrappers are being used to bundle the logs together, the wrappers are not required to be attached to the vehicle.

However, 49 CFR 393.116(b)(3)(i) notes that tiedowns are not required for logs transported in crib-type trailers, as defined in 49 CFR 393.5, provided that the logs are loaded in compliance with §§ 393.116(b)(2) and 393.116(c) of the FMCSRs. Crib-type trailers use stakes, bunks, a front-end structure, and a rear structure to restrain logs on trailers. The stakes prevent movement of logs from side to side on the vehicle while the front-end and rear structures prevent movement of the logs from front to back on the vehicle. The intent of such systems is to enable motor carriers to transport logs without the use of wrapper chains or straps to secure the load, thereby expediting the loading and unloading process.

In its exemption application, GLTPA states that questions have arisen between industry and enforcement regarding the proper securement of logs in crib-type trailers when modifications to those trailers have been made—including the lack of a front or rear structure (either because the vehicle was manufactured without front or rear structures, or because motor carriers have removed them) and the addition of a center-mounted crane for loading and unloading the logs. GLTPA states that ''In these cases, because the specific definition of a crib-type vehicle has not been met, enforcement has reverted to 49 CFR 393.116(e), which addresses logs loaded lengthwise on flatbed and frame vehicles. Here, logs that are contained by structures or another stack of logs require one tie down. Stacks that do not have this containment such as end stacks without front/rear structures or those adjacent to a center-mounted crane would require two tiedowns.''

In its exemption application, GLTPA references a ''Cargo Securement Enforcement Policy'' memorandum, dated December 31, 2003, from the FMCSA Assistant Administrator to its Field Administrators and Division Administrators.[1] Specifically as it relates to the subject exemption application, the December 2003 memorandum states ''Also, industry has requested the section 393.116 be amended to allow one tiedown per bunk, spaced equally between the standards, when transporting short length logs loaded lengthwise between the first two standards and between the last two standards. They believe the current wording requiring the use of two tiedowns is unnecessary given the bunks and standards . . . With regard to allowing the use of one tiedown per bunk for shortwood logs loaded lengthwise between the first two standards and between the last two standards, FMCSA believes one tiedown is sufficient given the standards used to protect against lateral movement.''

The GLTPA states ''This language suggests that end stacks not protected by front and rear structures, but contained by stakes, bunks, or standards, would require one tiedown. By extension, this would also suggest that a crib-type trailer without front and rear structures would require one tiedown on each of the end stacks. It is GLTPA's position that the interior stacks, which are protected by adjacent stacks of logs, should not be required to have tiedowns, provided they are loaded in accordance with 49 CFR 393.116(b)(3). With the front and rear stacks secured, the configuration is essentially now acting as a crib-type vehicle.''

To ensure that this interpretation would not reduce safety, GLTPA and the Wisconsin State Patrol Motor Carrier Enforcement Section partnered to test the use of a single tiedown on a stack of logs contained in a crib-type configuration. GLTPA states ''Specifically, a load was subjected to various simulated longitudinal g forces. Although not directly applicable to the cargo-specific requirements for logs, the tiedown performance criteria outlined in 49 CFR 393.102 was used as guidance.''

GLTPA states that the testing showed ''a single tiedown, on average, was able to maintain a stack of low-friction logs under winter conditions to approximately 0.5 g. This average was increased to 0.63 g for high-friction hardwood logs. It is noted that 0.8 g was obtained through the use of two tiedowns.'' Copies of the testing performed by GLTPA and the Wisconsin State Patrol Motor Carrier Enforcement Section in support of the exemption application are contained in the docket.

In considering the December 2003 FMCSA Cargo Securement Enforcement Policy memorandum, the cargo securement requirements for crib-type vehicles in the FMCSRs, and the testing

[1] A copy of the Cargo Securement Enforcement Policy memorandum is included in the docket referenced at the beginning of this notice.

described above, GLTPA requests an exemption from section 393.116 for the securement of shortwood loaded lengthwise. Specifically, GLTPA requests:

1. Logs transported in a crib or bunk type vehicle without a front structure will require at least two tiedowns on the foremost stack. All other stacks will not require tiedowns provided they are loaded in accordance with 49 CFR 393.116 (b)(2) and 49 CFR 393.116(c).

2. Logs transported in a crib or bunk vehicle without a rear structure will require at least one tie down on the rearmost stack. All other stacks will not require tiedowns provided they are loaded in accordance with 49 CFR 393.116 (b)(2) and 49 CFR 393.116(c).

3. Logs transported in a crib or bunk type vehicle having an internal gap between stacks such that a log could theoretically move in the forward or rearward direction and not be continually in contact with at least two stakes, bunks, bolsters or standards would require at least one tiedown on that stack.

4. When one tiedown is used, it must be positioned about midway between the stakes or cross diagonally from the front to the rear crossing midway over the stack.

GLTPA states ''Although the 2003 Enforcement Policy cites a single tiedown on the foremost stack, input from GLTPA member carriers has suggested requiring two for increased driver safety. Wisconsin State Patrol testing also found that two tiedowns have the capability of maintaining the load under a simulated longitudinal force of 0.8 g. This value exceeds heavy vehicle braking ability, and therefore provides an added element of safety in the event of a crash. The GLTPA and the Wisconsin State Patrol believe that this exemption will provide relief to the timber industry without compromising safety. Furthermore, these requirements will make the inherent safety aspects of crib-type vehicles more attractive to carriers in comparison to traditional frame vehicles with logs loaded crosswise.''

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on the GLTPA application for an exemption from certain cargo securement requirements of 49 CFR 393.116. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will continue to file relevant information in the public docket that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: March 3, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05908 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2016–0034]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 74 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2016–0034 using 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, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

*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 Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations 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. The 74 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

**II. Qualifications of Applicants**

*Daniel S. Adams*

Mr. Adams, 35, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Adams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Maine.

*Harold E. Adams, Sr.*

Mr. Adams, 71, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Adams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Albert L. Alexander*

Mr. Alexander, 39, has had ITDM since 2006. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Alexander understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Alexander meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*Jerry J. Altenburg*

Mr. Altenburg, 60, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Altenburg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Altenburg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Chris L. Austin*

Mr. Austin, 57, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Austin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Austin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

*Cory M. Bessette*

Mr. Bessette, 35, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bessette understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bessette meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Daryl K. Birr*

Mr. Birr, 57, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Birr understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Birr meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Jerry L. Brown*

Mr. Brown, 55, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Brown understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Brown meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Tennessee.

*James R. Burch, II*

Mr. Burch, 42, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Burch understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Burch meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

*Anthony K. Bush*

Mr. Bush, 45, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bush understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bush meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Walter L. Butcher, IV*

Mr. Butcher, 60, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Butcher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Butcher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Russell E. Cadman*

Mr. Cadman, 55, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cadman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cadman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Colorado.

*Mary L. Carr*

Ms. Carr, 53, has had ITDM since 2008. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Carr understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Carr meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2016 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from North Carolina.

*Alexander W. Coleman*

Mr. Coleman, 70, has had ITDM since 1998. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Coleman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coleman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B ECDL from Washington.

*Earl J. Collier, Jr.*

Mr. Collier, 53, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Collier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Collier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*Carolyn J. Conover*

Ms. Conover, 67, has had ITDM since 2011. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Conover understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Conover meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Tennessee.

*Gary R. Craig*

Mr. Craig, 63, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Craig understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Craig meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Sebastian Dacruz, Jr.*

Mr. Dacruz, 57, has had ITDM since 2005. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the

past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dacruz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dacruz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Scott D. Davis*

Mr. Davis, 58, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Davis understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Davis meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Kansas.

*Richard W. Dentler*

Mr. Dentler, 75, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Dentler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dentler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Idaho.

*Troy A. Epps*

Mr. Epps, 44, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Epps understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Epps meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*Joel R. Farmer*

Mr. Farmer, 42, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Farmer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Farmer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

*Joseph A. Figueroa*

Mr. Figueroa, 40, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Figueroa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Figueroa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Maryland.

*Ronald Floyd*

Mr. Floyd, 44, has had ITDM since 2005. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Floyd understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Floyd meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New York.

*Donald W. Fowler, Jr.*

Mr. Fowler, 45, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fowler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fowler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*Leonel E. Garcia-Bejar*

Mr. Garcia-Bejar, 50, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garcia-Bejar understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garcia-Bejar meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*William A. Garrett*

Mr. Garrett, 43, has had ITDM since 1980. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garrett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garrett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Georgia.

*Tyrone B. Gary, Sr.*

Mr. Gary, 55, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gary understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gary meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Pennsylvania.

*Hardy D. Glanzer*

Mr. Glanzer, 61, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Glanzer understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Glanzer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

*David Guerrero*

Mr. Guerrero, 46, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Guerrero understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Guerrero meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

*Bruce T. Hanson*

Mr. Hanson, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hanson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hanson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Darrell E. Holtsoi*

Mr. Holtsoi, 46, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Holtsoi understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Holtsoi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

*Roger J. Huffsmith*

Mr. Huffsmith, 51, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Huffsmith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Huffsmith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Joseph P. Hurston*

Mr. Hurston, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hurston understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hurston meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*Raymond W. James*

Mr. James, 58, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. James understands diabetes management and monitoring, has stable control of his diabetes using

insulin, and is able to drive a CMV safely. Mr. James meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Arizona.

*Kevin E. Johnson*

Mr. Johnson, 52, has had ITDM since 2014. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Texas.

*Thomas A. Johnson*

Mr. Johnson, 59, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Johnson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Calvin E. Jones, Jr.*

Mr. Jones, 26, has had ITDM since 2012. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jones understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jones meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Virginia.

*Russell D. Koehler*

Mr. Koehler, 49, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Koehler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Koehler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Richard A. Lange*

Mr. Lange, 57, has had ITDM since 1990. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Lange understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Lange meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Illinois.

*John K. Long*

Mr. Long, 63, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Long understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Long meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*Russell J. Luedecker*

Mr. Luedecker, 37, has had ITDM since 1993. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Luedecker understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Luedecker meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from New Jersey.

*Eugene D. Maessner*

Mr. Maessner, 63, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Maessner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Maessner meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Dakota.

*Leroy A. Maines*

Mr. Maines, 57, has had ITDM since 1999. His endocrinologist examined him

in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Maines understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Maines meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Brady T. Mart*

Mr. Mart, 21, has had ITDM since 2001. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mart understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Kevin R. Martin*

Mr. Martin, 47, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Martin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Martin meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Missouri.

*Jack L. McClintock*

Mr. McClintock, 60, has had ITDM since 1988. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McClintock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McClintock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Luis A. Medina*

Mr. Medina, 55, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Medina understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Medina meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from California.

*Jimmie L. Melton*

Mr. Melton, 53, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Melton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Melton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Florida.

*Robert J. Miller*

Mr. Miller, 51, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Virginia.

*Kirk A. Mosier*

Mr. Mosier, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mosier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mosier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Daniel A. Neuens*

Mr. Neuens, 68, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Neuens understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Neuens meets the

requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Wisconsin.

*Ephraim K. Njoroge*

Mr. Njoroge, 66, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Njoroge understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Njoroge meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Massachusetts.

*Mark C. Overbaugh*

Mr. Overbaugh, 57, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Overbaugh understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Overbaugh meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

*Mario A. Papa*

Mr. Papa, 41, has had ITDM since 1985. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Papa understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Papa meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Rhode Island.

*Joseph F. Puliafico*

Mr. Puliafico, 48, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Puliafico understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Puliafico meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*James N. Rice, III*

Mr. Rice, 50, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rice understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rice meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from South Carolina.

*Noble E. Risley*

Mr. Risley, 73, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Risley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Risley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Jacob C. Rojan*

Mr. Rojan, 22, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rojan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rojan meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Indiana.

*Vincent Romeo*

Mr. Romeo, 59, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Romeo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Romeo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Florida.

*Marilyn Segarra*

Ms. Segarra, 51, has had ITDM since 1999. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe

hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Segarra understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Segarra meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds an operator's license from Connecticut.

*Jeffrey J. Smith*

Mr. Smith, 51, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative and stable proliferative diabetic retinopathy. He holds a Class A CDL from Virginia.

*Ronald D. Smith*

Mr. Smith, 56, has had ITDM since 2003. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Smith understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Smith meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Indiana.

*Kenneth W. Swisher*

Mr. Swisher, 67, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Swisher understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Swisher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Melissa Tell*

Ms. Tell, 43, has had ITDM since 2004. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Tell understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Tell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class C CDL from New York.

*Jeremy N. Thompson*

Mr. Thompson, 27, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thompson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thompson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Charles R. Thompson, Jr.*

Mr. Thompson, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Thompson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Thompson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kentucky.

*William O. Wallen*

Mr. Wallen, 61, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wallen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wallen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Steven G. Wehrle*

Mr. Wehrle, 63, has had ITDM since 1997. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wehrle understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wehrle meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Missouri.

*James H. Wilkey*

Mr. Wilkey, 73, has had ITDM since 2014. His endocrinologist examined him

in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilkey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilkey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

*Dion Williams, Jr.*

Mr. Williams, 30, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Williams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Dakota.

*Joseph M. Wilson, II*

Mr. Wilson, 35, has had ITDM since 1987. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Washington.

*Scottie J. Wood*

Mr. Wood, 59, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*Jefferson Yazzie*

Mr. Yazzie, 41, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Yazzie understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Yazzie meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Mexico.

## III. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

## IV. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0034 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

recommendation. 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. FMCSA may issue a final determination at any time after the close of the comment period.

**V. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2016–0034 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

Issued on: March 10, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05905 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2015–0262]**

### Hours of Service of Drivers: National Star Route Mail Contractors Association; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces that it has denied the National Star Route Mail Contractors Association (NSRMCA) application to exempt its contract carrier members from the ''14-hour rule'' of the Agency's hours-of-service (HOS) regulations. NSRMCA requested that a driver of a commercial motor vehicle (CMV) transporting U.S. mail be allowed to follow an alternative HOS regimen consisting of no more than 10 hours of driving following 8 consecutive hours off duty; the driver would also be prohibited from driving after having been on duty for 15 non-consecutive hours following 8 consecutive hours off duty. FMCSA reviewed NSRMCA's application and the public comments received, and denied the application because available information did not allow the Agency to conclude that the proposed exemption would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained absent the exemption.

**DATES:** FMCSA denied the application for exemption by letter dated January 12, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from 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)).

**NSRMCA Application for Exemption**

NSRMCA is a national trade association representing contractors transporting mail for the United States Postal Service (USPS) in all 50 States as well as U.S. territories.

On behalf of its members employing ''split-shift'' contract CMV drivers, NSRMCA requested an exemption from the ''14-hour rule'' in 49 CFR 395.3(a)(2), which prohibits a property-carrying driver from driving a CMV after 14 hours after coming on duty following 10 consecutive hours off duty. Under NSRMCA's proposal, a driver transporting U.S. mail could drive a CMV no more than 10 (instead of the normal 11) hours following 8 (instead of the normal 10) consecutive hours off duty; and not drive after having been on duty 15 hours following 8 consecutive hours off duty.

**Public Comments**

On August 20, 2015, FMCSA published in the **Federal Register** notice of the NSRMCA application and requested public comment (80 FR 50711). The Agency received 562 comments, 542 of which opposed the exemption request. The commenters objected to the extension of the duty day, which they said would lead to more fatigued drivers and, potentially, an increase in CMV crashes. Several commenters saw this request as a cost-cutting measure which would enable NSRMCA members to reduce the number of CMV drivers they employed while performing the same level of mail-delivery service. Others noted that FMCSA had denied an identical request for the same exemption filed by the USPS (74 FR 23467, May 19, 2009). USPS had failed to demonstrate that the exemption would maintain a level of safety equal to, or greater than, the level of safety established by the current HOS rules.

Only 10 comments supported the exemption request, and two of them were filed by the original petitioner, NSRMCA.

**FMCSA Decision**

The Agency's decision is based upon the information provided by the applicants, review of comments received in response to the **Federal Register** notice, and the substantial body of HOS research the FMCSA relied upon to implement the 14-hour rule (68 FR 22473, April 28, 2003). The Agency concluded that the NSRMCA application failed to demonstrate how it would ensure that the operations of its members under the exemption would achieve a level of safety that would be obtained in the absence of the exemption. NSRMCA's exemption would allow drivers to operate for more hours and obtain less restorative rest. FMCSA has denied the same request on two previous occasions. NSRMCA did not provide any data, studies or research supporting its recommendations or sufficient specific information about these operations. Therefore, the Agency cannot determine that NSRMCA's proposed exemption would meet the statutory requirement to maintain the current levels of safety. Accordingly, FMCSA denied NSRMCA's application for exemption by letter dated January 12, 2016.

Issued on: March 10, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05904 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2015–0350]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 30 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. 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. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

**DATES:** Comments must be received on or before April 15, 2016. All comments will be investigated by FMCSA. The exemptions will be issued the day after the comment period closes.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0350 using 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, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

*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 acknowledgment 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations 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.'' FMCSA can renew exemptions at the end of each 2-year period. The 30 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

## II. Qualifications of Applicants

*Gary L. Bartels*

Mr. Bartels, 60, has had a retinal detachment in his left eye since 2009. The visual acuity in his right eye is 20/30, and in his left eye, 20/100. Following an examination in 2015, his optometrist stated, ''In my opinion, Gary Bartels has sufficient vision in his right eye and with both eyes but not with his left eye, and has sufficient field of vision in his right eye but not his left eye, to perform the driving tasks required to operate a commercial vehicle.'' Mr. Bartels reported that he has driven tractor-trailer combinations for 35 years, accumulating 2.45 million miles. He holds a Class AM CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Christopher Benavidez*

Mr. Benavidez, 54, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my medical opinion he has more than sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Benavidez reported that he has driven straight trucks for 25 years, accumulating 350,000 miles and tractor-trailer combinations for 15 years, accumulating 150,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*William H. Brence*

Mr. Brence, 47, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2015, his optometrist stated, ''It is my opinion that Mr. Brence has sufficient visual acuity, color vision, and field of vision to perform the driving tasks required to operate any vehicle safely, but specifically to operate a commercial vehicle safely.'' Mr. Brence reported that he has driven tractor-trailer combinations for 15 years, accumulating 1.95 million miles. He holds a Class A CDL from South Dakota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Dean B. Carrick*

Mr. Carrick, 72, has had ptisis bulbi in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception.

Following an examination in 2015, his optometrist stated, ''He has been monocular his entire adult life and has sufficient vision to perform driving tasks required for commercial vehicles.'' Mr. Carrick reported that he has driven straight trucks for 53 years, accumulating 132,500 miles and tractor-trailer combinations for 45 years, accumulating 1.6 million miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jaime V. Cavazos*

Mr. Cavazos, 43, has had a prosthetic left eye since 2008. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his ophthalmologist stated, ''In my medical opinion, Mr. Jaime Valdez has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Cavazos reported that he has driven tractor-trailer combinations for 21 years, accumulating 1.34 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Jacob Dehoyos*

Mr. Dehoyos, 35, has had traumatic glaucoma in his right eye since 1995. The visual acuity in his right eye is 20/50, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I certify that he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Dehoyos reported that he has driven straight trucks for 5 years, accumulating 273,500 miles. He holds a Class D operator's license from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Larry D. Fulk*

Mr. Fulk, 46, has had a choroidal melanoma in his right eye since 2012. The visual acuity in his right eye is 20/70, and in his left eye, 20/15. Following an examination in 2015, his ophthalmologist stated, ''In my medical opinion, Mr. Fulk certainly has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Fulk reported that he has driven straight trucks for 30 years, accumulating 30,000 miles and tractor-trailer combinations for 23 years, accumulating 575,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Hugo A. Galvis Barrera*

Mr. Galvis Barrera, 40, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2015, his optometrist stated, ''The above patient's driver's visual condition is not likely to interfere with the ability to safely operate a commercial motor vehicle and is likely to remain stable for the next two years.'' Mr. Galvis Barrera reported that he has driven tractor-trailer combinations for 4 years, accumulating 384,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and one conviction for a moving violation in a CMV; he exceeded the speed limit.

*Harold J. Gilbert*

Mr. Gilbert, 46, has been blind due to trauma in his right eye since 1975. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''I certify in my medical opinion in reference to ocular function, Harold Gilbert, has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Gilbert reported that he has driven straight trucks for 15 years, accumulating 300,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Darrell K. Harber*

Mr. Harber, 46, has had a macular scar in his right eye due to a traumatic incident in 1986. The visual acuity in his right eye is hand motion, and in his left eye, 20/25. Following an examination in 2015, his optometrist stated, ''This certifies that, in my medical opinion, the above named individual has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Harber reported that he has driven straight trucks for 5 years, accumulating 325,000 miles and tractor-trailer combinations for 5 years, accumulating 6,500. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Clair G. High*

Mr. High, 63, has been pseudophakic in his left eye since 1984. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''My medical opinion certifies that clair [*sic*] has sufficient vision to perfomr [*sic*] driving task [*sic*] required to operate a commercial vehicle [*sic*]'' Mr. High reported that he has driven straight trucks for 21 years, accumulating 420,000 miles. He holds an operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Robert E. Holbrook*

Mr. Holbrook, 45, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''In my professional medical opinion, Mr. Robert E. Holbrook has sufficient vision to safely perform the driving tasks necessary to operate a commercial vehicle.'' Mr. Holbrook reported that he has driven straight trucks for 1 year, accumulating 4,999 miles, and tractor-trailer combinations for 4 years, accumulating 80,000 miles. He holds a Class AM CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Lowell E. Jackson*

Mr. Jackson, 66, has temporal hemianopia in his left eye due to a traumatic incident in 1986. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2015, his optometrist stated, ''I believe Lowell Jackson's safety record for the past 29 years since that accident should allow him to continue driving as a commercial driver.'' Mr. Jackson reported that he has driven straight trucks for 5 years, accumulating 250,000 miles, tractor-trailer combinations for 40 years, accumulating 4 million miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Maurice L. Kinney*

Mr. Kinney, 52, has been blind due to trauma in his left eye since age five. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2015, his optometrist stated, ''Mr. Kinney entered with unaided visual acuity of 20/20 in his right eye . . . having tested Mr. Kinney and interpreting the results, I find no reason to prohibit him from meeting the criteria to retain his commercial drivers [*sic*] license.'' Mr. Kinney reported that he has driven straight trucks for 11 years, accumulating 343,200 miles. He holds a Class B CDL from New York. His driving

record for the last 3 years shows no crashes and two convictions for moving violations in a CMV; in one he disobeyed the traffic control device and in the other he made an improper turn.

*Richard R. Krafczynski, Jr.*

Mr. Krafczynski, Jr., 53, has had amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2015, his optometrist stated, ''It is my opinion that he has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Krafczynski reported that he has driven straight trucks for 2 years, accumulating 80,000 miles and buses for 32 years, accumulating 1.28 million miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Michael S. McHale*

Mr. McHale, 48, had a retinal detachment in his left eye during childhood. The visual acuity in his right eye is 20/20, and in his left eye, light perception. Following an examination in 2015, his optometrist stated, ''px [*sic*] meets federal standards for peripheral vision as required by CDL.'' Mr. McHale reported that he has driven straight trucks for 20 years, accumulating 1.8 million miles. He holds a Class BM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Darin P. Milton*

Mr. Milton, 49, has had a prosthetic right eye due to a traumatic incident in 1990. The visual acuity in his right eye is no light perception, and in his left eye, 20/15. Following an examination in 2015, his optometrist stated, ''I have followed Mr. Milton for the past eleven years and feel his 20/20 visual acuity, large visual field, and accurate color vision render him capable of driving a commercial vehicle.'' Mr. Milton reported that he has driven straight trucks for 11 years, accumulating 396,000 miles and tractor-trailer combinations for 17 years, accumulating 591,600 miles. He holds a Class A CDL license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Myron Morehouse*

Mr. Morehouse, 51, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''I believe he can see well enough to safely operate a commercial vehicle.'' Mr. Morehouse reported that he has driven straight trucks for 21 years, accumulating 210,000 miles and tractor-trailer combinations for 28 years, accumulating 140,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Dakota J. Papsun*

Mr. Papsun, 24, has had a prosthetic left eye since 2012. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''Monocular patients are able to operate commercial vehicles . . . Therefore, I do not feel that there are any other ocular-related reasons that would make it difficult to preform [*sic*] the necessary tasks.'' Mr. Papsun reported that he has driven straight trucks for 8 years, accumulating 41,600 miles. He holds a Class C operator's license from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Raffaelo Petrillo*

Mr. Petrillo, 49, has refractive amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/30, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''Mr. Petrillo's visual status is adequate to operate a commercial vehicle.'' Mr. Petrillo reported that he has driven straight trucks for 30 years, accumulating 72,000 miles, and tractor-trailer combinations for 24 years, accumulating 240,000 miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*William J. Powell*

Mr. Powell, 60, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/100, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''In my opinion, William has adequate vision to perform the tasks required to safely operate a commercial vehicle.'' Mr. Powell reported that he has driven straight trucks for 33 years, accumulating 369,402 miles. He holds a Class DB CDL license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Cory R. Rand*

Mr. Rand, 46, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''I, Doctor Koray Arin, certify that Mr Cory R [*sic*] Rand has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rand reported that he has driven straight trucks for 16 years, accumulating 480,000 miles. He holds a Class C CDL from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Bobby W. Sanders*

Mr. Sanders, 55, has had corneal scarring in his right eye since 2004. The visual acuity in his right eye is counting fingers, and in his left eye, 20/20. Following an examination in 2015, his ophthalmologist stated, ''In my medical opinion [*sic*] Bobby Sanders has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle.'' Mr. Sanders reported that he has driven straight trucks for 10 years, accumulating 5,000 miles. He holds a Class D operator's license from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Logan D. Shaffer*

Mr. Shaffer, 34, has had anisometropic amblyopia in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2015, his optometrist stated, ''In my medical opinion, patient has sufficient vision to perform driving tasks associated with driving a commercial vehicle.'' Mr. Shaffer reported that he has driven straight trucks for 11 years, accumulating 935,000 miles. He holds a Class D operator's license from South Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Laurence W. Sellers*

Mr. Sellers, 54, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''He has stated to me that he has been driving commercial vehicles with no problems for the past 20 years. I see no reason that he should not be able to continue to do so as a result of his vision.'' Mr. Sellers reported that he has driven straight

trucks for 22 years, accumulating 200,200 miles. He holds a Class DM operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Johnny T. Solorio*

Mr. Solorio, 47, is blind in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2015, his optometrist stated, ''It is my professional opinion that Mr. Solorio has sufficient vision to perform the tasks required to operate a commercial vehicle.'' Mr. Solorio reported that he has driven straight trucks for 9 years, accumulating 900,000 miles and tractor-trailer combinations for 9 years, accumulating 900,000 miles. He holds a Class AM1 CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Richard R. Vonderohe*

Mr. Vonderohe, 52, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/40, and in his left eye, 20/150. Following an examination in 2015, his optometrist stated, ''With correction, I believe Richard has sufficient has vision to operate a commercial vehicle.'' Mr. Vonderohe reported that he has driven straight trucks for 31 years, accumulating 496,000. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*William J. Watts*

Mr. Watts, 56, had a retinal detachment in his left in 1970. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2015, his optometrist stated, ''In my medical opinion, Mr. Watts has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Watts reported that he has driven straight trucks for 6 years, accumulating 60,000 miles, tractor-trailer combinations for 37 years, accumulating 4.44 million miles. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Russell Zelich*

Mr. Zelich, 49, has a central retinal scar in his right eye due to a traumatic incident in 1980. The visual acuity in his right eye is count fingers, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''Due to central retinal scarring his right eye is reduced to finger counting while the left eye uncorrected acuity is 20/25 correctable to 20/20 . . . He has had a commercial driving license for nearly 3 decades without a chargeable accident . . . In my opinion special allowances should me [*sic*] made in his case.'' Mr. Zelich reported that he has driven straight trucks for 24 years, accumulating 360,000 miles. He holds a Class B CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Frederick A. Zoeller, Jr.*

Mr. Zoeller, 53, has had refractive amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2015, his optometrist stated, ''He is visually capable of performing the tasks required to operate a commercial vehicle.'' Mr. Zoeller reported that he has driven straight trucks for 37 years, accumulating 231,250 miles. He holds a Class MC operator's license from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

## III. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice, 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. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and put the docket number FMCSA–2015–0350 in the ''Keyword'' box, and click ''Search. When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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.

FMCSA will consider all comments and material received during the comment period. FMCSA may issue a final determination at any time after the close of the comment period.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble, go to *http://www.regulations.gov* and insert the docket number FMCSA–2015–0350 in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: March 10, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05903 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORATION

### Federal Motor Carrier Safety Administration

**[FMCSA–2016–0096]**

### Hours of Service of Drivers: Specialized Carriers & Rigging Association; Application for Exemption

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of application for exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from the Specialized Carriers & Rigging Association (SC&RA) seeking exemption from two provisions of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers. SC&RA asks that motor carriers and drivers operating mobile cranes with a rated lifting capacity of greater than 30 tons be exempted from the 30-minute break requirement and the 14-hour rule. SC&RA believes that these two HOS rules uniquely affect the operational efficiency of these crane operations and unnecessarily place the

driver and public at risk. FMCSA requests public comment on SC&RA's application for exemption.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2016–0096 by any of the following methods:

- *Federal eRulemaking Portal: 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. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit 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., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Robert Schultz, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2718. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

## I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0096), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2016–0096'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

## II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). 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)).

## III. Request for Exemption

On December 27, 2011 (76 FR 81133), FMCSA published a final rule amending its hours-of-service (HOS) regulations for drivers of property-carrying CMVs. The new rule included a provision requiring many drivers to take a rest break during the workday. Generally, if 8 hours have passed since the end of the driver's last off-duty or sleeper-berth period of at least 30 minutes, the driver may not operate a CMV until he or she takes at least 30 minutes off duty (49 CFR 395.3(a)(3)(ii)). FMCSA did not specify when drivers must take the 30-minute break. The HOS rules also limit drivers of property-carrying CMVs to a 14-hour driving window each duty day (49 CFR 395.3(a)(2)). The window begins when the driver comes on duty following at least 10 consecutive hours off duty. After the 14th consecutive hour from that point, the driver cannot operate a CMV until he or she obtains at least 10 consecutive hours off duty. The requirements of the HOS rules apply to drivers of CMVs in interstate commerce and to their motor carrier employers who direct the drivers to operate the CMVs.

On June 18, 2015 (80 FR 34957), FMCSA granted SC&RA an exemption from the 30-minute rest-break requirement for its members when transporting loads that exceed certain vehicle weight and size limits and therefore require a permit issued by a governmental authority. The Agency granted this exemption for the maximum period of two years permitted by the FMCSRs (§ 381.300(b)). Subsequently, section 5206(a)(3) of the ''Fixing America's Surface Transportation Act'' (FAST Act) [Pub. L. 114–94, 129 Stat. 1312], effective October 1, 2015, gave the Agency authority to grant HOS exemptions for up to 5 years. Section 5206(b)(2)(A) also provides that any exemption from 49 CFR part 395 that was in effect on the date of enactment of the FAST Act is valid for 5 years from the date of the original exemption. The 30-minute exemption granted on June 18, 2015, is therefore valid until June 18, 2020. SC&RA advises that the broader exemption now being requested is needed because mobile cranes do not always require oversize/overweight permits, but the drivers encounter HOS problems nevertheless.

SC&RA advises that there are approximately 85,000 trained and certified mobile crane operators in the United States, and, of these, approximately 65,000 operate cranes over 30 tons lifting capacity.

SC&RA seeks an exemption from the 14-hour rule and the requirement for a 30-minute break for drivers operating mobile cranes with a rated lifting capacity of greater than 30 tons. It asks that the exemptions be for a period of 5 years. SC&RA asserts that these two HOS rules frequently compel drivers of these cranes to stop driving and park the crane to avoid violating their terms. SC&RA states that complications arise at this point because the availability of parking for CMVs is very limited. SC&RA cites data indicating that there is a shortage of parking places for CMVs in the United States and notes ongoing Federal and State efforts to address this problem. Parking for cranes is even more limited because of the dimensions of these vehicles. SC&RA asserts that compliance with the two HOS rules often results in cranes being parked on the shoulder of public roads. SC&RA states the width of some cranes is such that they can only be parked partially on the shoulder and partially on a travel lane.

SC&RA describes the unpredictable nature of the typical workday when a crane is fixed in place for lifting at a worksite. The applicant lists a number of variables that can complicate the scheduling of crane operations, including delays waiting for the item to be lifted to arrive at the work site or to be rigged so that the crane can lift it. Unexpected inclement weather can also trigger delays. SC&RA asserts that the primary result is that the workday may be unexpectedly extended. Thus, timing a crane's movement from the worksite and onto public roads at the end of the day is highly problematic. SC&RA points out that State and local restrictions limit the hours of the day, and sometimes the days of the week, that cranes may move on public roads. In addition, movement of cranes may require a pilot car, the display of signs and lights, and even an escort vehicle provided by state or local police. Movement of cranes is normally at speeds much slower than the posted speed limit, and is highly susceptible to weather and traffic conditions. SC&RA asserts that the two HOS rules from which it seeks exemption—the 30-minute-break and 14-hour rules—become most burdensome at this point. However, SC&RA acknowledges that crane operators cross State lines on less than 5 percent of their trips.

## IV. Method To Ensure an Equivalent or Greater Level of Safety

SC&RA does not foresee any negative impact to safety from the requested exemption. It believes that granting the exemption would have a favorable impact on overall safety by reducing the frequency of cranes being parked along public roads. It points out that its members generally drive a crane less than 2 hours a day. SC&RA states that its crane drivers have a low crash rate, and it attached copies of its driver training and safety manuals to the application for exemption. Copies of these documents are available for review in the docket for this notice.

Issued on: March 10, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05902 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Inspection, Repair, and Maintenance; Periodic Inspection of Commercial Motor Vehicles; Acceptance of Mexico's NOM–068–SCT–2–2014 Inspection Program

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice on periodic inspection programs.

**SUMMARY:** The FMCSA announces its acceptance of the Norma Oficial Mexicana ((NOM) or Official Mexican Standard) concerning the periodic inspection (PI) of commercial motor vehicles (CMVs). The Agency has reviewed NOM–068–SCT–2–2014 (NOM 68) and determined that it should be added to the list of programs which are comparable to, or as effective as, the Federal PI requirements contained in the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA's acceptance of NOM 68 means that Mexico-domiciled motor carriers operating in the United States must ensure that their CMVs are inspected annually as required by the Secretaría de Comunicaciones y Transportes (SCT). The motor carrier must retain a copy of the inspection report and a sticker/decal must be affixed to the vehicle in order to satisfy the PI requirements in the United States. These motor carriers will no longer have the option of relying on their employees to conduct inspections of the CMVs the carrier controls, using commercial garages for such inspections, or passing a roadside inspection based on criteria published by the Commercial Motor Vehicle Safety Alliance (CVSA) to comply with the periodic inspection requirements at 49 CFR part 396.

**DATES:** This action is effective March 16, 2016. NOM–68 inspection decals issued on or after October 1, 2015, will be accepted as proof of a periodic during roadside inspections and investigations conducted on or after March 16, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Marcelo Perez, North American Borders Division, MC–ESB, (512) 916–5440, Federal Motor Carrier Safety Administration, 903 San Jacinto Blvd., Suite 1100, Austin, TX 78701. Office hours are from 7:45 a.m. to 4:15 p.m., CDT, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 210 of the Motor Carrier Safety Act of 1984 (49 U.S.C. 31142) (the Act) requires the Secretary of Transportation to prescribe standards for annual or more frequent inspection of CMVs unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection. On December 7, 1988, in response to the Act, the Federal Highway Administration (FHWA), the agency within the Department of Transportation responsible for motor carrier safety until 1999, published a final rule amending 49 CFR part 396 of the FMCSRs (53 FR 49402). The final rule required CMVs operated in interstate commerce to be inspected at least once a year. The inspection was to be based on Federal inspection standards, or a State inspection program determined by the FHWA, FMCSA's predecessor agency, to be comparable to, or as effective as, the Federal standards. Accordingly, if FHWA decided that a State's PI program was comparable to, or as effective as, the requirements of part 396, then the motor carrier had to ensure that all of its CMVs which are required by that State to be inspected through the State's inspection program were inspected. If a State did not have such a program, the motor carrier was responsible for ensuring its CMVs are inspected using one of the alternatives included in the final rule.

On March 16, 1989, the FHWA published a notice in the **Federal Register** that requested States and other interested parties to identify and provide information on the CMV inspection programs in their respective jurisdictions (54 FR 11020). Upon review of the information submitted, the FHWA published a list of State

inspection programs that were determined to be comparable to the Federal PI requirements (54 FR 50726, December 8, 1989). This initial list included 15 States and the District of Columbia. The list was revised on September 23, 1991, to include the inspection programs of the Alabama Liquefied Petroleum Gas (LPG) Board, California, Hawaii, Louisiana, Minnesota, all of the Canadian Provinces, and the Yukon Territory (56 FR 47982).

On November 27, 1992, the list was revised to include the Wisconsin bus inspection program (57 FR 56400). On April 14, 1994, the list was revised to include the Texas CMV inspection program (59 FR 17829). The list was revised on November 7, 1995, to include the Connecticut bus inspection program (60 FR 56183). On February 19, 1998, the Ohio inspection program for church buses was added to the list (63 FR 8516), with a notice announcing FMCSA's acceptance of certain enhancements to the program on June 18, 2001 (66 FR 32863). And on October 22, 2008, the list was revised to include the Massachusetts CMV inspection program (73 FR 63040).

**FMCSA Determination: Official Mexican Standard, NOM 68**

On January 19, 2015, the SCT of Mexico published its Official Mexican Standard, NOM–68, in the Official Gazette, Mexico's equivalent of the **Federal Register**. NOM–68 addresses Federal inspection standards for CMVs in Mexico. Beginning May 19, 2015, Mexico-domiciled motor carriers must take their vehicles to an SCT-approved inspection center for a mandatory vehicle inspection. The inspections must be performed once every year, and on the months set on the Inspection Calendar.

FMCSA has reviewed Mexico's pass-fail criteria for the specific vehicle components and systems examined as during the mandatory vehicle inspection and determined that Mexico's inspection program is comparable to, or as effective as, FMCSA's requirements. The Agency compared the pass-fail requirements of Appendix G to the Federal Motor Carrier Safety Regulations (*i.e.,* the U.S. periodic inspection standards), which includes the 13 vehicle systems and components listed below with the list of vehicle systems and components included in NOM 68.

1. Brake system;
2. Coupling devices;
3. Exhaust system;
4. Fuel system;
5. Lighting devices;
6. Safe loading;
7. Steering mechanism;
8. Suspension;
9. Frame;
10. Tires;
11. Wheels and rims;
12. Windshield glazing; and,
13. Windshield wipers.

NOM–68 is organized into 79 sections, with multiple sections covering each of the 13 areas in Appendix G. In some instances, NOM–68 covers the requirements in greater detail and others Mexico's inspection standards cover equipment which is not addressed in the FMCSRs. While Appendix G does not include the same level of detail as NOM 68, 49 CFR part 393 provides many of those requirements in detail comparable to that of NOM–68. Therefore, NOM 68 provides an annual inspection standard that requires all the parts and accessories that must be installed on CMVs to be in proper working order in order to pass the inspection.

FMCSA acknowledges that Mexico's compliance date for certain vehicle safety systems and components, such as antilock braking systems (or ABS), differs from the U.S. requirements. However, the Agency does not believe the differences in the compliance dates for such systems is a sufficient basis for considering Mexico's annual inspection standards to be substantively different. Mexico-domiciled motor carriers are subject to the same requirements as U.S.- and Canada-domiciled carriers operating on U.S. public roads with regard to the requirements of 49 CFR part 393. This means the presence of an annual inspection decal would not provide relief from the requirements of part 393.

Mexico's mandatory annual inspection requirements cover most of the types of CMVs subject to FMCSA's periodic inspection regulations, which includes passenger-carrying vehicles designed to transport 16 or more passengers (including the driver) and property-carrying vehicles with a gross weight, gross vehicle weight rating, or gross combination weight rating of 10,001 pounds or more. Therefore, both the inspection criteria for the vehicle components and safety systems, and the types of vehicles required to be inspected are comparable to FMCSA's requirements.

For CMVs that are subject to FMCSA's periodic inspection requirements but excepted from the NOM 68 requirements, the motor carrier may continue to rely upon the options allowed under 49 CFR 396.17. FMCSA will work with the government of Mexico and the Commercial Vehicle Safety Alliance to provide detailed guidance on the specific vehicles subject to NOM 68 requirements to ensure uniform and consistent enforcement of § 396.17 (and the compatible State requirements adopted in accordance with 49 CFR part 350 concerning the Motor Carrier Safety Assistance Program) during roadside inspections of Mexico-domiciled vehicles operating in the United States.

It should be noted that in accepting the Mexico's program, FMCSA also accepts the recordkeeping requirements associated with the inspection program. Upon successful completion of Mexico's inspection, a report is created which identifies the vehicle, inspector, and the status of the inspection. In addition to the report, a program inspection sticker decal indicating that the vehicle has passed the inspection will be affixed to the vehicle's windshield.

**Relationship Between FMCSA's Decision Concerning Periodic Inspection and the Enforcement of the Requirements Under 49 CFR Part 393**

FMCSA notes that its acceptance of Mexico's PI program does not in any way alter the enforcement of the safety requirements under 49 CFR part 393 concerning vehicle parts and accessories necessary for safe operations. All interstate motor carriers operating CMVs in the United States, including Canada- and Mexico-domiciled motor carriers, must ensure that their CMVs meet the applicable requirements under 49 CFR part 393 regardless of whether the vehicle has passed a PI. And Part 393 includes cross-references to various Federal Motor Vehicle Safety Standards (FMVSSs) established by the National Highway Traffic Safety Administration and applicable to vehicle manufacturers. Through these cross-references, FMCSA holds motor carriers responsible for ensuring that vehicles manufactured on or after the effective dates of the NHTSA standards are maintained to keep the safety equipment and features installed by the manufacturer operable.

While manufacturers building CMVs designed and sold for use in Canada and Mexico are not required to meet the FMVSSs, FMCSA requires that the motor carriers operating these vehicles in the United States meet the same safety requirements applicable to domestic motor carriers. And, although the effective date for certain vehicle safety requirements such as antilock braking systems under NOM 68 and Canada's rules may differ from the effective date for the U.S. requirements, vehicles manufactured on or after the effective dates listed in the FMVSSs,

and cross-referenced in part 393, must meet FMCSA's requirements when operating in the United States. These vehicles are subject to roadside inspections while operating in the United States and violations of these 49 CFR part 393 requirements may be cited on the inspection report.

Acceptance of periodic inspection decals from Canada or Mexico simply means that these carriers would not be cited for violations of 49 CFR 396.17. As noted above, this decision does not constitute an exception from any of the applicable requirements under 49 CFR part 393. Therefore, today's decision in no way compromises safety.

Although passing a roadside inspection is another option under the current regime, FMCSA published a notice of proposed rulemaking on October 7, 2015 (80 FR 60592), which would, in response to a petition for rulemaking from the Commercial Vehicle Safety Alliance (CVSA), eliminate this option for all motor carriers subject to the FMCSRs.

**Jurisdictions With Equivalent Periodic Inspection Programs**

The following is a complete list of States with inspection programs that FMCSA has determined are comparable to, or as effective as, the Federal PI requirements.

- Alabama (LPG Board),
- California,
- Connecticut,
- District of Columbia,
- Hawaii,
- Illinois,
- Louisiana,
- Maine,
- Maryland,
- Massachusetts,
- Michigan,
- Minnesota,
- New Hampshire,
- New Jersey,
- New York,
- Ohio,
- Pennsylvania,
- Rhode Island,
- Texas,
- Utah,
- Vermont,
- Virginia,
- West Virginia,
- Wisconsin.

Please note that since the list was originally established, two States have been removed. Arkansas no longer has a PI program for buses comparable to, or as effective, as the Federal PI program. And Oklahoma repealed its inspection requirements. Therefore, these States are no longer listed.

In addition to the States listed above, FMCSA accepts the inspection programs of the 10 Canadian Provinces (Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan) and the Yukon Territory, and with today's notice, Mexico's NOM 68 program, as comparable to, or as effective as, the Federal PI requirements.

All other jurisdictions either have no PI programs for CMVs or their PI programs have not been determined by the FMCSA to be comparable to, or as effective as, the Federal PI requirements. Should any of these jurisdictions wish to establish a program or modify their programs in order to make them comparable to the Federal requirements, the State should contact the appropriate FMCSA division office.

**List of Subjects**

Highway safety, Highways and roads, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

**Authority:** 49 U.S.C. 31132, 31136, 31142, 31502, and 31504; 49 CFR 1.87.

Issued on: March 9, 2016.

**T.F. Scott Darling, III,**

*Acting Administrator.*

[FR Doc. 2016–05933 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2015–0343]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA).

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 68 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0343 using 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, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. 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 for further information.

*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 Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from

the Federal Motor Carrier Safety Regulations 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. The 68 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

**II. Qualifications of Applicants**

*Korey D. Adams*

Mr. Adams, 43, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Adams understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Adams meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Missouri.

*Michael D. Alley*

Mr. Alley, 54, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Alley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Alley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

*Jerry J. Altenburg*

Mr. Altenburg, 60, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Altenburg understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Altenburg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

*Juanita K. Anderson*

Ms. Anderson, 56, has had ITDM since 2000. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Anderson understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Anderson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2015 and certified that she has stable nonproliferative diabetic retinopathy. She holds a Class B CDL from Minnesota.

*Alan D. Bahlmann*

Mr. Bahlmann, 51, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bahlmann understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bahlmann meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable proliferative diabetic retinopathy. He holds a chauffeur's license from Indiana.

*William A. Ball, Jr.*

Mr. Ball, 40, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ball understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ball meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from West Virginia.

*John F. Beatrice*

Mr. Beatrice, 51, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beatrice understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Beatrice meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Hampshire.

*Benjamin J. Beitelspacher*

Mr. Beitelspacher, 25, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Beitelspacher understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Beitelspacher meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from South Dakota.

*Russell E. Bjerkness*

Mr. Bjerkness, 59, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bjerkness understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bjerkness meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Minnesota.

*Chase L. Blankenship*

Mr. Blankenship, 27, has had ITDM since 1997. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Blankenship understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Blankenship meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Oklahoma.

*Samuel E. Bostic*

Mr. Bostic, 43, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bostic understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bostic meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

*Eric K. Caldwell*

Mr. Caldwell, 46, has had ITDM since 1981. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Caldwell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Caldwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Michael J. Chevalier, Jr.*

Mr. Chevalier, 26, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Chevalier understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Chevalier meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New Jersey.

*James R. Cockerham*

Mr. Cockerham, 48, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Cockerham understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cockerham meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

*Darrell L. Coleman*

Mr. Coleman, 45, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Coleman understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Coleman meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

*Michael R. Conley*

Mr. Conley, 25, has had ITDM since 2002. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Conley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Conley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

*James D. Deardorff*

Mr. Deardorff, 54, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no

severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Deardorff understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Deardorff meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Ivan R. Edsall*

Mr. Edsall, 69, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Edsall understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Edsall meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

*Steven W. Engel*

Mr. Engel, 58, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Engel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Engel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Colorado.

*Samuel M. Feaganes, Jr.*

Mr. Feaganes, 63, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Feaganes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Feaganes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Virginia.

*Jerry A. Fogel*

Mr. Fogel, 53, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Fogel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Fogel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Wisconsin.

*William J. Garrett*

Mr. Garrett, 59, has had ITDM since 1995. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Garrett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garrett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

*Kevin E. Griebel*

Mr. Griebel, 49, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Griebel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Griebel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from South Dakota.

*Martin R. Hair*

Mr. Hair, 52, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hair understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hair meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Connecticut.

*Justin M. Herb*

Mr. Herb, 24, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Herb understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Herb meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does

not have diabetic retinopathy. He holds a chauffeur's license from Indiana.

*Terry D. Hescock*

Mr. Hescock, 55, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hescock understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hescock meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

*Brandon Heselton*

Mr. Heselton, 40, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Heselton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heselton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Illinois.

*Arrington Hughes*

Mr. Hughes, 36, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hughes understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hughes meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington, DC.

*Brian K. Hyler*

Mr. Hyler, 42, has had ITDM since 1973. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hyler understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hyler meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Wisconsin.

*James A. Iozia*

Mr. Iozia, 57, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Iozia understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Iozia meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from New Jersey.

*Joshua D. Jaramillo*

Mr. Jaramillo, 26, has had ITDM since 1996. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Jaramillo understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jaramillo meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Washington.

*Jerry M. Kilpatrick*

Mr. Kilpatrick, 68, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Kilpatrick understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Kilpatrick meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Alabama.

*Rex O. King*

Mr. King, 54, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. King understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. King meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*Edward D. Krager*

Mr. Krager, 32, has had ITDM since 1996. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Krager understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Krager meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from Pennsylvania.

*Kevin K. Leavey*

Mr. Leavey, 28, has had ITDM since 1999. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Leavey understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leavey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Michael P. Leggett*

Mr. Leggett, 56, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Leggett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leggett meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

*Thomas J. Liddy*

Mr. Liddy, 65, has had ITDM since 2013. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Liddy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Liddy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Gregory S. Luce, Jr.*

Mr. Luce, 55, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Luce understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Luce meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Renee N. Lycksell*

Ms. Lycksell, 30, has had ITDM since 2015. Her endocrinologist examined her in 2016 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Lycksell understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Lycksell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Washington.

*Andrew Majkowicz*

Mr. Majkowicz, 47, has had ITDM since 1993. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Majkowicz understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Majkowicz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Raymond L. Makings*

Mr. Makings, 63, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Makings understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Makings meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Kansas.

*Daniel J. Mandell*

Mr. Mandell, 55, has had ITDM since 2015. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Mandell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Mandell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from North Carolina.

*John D. McGinley, Jr.*

Mr. McGinley, 49, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of

consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McGinley understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McGinley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from California.

*Denise R. McKelvey*

Ms. McKelvey, 69, has had ITDM since 2007. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. McKelvey understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. McKelvey meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2015 and certified that she has stable nonproliferative diabetic retinopathy. She holds an operator's license from Connecticut.

*Gareth L. Miller*

Mr. Miller, 51, has had ITDM since 2006. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Miller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Miller meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

*Victor Moore, Jr.*

Mr. Moore, 46, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moore understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moore meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Missouri.

*Jimmy C. Morcom*

Mr. Morcom, 47, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Morcom understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morcom meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a CDL from Michigan.

*Peter J. Niedzwiecki*

Mr. Niedzwiecki, 40, has had ITDM since 1988. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Niedzwiecki understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Niedzwiecki meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Kevin R. OToole*

Mr. OToole, 61, has had ITDM since 2009. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. OToole understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. OToole meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Wisconsin.

*Robert J. Paitsel*

Mr. Paitsel, 35, has had ITDM since 2005. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Paitsel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Paitsel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from West Virginia.

*Kameka D. Palmer*

Ms. Palmer, 41, has had ITDM since 2015. Her endocrinologist examined her in 2015 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Palmer understands diabetes management and monitoring has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms.

Palmer meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2015 and certified that she does not have diabetic retinopathy. She holds a Class B CDL from Wisconsin.

*Neal M. Quinton, Jr.*

Mr. Quinton, 47, has had ITDM since 2005. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Quinton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Quinton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Massachusetts.

*Howard G. Rau*

Mr. Rau, 58, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rau understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

*Andrew Reid*

Mr. Reid, 60, has had ITDM since 2010. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Reid understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reid meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Indiana.

*Brett M. Rice*

Mr. Rice, 38, has had ITDM since 1994. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rice understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rice meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

*Mark A. Rinehardt*

Mr. Rinehardt, 46, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rinehardt understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rinehardt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

*Sholom Rub*

Mr. Rub, 32, has had ITDM since 2000. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rub understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rub meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Jeremy M. Samson*

Mr. Samson, 39, has had ITDM since 2015. His endocrinologist examined him in 2016 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Samson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Samson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Iowa.

*David J. Scimecca*

Mr. Scimecca, 52, has had ITDM since 1965. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Scimecca understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Scimecca meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from New York.

*Blane Tor*

Mr. Tor, 56, has had ITDM since 2004. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in

the last 5 years. His endocrinologist certifies that Mr. Tor understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tor meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Jersey.

*Samuel C. Tracy*

Mr. Tracy, 21, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tracy understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tracy meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Washington.

*Allen B. Treadwell*

Mr. Treadwell, 34, has had ITDM since 1997. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Treadwell understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Treadwell meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds an operator's license from Alabama.

*Terry L. Underwood, Jr.*

Mr. Underwood, 40, has had ITDM since 2011. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Underwood understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Underwood meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Virginia.

*Aaron M. Vanlanduit*

Mr. Vanlanduit, 28, has had ITDM since 1990. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Vanlanduit understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Vanlanduit meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds an operator's license from Missouri.

*Paul R. Whitehead*

Mr. Whitehead, 52, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Whitehead understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Whitehead meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2016 and certified that he does not have diabetic retinopathy. He holds an operator's license from New Mexico.

*Grady E. Wilkins*

Mr. Wilkins, 62, has had ITDM since 2008. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilkins understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilkins meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Maryland.

*Joseph A. Wilson, Sr.*

Mr. Wilson, 55, has had ITDM since 2007. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wilson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wilson meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2015 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Massachusetts.

*Michael A. Zuke, Sr.*

Mr. Zuke, 59, has had ITDM since 2014. His endocrinologist examined him in 2015 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zuke understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zuke meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined

him in 2015 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

**III. Request for Comments**

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C.. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

**IV. Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0343 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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. FMCSA may issue a final determination at any time after the close of the comment period.

**V. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2015–0343 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: March 10, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05897 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2015–0124]**

### Potential Benefits and Feasibility of Voluntary Compliance; Public Listening Sessions

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public listening sessions; request for comments.

**SUMMARY:** FMCSA announces two public listening sessions, on April 1 and 25, 2016, to solicit information on the potential benefits and feasibility of voluntary compliance and ways to credit carriers and drivers who initiate and establish programs that promote safety beyond the standards established in FMCSA regulations. The recently enacted Fixing America's Surface Transportation (FAST) Act mandates that the FMCSA Administrator allow recognition for a motor carrier that installs advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs and other standards for use by motor carriers to receive recognition, including credit or an improved Safety Measurement System (SMS) percentile. FMCSA is soliciting comments to develop a process for identifying and reviewing these opportunities to provide credit to those carriers and drivers who go above and beyond the regulatory requirements. The listening sessions are intended to provide interested parties with an opportunity to share their views on this topic with Agency representatives, along with any data or analysis they may have. All comments will be transcribed and placed in the docket referenced above for FMCSA's consideration. The entire proceedings of both meetings will be webcast.

**DATES:** This docket will remain open indefinitely.

The listening sessions will be held on Friday, April 1, 2016, from 10:00 a.m. to Noon and 1:15 p.m. to 3 p.m., Local Time, and on Monday, April 25, 2016, from 9:30 a.m. to 11:30 a.m. and 1:30 p.m. to 3:30 p.m., Local Time. If all interested parties have had the opportunity to comment, the sessions may conclude early.

**ADDRESSES:** The April 1, 2016, listening session will be held at the Mid-America Trucking Show at the Kentucky Expo Center, 938 Phillips Lane, Louisville, KY. The April 25, 2016, session will be held at the Commercial Vehicle Safety Alliance Spring 2016 Workshop at the Sheraton Grand Chicago, 301 East North Water Street, Chicago, IL. In addition to attending the session in person, the Agency offers several ways to provide comments, as described below.

*Internet Address for Live Webcast.* FMCSA will post specific information on how to participate via the Internet on the FMCSA Web site at *www.fmcsa.dot.gov/calendar* in advance of the listening session.

You may submit comments identified by Docket Number FMCSA–2015–0124 using any of the following methods:

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

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

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

• *Fax:* 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:**

*For information about the listening sessions:* Ms. Shannon L. Watson, Senior Policy Advisor, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 or by telephone at 202–366–2551.

If you need sign language interpretation or any other accessibility accommodation, please contact Ms. Watson by Friday, March 18, 2016, to allow us to arrange for such services. FMCSA cannot guarantee that interpreter services requested on short notice will be provided.

*For other information about the Beyond Compliance program:* Ms. Theresa Rowlett, (202) 366–6406, *theresa.rowlett@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Submitting Comments**

If you submit a comment, please include the docket number for this notice (FMCSA–2015–0124), 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. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2015–0124, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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 draft a notice of proposed rulemaking based on your comments and other information and analysis.

**Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2015–0124, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**I. Background**

The trucking and bus industries and the U.S. Department of Transportation have invested in the research, development, and testing of strategies and technologies to reduce truck and bus crashes. In September 2014, the Commercial Vehicle Safety Alliance (CVSA) submitted a request to FMCSA to consider initiating a pilot program to investigate the benefits and feasibility of a voluntary compliance program. Citing research that has been underway for several years, the Agency established an Alternative Compliance team in December 2014, the goal of which was to analyze the concept and gather data to support how it might be developed and implemented.

On March 30–31, 2015, the Agency's Motor Carrier Safety Advisory Committee (MCSAC) deliberated on the potential benefits and feasibility of a voluntary compliance program and ways to credit carriers and drivers who initiate and establish programs that promote safety beyond FMCSA's regulations. MCSAC completed its deliberations during its June 15–16, 2015, meeting and subsequently submitted its final report on Task 15–1 to the Agency on September 21, 2015. A copy of the report is posted at the MCSAC's Web site, *https://www.fmcsa.dot.gov/mcsac.*

On April 23, 2015 (80 FR 22770), the Agency published a notice requesting responses to specific questions and any supporting data the Agency should consider in the potential development of a Beyond Compliance program.[1] The notice indicated that Beyond Compliance would include voluntary programs implemented by motor carriers that exceed regulatory requirements and improve the safety of commercial motor vehicles and drivers operating on the Nations' roadways by reducing the number and severity of crashes. Beyond Compliance would not result in regulatory relief.

Section 5222 of the recently enacted the Fixing America's Surface Transportation Act (Pub. L. 114–94, Dec. 4, 2015, 129 Stat. 1312) (FAST Act) mandates that the FMCSA Administrator allow recognition for a motor carrier that installs advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs and other standards for use by motor carriers to receive recognition, including credit or an improved SMS percentile. This provision requires the Administrator, after providing notice and comment, to develop a process for identifying and reviewing these opportunities to provide credit to those carriers and drivers who go above and beyond the regulatory requirements.

FMCSA held similar listening sessions on January 12, 2016, at the American Bus Association's (ABA) Marketplace in Louisville, Kentucky, and on January 31, 2016, at the United Motorcoach Association (UMA) Expo 2016 in Atlanta, Georgia.

**II. Meeting Participation and Information FMCSA Seeks From the Public**

The listening session is open to the public. Speakers should try to limit their remarks to 3–5 minutes. No preregistration is required. Attendees may submit material to the FMCSA staff at the session for inclusion in the pubic docket referenced at the beginning of this notice.

[1] See *https://www.gpo.gov/fdsys/pkg/FR-2015-04-23/pdf/2015-09463.pdf* or *https://www.fmcsa.dot.gov/regulations/notices/2015-09463.*

Those participating in the webcast will have the opportunity to submit comments online that will be read aloud at the session along with those comments made in the meeting rooms in Louisville and Chicago. FMCSA will docket the transcripts of the webcast, a separate transcription of each listening session prepared by an official court reporter, and all other materials submitted to FMCSA personnel.

FMCSA would like to know the views of the public on the concept, with any data or analysis to support it, with regard to 3 basic areas: (1) What voluntary technologies or safety program best practices would be appropriate for beyond compliance; (2) What type of incentives would encourage motor carriers to invest in technologies and best practices programs; and (3) How FMCSA would verify that the voluntary technologies or safety programs are being implemented.

Issued on: March 10, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05928 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2014–0111]**

### Hours of Service of Drivers: Application for Renewal of Illumination Fireworks, LLC and ACE Pyro, LLC Exemptions From the 14-Hour Rule During Independence Day Celebrations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for renewal of exemption; request for comments.

**SUMMARY:** FMCSA announces that it has received an application from Illumination Fireworks, LLC and ACE Pyro, LLC (applicants) for a renewal of their exemption from the requirement that drivers of commercial motor vehicles (CMVs) must not drive following the 14th hour after coming on duty. The applicants requested the exemption for the period of June 28–July 8, for the next five years (2016–2020) inclusive. The applicants were previously granted an exemption for drivers of 50 CMVs during the Independence Day period of June 28, 2015–July 8, 2015. The exemption would apply solely to the operation of drivers of 50 CMVs employed by the applicants in conjunction with staging fireworks shows celebrating Independence Day during the proposed periods. During these periods, the CMV drivers employed by the applicants would be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers would not be allowed to drive after accumulating a total of 14 hours of on-duty time, following 10 consecutive hours off duty, and would continue to be subject to the 11-hour driving time limit, and the 60- and 70-hour on-duty limits. The applicants maintain that the terms and conditions of the limited exemption would ensure a level of safety equivalent to or greater than the level of safety achieved without the exemption.

**DATES:** Comments must be received on or before April 15, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2014–0111 using any of the following methods:

- *Federal eRulemaking Portal: 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., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit 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., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment 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:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

#### I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

*Submitting Comments*

If you submit a comment, please include the docket number for this notice (FMCSA–2014–0111), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2014–0111'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Comment Now!'' button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. 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. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

*Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to

*www.regulations.gov* and insert the docket number, ''FMCSA–2014–0111'' in the ''Keyword'' box and click ''Search.'' Next, click ''Open Docket Folder'' button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

## II. Legal Basis

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)).

## III. Application for Exemptions

The hours-of-service (HOS) rule in 49 CFR 395.3(a)(2) prohibits a property-carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. The applicants represent two fireworks display companies that were previously granted exemptions during the Independence Day period of June 28–July 8, 2015. The applicants' initial exemption application for relief from the 14-hour rule was submitted in 2014; a copy of the application is in the docket identified at the beginning of this notice. That 2014 application describes fully the nature of the operations of the CMV drivers employed by the applicant during a typical Independence Day period.

The applicants request a renewal of its exemption for the period of June 28–July 8, for the next five years (2016–2020) inclusive. Section 5206(a)(2) of the ''Fixing America's Surface Transportation Act'' (FAST Act) [Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015], effective October 1, 2015, permits exemptions for no longer than five years from their dates of inception.

As stated in the applicants' request, CMV drivers employed by the applicants hold commercial driver's licenses (CDL) with hazardous materials endorsements to transport Division 1.3G and 1.4G fireworks in conjunction with the setup of firework shows for Independence Day. The applicants state that they seek HOS exemptions for the 2016–2020 Independence Day periods because compliance with the 14-hour rule would impose economic hardship on cities, municipalities, and themselves. Complying with the existing regulation means that most shows would require two drivers, significantly increasing the cost of the fireworks display.

The applicants assert that without the extra duty-period provided by the exemption, safety would decline as firework drivers would be unable to return to their home base following each show should they have fireworks remaining after the display. They would be forced to park the CMVs carrying Division 1.3G and 1.4G products in areas less secure than the motor carrier's home base.

## IV. Method To Ensure an Equivalent or Greater Level of Safety

As a condition for maintaining the exemption, each motor carrier would be required to notify FMCSA within 5 business days of any crash (as defined in 49 CFR 390.5) involving the operation of any CMVs under this exemption. The applicants advise they have never been involved in a crash.

In the exemption request, the applicants assert that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display and normally do so in the early morning when traffic is light. The applicants noted that during the 2015 Independence Day season, the farthest Illumination Fireworks traveled from its home base was 150 miles. At the site, they spend considerable time installing, wiring, and checking the safety of fireworks displays, followed by several hours of duty in the late afternoon and early evening prior to the event. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers.

## V. Terms and Conditions of the Exemption

*Period of the Exemption*

The requested exemption from the requirements of 49 CFR 395.3(a)(2) is proposed to be effective for June 28–July 8, for the next five years (2016–2020 inclusive). The exemption would expire on June 27, 2021 at 11:59 p.m. local time, 5 years from its inception.

*Extent of the Exemption*

The exemption would be restricted to the 50 drivers employed by the applicants. The drivers would be given a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving a CMV after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by the exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. The exemption would be contingent on each driver driving no more than 11 hours in the 14-hour period after coming on duty as extended by any off-duty or sleeper-berth time in accordance with this exemption. The exemption would be further contingent on each driver having a minimum of 10 consecutive hours off duty prior to beginning a new duty period. The carriers and drivers must comply with all other applicable requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

*Other Conditions*

The exemption would be contingent upon each carrier maintaining USDOT registration, a Hazardous Materials Safety Permit (if required), minimum levels of public liability insurance, and not being subject to any ''imminent hazard'' or other out-of-service (OOS) order issued by FMCSA. Each driver covered by the exemption would be required to maintain a valid CDL with the appropriate endorsements, not be subject to any OOS order or suspension of driving privileges, and meet all physical qualifications required by 49 CFR part 391.

*Preemption*

During the periods the exemption would be in effect, no State would be allowed to enforce any law or regulation

that conflicted with or was inconsistent with the exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

*FMCSA Accident Notification*

Exempt motor carriers would be required to notify FMCSA within 5 business days of any accident (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification would have to include the following information:

a. Exemption Identity: ''Illumination Fireworks'' or ''Ace Pyro''

b. Name of operating motor carrier and USDOT number,

c. Date of the accident,

d. City or town, and State, in which the accident occurred, or closest to the accident scene,

e. Driver's name and driver's license number and State of issuance,

f. Vehicle number and State license plate number,

g. Number of individuals suffering physical injury,

h. Number of fatalities,

i. The police-reported cause of the accident,

j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations, and

k. The driver's total driving time and total on-duty time period prior to the accident.

Accidents would be reported via email to *MCPSD@DOT.GOV.*

Issued on: March 1, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05907 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0368; FMCSA–2011–0381; FMCSA–2013–0192; FMCSA–2013–0193]**

### Qualification of Drivers; Exemption Applications; Diabetes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions of 99 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. FMCSA has statutory authority to exempt individuals from this rule if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals 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:** Each group of renewed exemptions are effective from the dates stated in the discussions below. Comments must be received on or before April 15, 2016.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. FMCSA–2011–0368; FMCSA–2011–0381; FMCSA–2013–0192; FMCSA–2013–0193, using 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, 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., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*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 Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment 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).

**FOR FURTHER INFORMATION CONTACT:** Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–113, Washington, DC 20590–0001. Office hours are from 8 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the Federal Motor Carrier Safety Regulations 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. The 99 individuals listed in this notice have recently become eligible for a renewed exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. The drivers remain in good standing with the Agency, have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period.

#### Exemption Decision

This notice addresses 99 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. These 99 drivers remain in good standing with the Agency, have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. Therefore, FMCSA has decided to extend each exemption for a renewable two-year period. Each individual is identified according to the renewal date.

The exemptions are renewed subject to the following conditions: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive

medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual submit an annual ophthalmologist's or optometrist's report; and (4) 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 also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. The following groups of drivers received renewed exemptions in March, 2016 and are discussed below.

As of March 5, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 41 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (78 FR 79062; 79 FR 12567):

David E. Ames (IL)
Michael R. Boland (IL)
Christopher D. Burks (MA)
Larry D. Burton (IL)
Anthony D. Chrisley (CA)
Henry Collins (MO)
John B. Conway Jr. (NC)
James V. Davidson Jr. (UT)
Michael A. De La Torree (CA)
Corrado DePalma (NJ)
Douglas E. Emey (IN)
William C. Flom (IA)
Brian A. Griep (IA)
George E. Hagey (IL)
Ronnie Harrington (MS)
Andrew P. Hines (OH)
Arlyn D. Holtrop (IA)
Stephan P. Hyre (OH)
Aaron C. Kaplan (CA)
Sigmund E. Keller (NY)
Derl T. Martin (MO)
Waymond E. Mayfield (MO)
Senad Mehmedovic (KY)
Ronald E. Mullard (AL)
Justin C. Orr (CA)
Kevin L. Otto (OH)
Larry H. Painter (PA)
Robert K. Patterson (IA)
Albert M. Purdy (PA)
Adam Razny (MO)
Thomas F. Scanlon (NJ)
Harrison G. Simmons (MO)
Scott A. Stout (FL)
Walter D. Strang, IV (CT)
Mark A. Torres (MA)
Eric A. Vernon (IA)
Marvin L. Vonk (IA)
Kelly J. Walstad (MN)
John R. Wappes (OH)
Ray C. Williams (CT)
Rickey A. Wulf (IA)

The drivers were included in Docket No. FMCSA–2013–0193. Their exemptions are effective as of March 5, 2016 and will expire on March 5, 2018.

As of March 7, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 45 individuals, have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce (77 FR 3549; 77 FR 13685; 78 FR 78479; 79 FR 13086):

Chad E. Anger (WI)
Willie V. Apodaca (NM)
Edward Blake (GA)
Dorin D. Blodgett (IN)
Jerry A. Campbell (OH)
Brian M. Chase (VA)
Phillip Covel (NE)
Nicholas P. Dube (RI)
James W. Dusing (MN)
Manuel Elizondo (TX)
Michael K. Farris (IN)
Menino Fernandes (IL)
Craig J. Gadley, Sr. (NY)
Daniel C. Grove Jr. (PA)
Mary F. Guilfoy (IN)
Jeffrey M. Halida (WI)
James M. Hatcher (MS)
Matthew E. Hay (TX)
Edward S. Ionescu (IL)
Jeffrey P. James (AR)
Tracy N. Jenkins (DE)
Gregory A. King (NC)
Matthew R. Linehan (NY)
Cory A. Meadows (OH)
Ashun R. Merritt (GA)
Herbert A. Morton (CA)
Colby A. Nutter (VA)
Jayrome B. Rimolde (MN)
Gale Roland (PA)
Larry A. Sanders (MD)
John L. Scherette (WA)
Kelly T. Scholl (MN)
James P. Shurkus (NH)
Gregory G. Sisco (IA)
Travers L. Stephens (GA)
Brittany K. Tomasko (CA)
Joel L. Topping (NV)
Daren Warren (NY)
Alan T. Whalen (NY)
Thomas L. Whitley (IN)
Randall S. Williams (PA)
Charles J. Wirth (WI)
Tomme J. Wirth (IA)
Joshua C. Wyse (OH)
Rowland P. Yee (HI)

The drivers were included in Docket Nos. FMCSA–2011–0368; FMCSA–2013–0192. Their exemptions are effective as of March 7, 2016 and will expire on March 7, 2018.

As of March 23, 2016, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the rule prohibiting drivers with ITDM from driving CMVs in interstate commerce. (77 FR 5870; 77 FR 17116):

Roger L. Arcand, Jr. (MA)
Marsha M. Colberg (WA)
Robert D. Crissinger (MN)
Scott W. Forsyth, Jr. (CO)
Fritz D. Gregory (UT)
Anthony P. Kesselring (FL)
Don R. Kivi (ND)
Vincent Ligotti (NY)
Michael R. Miller (PA)
Jack L. Phippen (WI)
Richard A. Purk (CA)
Bryan E. Quick (VA)
Jack A. Tidey (AR)

The drivers were included in Docket No. FMCSA–2011–0381. Their exemptions are effective as of March 23, 2016 and will expire on March 23, 2018.

Each of the 99 drivers in the aforementioned groups qualifies for a renewal of the exemption. They have maintained their required medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each of the 99 drivers for a period of two years is likely to achieve a level of safety equal to that existing without the exemption. The drivers were included in docket numbers FMCSA–2011–0368; FMCSA–2011–0381; FMCSA–2013–0192; FMCSA–2013–0193.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by April 15, 2016.

FMCSA believes that the requirements for a renewal of an

exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 99 individuals from rule prohibiting persons with ITDM from operating CMVs in interstate commerce in 49 CFR 391.41(b)(3). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the medical condition of each applicant for an exemption from rule prohibiting persons with ITDM from operating CMVs in interstate commerce. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

**Submitting Comments**

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket numbers FMCSA–2011–0368; FMCSA–2011–0381; FMCSA–2013–0192; FMCSA–2013–0193 and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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. FMCSA may issue a final determination at any time after the close of the comment period.

**Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and in the search box insert the docket number FMCSA–2011–0368; FMCSA–2011–0381; FMCSA–2013–0192; FMCSA–2013–0193 and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to this notice.

Issued on: March 10, 2016.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2016–05906 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Request for Proposals for Implementing a High-Speed Rail Corridor

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of request for proposals.

**SUMMARY:** Section 11308 of the Fixing America's Surface Transportation (FAST) Act, Public Law 114–94 (December 4, 2015), requires the Secretary of Transportation (Secretary) to ''issue a request for proposals for projects for the financing, design, construction, operation, and maintenance of a high-speed passenger rail system operating within a high-speed rail corridor.'' To satisfy this requirement, the FRA is soliciting and encouraging the submission of proposals to finance, design, construct, operate, and maintain a high-speed rail (HSR) system. FRA will review the proposals within 90 days of their receipt and the Secretary may establish commissions to further review proposals that the Secretary determines warrant further consideration.

**DATES:** All proposals submitted in response to this notice shall be submitted by 5 p.m. ET on August 31, 2016, in accordance with the instructions in **ADDRESSES** below.

**ADDRESSES:** Any questions, responses or proposals in response to this notice shall be submitted under the docket number FRA–2016–0014 by any of the following methods:

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

*Instructions:* All submissions must include the agency name and docket number (FRA–2016–0014) for this Request for Proposals (RFP) process. Note that all comments received will be posted, without change, to *http://www.regulations.gov,* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials. Internet users may access comments received by DOT at *http://www.regulations.gov.*

If you wish to submit any information under a claim of confidentiality, submit a version from which you have deleted the claimed confidential business information to the docket as specified above and send two copies of your complete submission, including the information you claim to be confidential business information, following the steps outlined in ''Requests for Confidential Treatment'' in the **SUPPLEMENTARY INFORMATION** section of this document to Mr. Trevor Gibson as specified below.

**FOR FURTHER INFORMATION CONTACT:** For information from FRA, please contact Mr. Trevor Gibson, Office of Railroad Policy and Development, Federal Railroad Administration, 1200 New Jersey Avenue SE., MS–20/W36–411, Washington, DC 20590. Phone (202) 493–6371.

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1. Background on High-Speed Rail (HSR): HSR is self-guided intercity passenger ground transportation that is

time competitive with air and/or auto on a door-to-door basis for trips in the approximate range of 100 to 500 miles. A corridor is a natural grouping of metropolitan areas and markets that, by their proximity and configuration, lend themselves to efficient service by HSR.

America's population is estimated to increase by 70 million people, or more than 20 percent, by 2045 (U.S. Department of Transportation, Beyond Traffic 2045: Trends and Choices, 2015). The majority of this growth will be concentrated in the Nation's growing megaregions—densely populated, metropolitan areas with interlocking economies and shared transportation, environmental, and cultural resources. To maintain economic competitiveness and quality-of-life, the U.S. must have an interconnected and balanced transportation network that maximizes the benefits of every mode. Rail transportation will play a critical role in accommodating this growth and provide an alternative to the Nation's increasingly congested airports and highways. This request for proposals to finance, design, construct, operate, and maintain high-speed rail corridors will set the stage for job creation, sustainable economic competitiveness, a more resilient infrastructure, and a lasting prosperity.

2. Background on this RFP Section 11308 of the FAST Act, Public Law 114–94 (December 4, 2015), requires the Secretary of Transportation to ''issue a request for proposals for projects for the financing, design, construction, operation, and maintenance of a high-speed passenger rail system operating within a high-speed rail corridor.'' Potential corridors include, but are not limited to, the following:

(A) Northeast Corridor;
(B) California Corridor;
(C) Pacific Northwest Corridor;
(D) South Central Corridor;
(E) Gulf Coast Corridor;
(F) Chicago Hub Network;
(G) Florida Corridor;
(H) Southeast Corridor;
(I) Keystone Corridor;
(J) Empire Corridor; and
(K) Northern New England Corridor.

The FAST Act prescribes that responses to this RFP will be considered by the Secretary and possibly by commissions representing affected and involved governors, mayors, freight railroads, transit authorities, labor organizations, and Amtrak. Based on the results of these reviews, proposals may be summarized in one or more reports to Congress, which will make recommendations for further action. FRA envisions this as the first phase of a qualification process that Congress may follow with more specific actions regarding particular proposals in one or more corridors.

However, no Federal funding is associated with this provision and, in the FAST Act, Congress prohibited any Federal agency from taking subsequent actions to further ''implement, establish, facilitate, or otherwise act upon any proposals'' submitted under this RFP—other than the actions described in this notice—without ''explicit statutory authority'' to be subsequently provided by Congress. Respondents to this RFP acknowledge, by virtue of their response, that the likelihood of future funding and implementation of the proposed projects covered by this notice is unknown, and that the Federal Government is not liable for any costs incurred preparing responses to this notice.

3. Previous Request for Expressions of Interest: Section 502 of the Passenger Rail Investment and Improvement Act of 2008, Public Law 110–432 (October 16, 2008), required a similar proposal process to the FAST Act provisions outlined in this notice. FRA published a request for expressions of interest in the **Federal Register** on December 16, 2008 (Vol. 73, No. 242, 76443–76448) requiring proposals to be submitted to FRA by September 14, 2009. The Secretary did not establish commissions to further consider any of the proposals submitted in 2009.

4. Who May Respond: Responses to this RFP are welcome from all sources. Section 11308 calls for comprehensive proposals that will address all the tasks necessary to implement HSR. Potential proposers are advised to verify, before committing resources to responding to this RFP, that they would be able to assemble a multi-disciplinary team that can plan, organize, finance, design, and construct a complete HSR system, as well as gain the support of the key public and private stakeholders, and successfully operate and maintain it on a long-term basis.

5. Performance Standards for HSR Systems: Section 11308 requires that the HSR proposals submitted in response to this RFP meet the following travel time performance standards:

(A) For the Northeast Corridor between New York and Washington: Proposed express service must link Pennsylvania Station, New York, with Union Station, Washington, with a reliable travel time of two hours; and

(B) For all other corridors with existing intercity passenger rail service, including the Northeast Corridor between New York and Boston: Existing minimum intercity rail scheduled service trip times (as shown in Amtrak's published timetable in effect on January 11, 2016) between endpoints and all other main corridor city-pairs must be reduced by a minimum of 25 percent, and reliable service provided. If no service presently exists in the proposed corridor, the respondent will need to demonstrate that the proposed service will be reliable and time competitive with other modes of transportation in the corridor.

6. Corridor Definitions: Section 11308 identifies eleven potential high speed rail corridors but does not limit proposals to these corridors. The corridors listed in Section 11308 are defined as follows:

(A) ''Northeast Corridor'' between Washington, DC, Baltimore, MD, Wilmington, DE, Philadelphia, PA, Trenton, NJ, New York, NY, New Haven, CT, Providence, RI, and Boston, MA. Separate service standards apply north and south of New York City, see Performance Standards for HSR Systems, above;

(B) ''California Corridor'' connecting and between the San Francisco Bay Area, Sacramento, Los Angeles, and San Diego, CA;

(C) ''Pacific Northwest Corridor'' between Eugene and Portland, OR, Seattle, WA, and Vancouver, BC, Canada;

(D) ''South Central Corridor'' along three branches between Dallas/Fort Worth, TX and:

(1) Austin and San Antonio, TX;
(2) Oklahoma City and Tulsa, OK; and
(3) Texarkana and Little Rock, AR;

(E) ''Gulf Coast Corridor'' along three branches between New Orleans, LA and:

(1) Birmingham, AL and Atlanta, GA;
(2) Houston, TX; and
(3) Mobile, AL;

(F) ''Chicago Hub Network'' along six routes between:

(1) Chicago, IL, Milwaukee, WI and Minneapolis-St. Paul, MN;
(2) Chicago, IL and Detroit, MI;
(3) Chicago, IL, Toledo and Cleveland, OH;
(4) Chicago, IL, Indianapolis, IN, and both Cincinnati, OH and Louisville, KY;
(5) Chicago, IL, St. Louis, MO and Kansas City, MO; and
(6) The transversal extension between Cleveland, Columbus, and Cincinnati, OH;

(G) ''Florida Corridor'' between Miami, Orlando, and the Tampa Bay region, FL;

(H) ''Southeast Corridor'' along three branches between:

(1) Washington, DC, Richmond, VA, Raleigh, Greensboro and Charlotte, NC, Greenville, SC and Atlanta, GA;
(2) Raleigh, NC, Columbia, SC, Savannah, GA, Jacksonville, FL; and

(3) Atlanta, Macon, and Jesup, GA, thence either or both Savannah, GA and Jacksonville FL;

(I) ''Keystone Corridor'' between Philadelphia, Harrisburg, and Pittsburgh, PA, over the route of the former Pennsylvania Railroad;

(J) ''Empire Corridor'' between New York City, Albany and Buffalo, NY, over the route of the former New York Central Railroad; and

(K) ''Northern New England Corridor'' along three branches between Boston, MA and:

(1) Portland/Lewiston-Auburn, ME;

(2) Concord, NH, Montpelier, VT, Montreal, QE, Canada; and

(3) Springfield, MA and to both New Haven, CT and Albany, NY; and

7. Required Contents of Proposals: Proposals in response to this RFP must include the following:

(A) The name(s) and qualifications of the person(s) submitting the proposal, and the names and qualifications of the lead entity and each member/entity of the team proposed to finance, design, construct, operate, and maintain the railroad, railroad equipment, and related facilities, stations, and infrastructure. Describe how such entities would be related to the lead entity;

(B) An executive summary, not to exceed 3 pages, of the proposed project concept, including:

(1) Markets served, including a concept map;

(2) Station locations;

(3) Trip times for major markets indicating that program performance standards will be met;

(4) Peak and average operating speeds of the train service;

(5) Proposed routes and alignments, noting the extent of new rights-of-way (ROW) and use of existing ROW, as well as a general discussion of how the intended reliability requirements will be achieved;

(6) Type of train equipment to be used, the maximum speed of that equipment, and any technologies used to meet trip time goals;

(7) Proposed organizational structure;

(8) Salient features of the intended operation as they may affect operating practices and unit costs;

(9) Total capital cost and expected contributions by Federal, state, and other public and private sources;

(C) The benefits to the public and the national transportation system, including an explanation of why the project is cost-effective and what advantages it offers over existing services. Provide a detailed technical description of the proposed project, including:

(1) Populations of markets served by each of the proposed stations;

(2) Existing intercity traffic (passengers, vehicle capacity, frequency) by mode;

(3) Proposed station locations and, for each, whether it is existing or new, and how it maximizes the use of existing infrastructure;

(4) How the project will facilitate convenient intermodal travel connections with other transportation services and systems;

(5) Trip time and fare comparisons among proposed services, existing rail services, if any, and competing modes for major city pairs;

(6) An operating plan with train service frequency, timetable, and information on intermodal connections;

(7) Annual ridership and revenue projections for 10 years with documentation of assumptions and methods;

(8) Operating costs with documentation of assumptions and methods;

(9) The impact of the project on highway and aviation congestion, energy consumption, pollutant emissions, land use and economic development;

(10) A description of how the design, construction, implementation, and operation of the proposed project will accommodate and allow for future growth of existing and projected intercity, commuter, and freight rail service;

(11) The impact of the proposed project on other intercity, commuter, and freight rail services;

(12) Proposed routes and alignments noting the extent of new ROW and use of existing ROW;

(13) Required infrastructure investments and improvements, including the feasibility of building new track and method for securing required ROW;

(14) How adverse impacts of the proposed project would be mitigated;

(15) The type and quantity of train equipment to be used, with technical specifications, such as consist, maximum speed, passenger capacity, energy consumption profile, acceleration and deceleration rates;

(16) Project capital costs for major categories of expenditures (track structures, tunnels, bridges, vehicles, stations, maintenance equipment and facilities, communication and control systems, and power systems), with documentation of assumptions and methods;

(17) How the proposed project would contribute to the development of a national HSR system;

(18) A detailed analysis of the methods and technologies for achieving the required reductions in trip times and the intended reliability standards; and

(19) Synopses and references for any past high-speed rail studies deemed relevant.

(D) Present a detailed financial plan for the proposed project, including:

(1) Projected annual operating revenues by year and sources;

(2) Estimates of annual operating costs by type of expenditure;

(3) Annual schedule of capital costs required both initially and in subsequent years to maintain a state-of-good-repair and to recapitalize as necessary to sustain the initially proposed level of service or higher levels of service;

(4) Sources and descriptions of capital funds, including terms, conditions and expectation for return on equity;

(5) Credit assumptions including sources, guarantees, terms, maturity and special conditions;

(6) A description of the insurance program contemplated for construction and operation;

(7) A description of construction cost risk sharing and rationale for the proposed approach;

(8) A description of revenue and operating cost risk sharing and rationale for the proposed approach;

(9) Projected levels of private investment and sources thereof, including the identity of any person or entity that has made or is expected to make a commitment to provide or secure funding and the amount of such commitment;

(10) Projected funding for the full fair market compensation for any asset, property right or interest, or service acquired from, owned, or held by a private person or Federal entity that would be acquired, impaired, or diminished in value as a result of a project, except as otherwise agreed to by the private person or entity; and

(11) A projected financial statement for the proposed organization showing annual revenues, costs, investments, and debt service from project inception through construction, testing, and the first 20 years of operation;

(E) Describe the institutional framework and address other institutional issues, including:

(1) A project structure organization chart showing the proposer team and all the relationships among the public and private entities involved in the proposed project, a description of the relationships among the entities responsible for the financing, design, construction, operation and

maintenance of the proposed project (including their equity stakes), and the roles of other participants in the operational aspects of the proposed project;

(2) Any new entities required to be created and how they will be structured legally and financially;

(3) Integration of the proposed service with Amtrak, other HSR rail services, other intercity passenger systems, and local access/egress systems;

(4) The feasibility of gaining access to required ROW, the approach to track capacity including building new track, and any public and private agreements for facility access and the expected costs of each;

(5) Required governmental actions and approvals and the role of the state government(s) in implementing the proposal; and

(6) The relationship to state rail plans and programs or, if not already part of such plans or programs, a statement describing plans for integration into them;

(F) Identify legislative actions needed, if any, to facilitate all aspects of the proposed project, including:

(1) Required Federal, state, and/or local legislation to authorize and create a sponsoring entity for the proposed project, or to remove legal impediments to project implementation, or otherwise facilitate the proposed project;

(2) Required public funding commitments, Federal, state, and/or local; and

(3) Required to allow the project to benefit from government-sponsored credit assistance programs, such as the Railroad Rehabilitation and Improvement Financing program (45 U.S.C. 821 *et seq.*) and the Transportation Infrastructure Finance and Innovation Act program (23 U.S.C. 601 *et seq.*); and

(G) Describe how the proposed project will be implemented to comply with Federal, state and local laws, including but not limited to:

(1) Laws governing the rights and status of employees associated with the route and service, including those specified in Section 24405 of title 49 United States Code;

(2) Buy America, as specified in Section 24405 of title 49 United States Code;

(3) Rail safety and security laws, orders, and regulations governing HSR operations, including, but not limited to, the railroad safety provisions in Part 49 of the Code of Federal Regulations and the requirements of the FAST Act;

(4) Environmental laws and regulations and the status or any progress towards completion of required documentation or actions under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the National Historic Preservation Act (16 U.S.C. 470 *et seq.*), Section 4(f) of the DOT Act (23 U.S.C. 138 and 49 U.S.C. 303), or other applicable Federal or state environmental impact assessment laws; and

(5) The Americans with Disabilities Act, as amended.

8. Optional Contents Requested for Inclusion in Proposals: In addition to the required contents, respondents are requested to provide, at their option, their perspectives on what type of contracting and financing strategies are most likely to facilitate successful HSR projects. FRA is particularly interested in perspectives that draw on prior experience with HSR projects. In responding to this RFP, please consider addressing the following:

(A) What type of contracting structure is likely to provide the most effective allocation of the risk and responsibility for each element of the project (design, construction, financing, operation and maintenance) between the private and public sectors?

(B) Should all of the project elements to be performed by the private sector be procured in a single procurement or separately (for example, separate procurements for civil works, the provision of systems and equipment, and long-term operations and maintenance of the system)?

(C) Should the project's financing rely on commercial ticket fares and other revenue generated directly by the facility to pay for all or any portion of the project's cost, and should the private partner assume the risk that these revenues will be sufficient to repay all or any portion of the project's financing?

(D) What role should public sector commitments play in financing the project or particular components of the project, and what type of public commitment would be most effective?

(E) What measures or commitments would be needed, including possible legislation, to provide and facilitate multi-year Federal commitments of any Federal financing needed for the project?

(F) What role should private equity play in financing the project or particular components of the project and how would terms and conditions affect public sector participation?

(G) Are there any key considerations that will encourage or dissuade private sector involvement in the financing, design, construction, and long-term operations and maintenance of HSR corridors?

(H) Should the commissions required by Section 11308 of the FAST Act be organized and their work structured in the same way for all corridors, and what structures and models should be considered to guide the commissions?

9. Format for Submissions: Each proposal shall be submitted according to the instructions in **ADDESSES** above. Text and graphic documents shall be submitted as either Microsoft Word or Adobe PDF documents, in Times New Roman, 12 point font, with 1-inch margins. Spreadsheets containing financial information shall be submitted as Microsoft Excel (or compatible) or Adobe PDF documents.

Each proposal should not exceed a maximum total of 50 pages, excluding appendices. Proposals should be organized by the following sections: cover page, proposer name(s) and contact information, executive summary, detailed technical description, detailed financial plan, institutional information, legislative actions, legal compliance issues, and appendices containing any spreadsheets, drawings, and tables. Optional content should be provided as an additional section not included in the page count. The executive summary should not exceed three (3) pages in length.

10. Evaluation and Selection Process for Proposals: FRA will evaluate each proposal in a phased process. Proposals will first be screened for completeness in responding to this RFP. Following this initial screening for completeness, proposals will undergo a review and selection process as outlined below.

*Selection Criteria:* The proposals will be assessed on the extent to which each satisfies the following selection factors:

(1) The project detailed in the proposal demonstrates the ability to achieve the specified reduction in minimum intercity rail service trip times and the intended reliability standards;

(2) The project detailed in the proposal is sufficiently credible to warrant further consideration, including containing pledges of the requisite public or private funding or financing contemplated in the proposal. Respondents whose financial plans do not provide adequate assurances as to the availability of their intended funding and financing sources will not advance to the commission stage of the RFP process;

(3) The project detailed in the proposal is likely to result in a positive impact on the Nation's transportation system;

(4) The project detailed in the proposal is cost-effective; and

(5) The project detailed in the proposal is in the public interest.

*Step 1—FRA Review Process:* Upon close of the RFP solicitation, FRA will evaluate each proposal and determine if it is complete and if there is evidence provided in the proposal that supports the conclusions, based on the Selection Criteria.

*Step 2—Sufficient Resource Certification Process:* The FAST Act requires the Secretary to certify to Congress that DOT has sufficient resources to undertake the program before any action is taken. The Secretary has sent a letter to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives providing a conditional certification stating that DOT has the resources to issue the RFP and review proposals. Once all the proposals have gone through the FRA Review Process, the Secretary can determine the financial and personnel resources needed for the remainder of the program. This in turn will allow the Secretary to issue a final certification on the sufficiency of resources at the Department, or specify the resources that are necessary to complete the program. While the FAST Act authorizes funds to support the subsequent commission review process, no funds have been appropriated for this provision as of the date of this RFP.

*Step 3—Commission Review Process:* If the Secretary determines that one or more proposals warrant further consideration and the Secretary issues a final certification on the sufficiency of resources to Congress, then the Secretary will establish a commission for each relevant corridor no later than 90 days after the receipt of the proposals. Commission members will include affected governors, mayors, freight railroads, transit authorities, and labor organizations, as well as Amtrak. The commission(s) will review the proposals forwarded by the Secretary and prepare a report to the Secretary making recommendations for further consideration.

*Step 4—Secretary Selection Process:* Within 60 days of receipt of each commission's evaluation and recommendations, the Secretary will consider the commission report(s) and select proposals that: (1) demonstrate a high likelihood of providing substantial benefits to the public and the national transportation system; (2) are cost-effective, considering public commitments necessary for implementation and operation; and (3) promise significant advantages over existing services operating in the same HSR corridor. The Secretary will then submit one or more reports to Congress on the selected proposals.

Until Congress issues follow-up actions for selected proposals, no Federal agency may take any action to implement, establish, facilitate, or otherwise act upon any proposal submitted under Section 11308, other than those actions specifically authorized by that Section.

11. Freedom of Information Act Applicability: Documents submitted to the agency pursuant to this notice become agency records subject to the public access provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552). FOIA generally provides that any person has a right, enforceable in court, to obtain access to Federal agency records, except to the extent that such records (or portions of them) are protected from public disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. The Department of Transportation's regulations implementing the FOIA are found at 49 CFR part 7. See the discussion later in this notice about the treatment of trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

12. Requests for Confidential Treatment: FRA recognizes that proposals submitted to the agency pursuant to this notice may contain certain information that is or should be exempt from public release, principally because the information constitutes trade secrets or commercial or financial information obtained from a person that is privileged or confidential as provided for in FOIA exemption 4 (5 U.S.C. 552(b)(4)). The term ''trade secret'' has been fairly narrowly defined as a ''secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.'' *Public Citizen Health Research Group* v. *FDA,* 704 F.2d 1280, 1288 (D.C. Cir. 1983). FRA expects that there should be very limited, if any, need to submit trade secret information in connection with this notice. Commercial or financial information obtained from a person that is privileged or confidential and thus exempt from release under FOIA exemption 4 typically involves information for which the release is likely to cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Association* v. *Morton,* 498 F.2d 765, 770 (D.C. Cir. 1974). This is a fairly restrictive standard and should serve to limit the volume of exempt material that might be submitted.

FRA also recognizes that the nature of the process established through Section 11308 of the FAST Act, with the potential involvement of a multi-member commission that could be charged with reviewing proposals submitted pursuant to this notice, could present significant challenges managing any confidential information is submitted. Thus, respondents are encouraged to carefully review the applicable standards governing what constitutes trade secrets or confidential commercial or financial information and to limit the submission of such information to that specifically needed to respond to this notice.

A request for confidential treatment with respect to a document or portion thereof may be made in accordance with instructions in ADDRESSES above on the basis that the information is— (1) Exempt from the mandatory disclosure requirements of FOIA (5 U.S.C. 552); (2) Required to be held in confidence by 18 U.S.C. 1905; or (3) Otherwise exempt by law from public disclosure. Any document containing information for which confidential treatment is requested shall be accompanied at the time of filing by a detailed statement justifying non-disclosure and referring to the specific legal authority claimed for confidentiality. Any document containing any information for which confidential treatment is requested shall be marked ''CONFIDENTIAL'' or ''CONTAINS CONFIDENTIAL INFORMATION'' in bold letters. If confidentiality is requested for the entire document, or if it is claimed that non-confidential information in the document is not reasonably segregable from confidential information, the accompanying statement of justification shall so indicate and include support with specific legal authority. If confidentiality is requested for a portion of the document, then the person filing the document shall file, together with the document, a second copy of the document with the information for which confidential treatment is requested redacted. If the person filing a document, of which only a portion is requested to be held in confidence, does not submit a second copy of the document with the confidential information deleted, FRA may assume that there is no objection to public disclosure of the document in its entirety. FRA retains the right to make its own determination with regard to any claim of confidentiality. Notice of a decision by the FRA to deny a claim of confidentiality, in whole or in part, and

an opportunity to respond shall be given to a person claiming confidentiality of information no less than five days prior to its public disclosure. FRA intends to address protection of confidential information by any commission(s) formed to review submitted proposals through the commission formation process. Respondents are welcome to offer suggestions for managing confidential data along with their proposals.

Issued in Washington, DC, on March 9, 2016.

**Sarah E. Feinberg,**

*Administrator.*

[FR Doc. 2016–05866 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA–2016–0002–N–8]**

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this notice announces that the renewal Information Collection Requests (ICRs) abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on December 29, 2015.

**DATES:** Comments must be submitted on or before April 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Information Collection Clearance Officer, Office of Safety, Safety Regulatory Analysis Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292), or Ms. Kimberly Toone, Information Collection Clearance Officer, Office of Administration, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, sec. 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), and 1320.12. On December 29, 2015, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency is seeking OMB approval. *See* 80 FR 81423. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requests (ICRs) and their expected burdens. The renewal requests are being submitted for clearance by OMB as required by the PRA.

*Title:* System for Telephonic Notification of Unsafe Conditions at Highway-Rail and Pathway Grade Crossings.

*OMB Control Number:* 2130–0591.

*Abstract:* The collection of information is set forth under 49 CFR part 234. The rule is intended specifically to help implement Section 205 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Division A, which was enacted on October 16, 2008. Generally, the rule is intended to increase safety at highway-rail and pathway grade crossings. Section 205 of the RSIA mandates that the Secretary of Transportation require certain railroad carriers to take a series of specified actions related to setting up and using systems by which the public is able to notify the railroad by toll-free telephone number of safety problems at its highway-rail and pathway grade crossings. Such systems are commonly known as Emergency Notification Systems (ENS) or ENS programs. 49 CFR part 234 implements Section 2015 of the RSIA. The information collected is used by FRA to ensure that railroad carriers establish and maintain a toll-free telephone service to report emergencies at all public, private, and pedestrian grade crossings for rights-of-way over which they dispatch trains.

*Type of Request:* Extension with change of a currently approved information collection.

*Affected Public:* Businesses (Railroads).

*Form(s):* N/A.

*Total Annual Estimated Responses:* 298,245.

*Total Annual Estimated Burden:* 15,310 hours.

*Title:* Control of Alcohol and Drug Use in Railroad Operations: Addition of Post-Accident Toxicological Testing for Non-Controlled Substances.

*OMB Control Number:* 2130–0598.

*Abstract:* Since 1985, as part of its accident investigation program, FRA has conducted post-accident alcohol and drug tests on railroad employees who have been involved in serious train accidents (50 FR 31508, Aug. 2, 1985). If an accident meets FRA's criteria for post-accident testing (*see* 49 CFR 219.201), FRA conducts tests for alcohol and for certain drugs classified as controlled substances under the Controlled Substances Act (CSA), Title II of the Comprehensive Drug Abuse Prevention Substances Act of 1970 (CSA, 21 U.S.C. 801 *et seq.*). Controlled substances are drugs or chemicals that are prohibited or strictly regulated because of their potential for abuse or addiction. The Drug Enforcement Agency (DEA), which is primarily responsible for enforcing the CSA, oversees the classification of controlled substances into five schedules. Schedule I contains illicit drugs, such as marijuana and heroin, which have no legitimate medical use under Federal law. Currently, FRA routinely conducts post-accident tests for the following drugs: Marijuana, cocaine, phencyclidine (PCP), and certain opiates, amphetamines, barbiturates, and benzodiazepines. Controlled substances are drugs or chemicals that are prohibited or strictly regulated because of their potential for abuse or addiction.

FRA research indicates that prescription and OTC drug use has become prevalent among railroad employees. For this reason, FRA has added certain non-controlled substances to its routine post-accident testing program, which currently routinely tests

only for alcohol and controlled substances. At this time, FRA is adding two types of non-controlled substances, tramadol (a synthetic opioid) and sedating antihistamines. Publication of the PATT Final Rule, however, in no way limits FRA's post-accident testing to the identified substances or in any way restricts FRA's ability to make routine amendments to its standard post-accident testing panel without prior notice. Furthermore, in addition to its standard post-accident testing panel, FRA always has the ability to test for ''other impairing substances specified by FRA as necessary to the particular accident investigation.'' *See* 49 CFR 219.211(a). This flexibility is essential, since it allows FRA to conduct post-accident tests for any substance (*e.g.,* carbon monoxide) that its preliminary investigation shows may have played a role in an accident.

FRA uses the additional information collected for research and accident investigation purposes. The addition of non-controlled substances to the post-accident testing panel helps inform FRA about a broader range of potentially impairing prescription and OTC drugs that may be currently contributing to the cause or severity of train accidents/incidents. Research generated by these data will inform future agency policy decisions regarding these non-controlled substances.

*Type of Request:* Extension without change of a currently approved information collection.

*Form(s):* N/A.

*Total Annual Estimated Responses:* 32.

*Total Annual Estimated Burden:* 5 hours.

*Addressee:* Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov.*

*Comments are invited on the following:* Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, DC, on March 11, 2016.

**Erin McCartney,**

*Acting Chief Financial Officer.*

[FR Doc. 2016–05924 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2015–0106, Notice 2]**

### Decision That Nonconforming Model Year 2008–2010 Alfa Romeo 8C Spider Passenger Cars Are Eligible for Importation

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

**ACTION:** Grant of petition.

**SUMMARY:** This document announces a decision by the National Highway Traffic Safety Administration that certain Model Year (MY) 2008–2010 Alfa Romeo 8C Spider passenger cars (PCs) that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS) are eligible for importation into the United States because the 2008 and 2009 model year vehicles are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and certified to all applicable FMVSS (the U.S-certified version of the 2008–2009 Alfa Romeo 8C Spider PCs), and, in the case of the 2010 model year vehicles, because those vehicles have safety features that comply with, or are capable of being altered to comply with, all applicable FMVSS.

**DATES:** This decision became effective on March 10, 2016.

**ADDRESSES:** For further information contact George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

**SUPPLEMENTARY INFORMATION:**

#### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Under 49 U.S.C 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence that NHTSA decides to be adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories (WETL), Inc. of Houston, Texas (Registered Importer R–90–005), petitioned NHTSA to decide whether MY 2008–2010 Alfa Romeo 8C Spider PCs are eligible for importation into the United States. NHTSA published a notice of the petition on January 22, 2016 (81 FR 3859) to afford an opportunity for public comment. No comments were received in response to this notice. The reader is referred to the notice for a thorough description of the petition.

*NHTSA Conclusions*

In its petition, WETL noted that the original manufacturer, Alfa Romeo, certified the MY 2008 and 2009 8C Spider PCs to all applicable FMVSS and offered those vehicles for sale in the United States. WETL also contends that the non-U.S certified MY 2010 Alfa Romeo 8C Spider PC shares the same platform with the U.S.-certified MY 2008 and 2009 Alfa Romeo 8C Spider PC, and on that basis compares the non-U.S. certified model to those vehicles to establish its conformity with many applicable FMVSS. Because there is no U.S.-certified counterpart for the MY 2010 Alfa Romeo 8C Spider PC, the

petitioner acknowledged that it could not base its petition solely on the substantial similarity of those vehicles to the U.S.-certified MY 2008 and 2009 Alfa Romeo 8C Spider PC. Instead, the petitioner chose to establish import eligibility on the basis that the vehicles have safety features that comply with, or are capable of being modified to comply with, the FMVSS based on destructive test data or such other evidence that NHTSA decides to be adequate as set forth in 49 U.S.C. 30141(a)(1)(B). Nevertheless, the petitioner contends that the non-U.S. certified MY 2010 Alfa Romeo 8C Spider PCs use the same components as the U.S.-certified MY 2008 and 2009 Alfa Romeo 8C Spider PCs in virtually all of the systems subject to applicable FMVSS.

NHTSA has reviewed the petition and has concluded that the nonconforming versions of the MY 2008 and 2009 Alfa Romeo 8C Spider PCs described in the petition are substantially similar to the U.S.-certified versions of the MY 2008 and 2009 Alfa Romeo 8C Spider PCs and are capable of being readily altered to comply with all applicable FMVSS. NHTSA has also concluded that the nonconforming versions of the MY 2010 Alfa Romeo 8C Spider PCs described in the petition are comparable to the nonconforming versions of the MY 2008 and 2009 Alfa Romeo 8C Spider PCs with respect to all applicable FMVSS.

NHTSA has also determined that any RI who imports or modifies one of these vehicles must include in the statement of conformity and associated documents (referred to as a ''conformity package'') it submits to NHTSA under 49 CFR 592.6(d) additional specific proof to confirm that the vehicle was manufactured to conform to, or was successfully altered to conform to, FMVSS No. 138 *Tire Pressure Monitoring Systems* and FMVSS No. 208 *Occupant Protection.* This proof must include detailed descriptions of all modifications made to achieve conformity with those standards, including a detailed description of systems in place (if any) on the vehicle at the time it was delivered to the RI and a similarly detailed description of the systems in place after the vehicle is altered, including photographs of all required labeling. The description must also include parts assembly diagrams and associated part numbers for all components that were removed from or installed on the vehicle, a description of how any computer programming changes were completed, and a description of how compliance was verified after alterations were completed. Photographs (*e.g.,* monitor print screen captures) or report printouts, as practicable, must be submitted as proof that any computer reprogramming was carried out successfully.

In addition to the information specified above, each conformity package must also include evidence showing how the RI verified that any changes it made in loading or reprograming vehicle software to achieve conformity with each separate FMVSS did not cause the vehicle to fall out of compliance with any other applicable FMVSS.

*Decision*

Accordingly, on the basis of the foregoing, NHTSA hereby decides that MY 2010 Alfa Romeo 8C Spider passenger cars that were not originally manufactured to comply with all applicable FMVSS, are capable of being altered to conform to all applicable FMVSS.

NHTSA also hereby decides that MY 2008 and 2009 Alfa Romeo 8C Spider passenger cars that were not originally manufactured to comply with all applicable FMVSS, are capable of being readily altered to conform to all applicable FMVSS.

*Vehicle Eligibility Number for Subject Vehicles*

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–580 is the vehicle eligibility number assigned to MY 2008 and 2009 Alfa Romeo 8C Spider passenger cars and VCP–61 is assigned to MY 2010 Alfa Romeo 8C Spider passenger cars admissible under this notice of final decision.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

**Jeffrey M. Giuseppe,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2016–05843 Filed 3–15–16; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Notice of Application for Special Permits

**AGENCY:** Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, (PHMSA), DOT.

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before April 15, 2016.

*Address Comments To:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Approvals and Permits Division, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202)366–4535.

Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR I.53(b)).

Issued in Washington, DC, on January 28, 2016.

**Don Burger,**

*Chief, General Approvals and Permits.*

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of the special permits thereof |
|---|---|---|---|---|
| **Special Permits Data** | | | | |
| 20065–N | | BOOST OXYGEN, LLC | 176.1, 177.800, 172.500, 173.302a(a)(1), 172.200, 172.400. | To authorize the transportation in commerce of certain DOT Specification 2Q containers with Division 2.2 materials. |
| 20084–N | | CIMARRON COMPOSITES, LLC. | 173.302a | To authorize the manufacture, mark, sale and use of non-DOT specification cylinders for the transportation in commerce of certain Divisions 2.1 and 2.2 compressed gases. |
| 20088–N | | DSM NUTRITIONAL PRODUCTS, INC. | 107.601(a), 177.804(a), 172.500(a), 172.504(e), 172.400. | To authorize the transportation in commerce of certain Division 4.2, Packing Group III self-heating solid materials as excepted from registration, marking, labeling, placarding, and certain carrier requirements. |

[FR Doc. 2016–05687 Filed 3–15–16; 8:45 am]

**BILLING CODE 4909–60–M**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Delayed Applications

**AGENCY:** Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of application delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**Key to "Reason for Delay"**

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

### Meaning of Application Number Suffixes

N—New Application
M—Modification Request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on January 28, 2016.

**Don Burger,**

*Chief, General Approvals and Permits.*

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| **Modification to Special Permits** | | | |
| 16142–M | Nantong CIMC Tank Equipment Co. Ltd., Jiangsu, Province | 4 | 01–20–2016 |
| 14808–M | Amtrol-Alfa Metalomecanica, S.A., West Warwick, RI | 4 | 01–31–2016 |
| 15972–M | EnTrans International, LLC, Athens, TN | 4 | 02–15–2016 |
| 15628–M | Chemours Company FC, LLC., Wilmington, DE | 4 | 01–31–2016 |
| 16219–M | Structural Composites Industries (SCI), Pomona, CA | 4 | 02–18–2016 |
| 14437–M | Columbiana Boiler Company (CBCo), LLC, Columbiana, OH | 4 | 02–15–2016 |
| **New Special Permit Applications** | | | |
| 15767–N | Union Pacific Railroad Company, Omaha, NE | 3 | 02–29–2016 |
| 16001–N | VALTEK ASSOCIATES, INC., Malvern, PA | 3 | 03–31–2016 |
| 16220–N | Americase, Waxahache, TX | 4 | 03–31–2016 |
| 16337–N | Volkswagen Group of America (VWGoA), Herndon, VA | 4 | 02–15–2016 |
| 16371–N | Volkswagen Group of America (VWGoA), Herndon, VA | 4 | 02–15–2016 |
| 16416–N | INOX India Limited, Gujarat, India | 4 | 02–28–2016 |
| 16452–N | The Procter & Gamble Company, Cincinnati, OH | 4 | 03–10–2016 |
| 16477–N | Hydroid, Inc., Pocasset, MA | 4 | 03–15–2016 |
| 16516–N | Exosent Engineering, LLC, College Station, TX | 4 | 02–15–2016 |
| 16495–N | TransRail Innovation Inc., Calgary | 4 | 01–31–2016 |
| 16524–N | Quantum Fuel Systems Technologies Worldwide, Inc., Lake Forest, CA | 4 | 03–15–2016 |
| 16463–N | Salco Products, Lement, IL | 3 | 03–31–2016 |
| 16461–N | Coastal Hydrotesting LLC, Baltimore, MD | 4 | 02–10–2016 |
| **Party to Special Permits Application** | | | |
| 16279–P | AEG Environmental Products & Services, Inc., Westminster, MD | 4 | 01–31–2016 |
| **Renewal Special Permits Applications** | | | |
| 11860–R | GATX Corporation, Chicago, IL | 4 | 01–31–2016 |

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| 14694–R | FedEx Express, Memphis, TN | 4 | 01–31–2016 |

[FR Doc. 2016–05685 Filed 3–15–16; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Delayed Applications

**AGENCY:** Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of application delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PIIMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, P1111–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

**Key to ''Reason for Delay''**

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

**Meaning of Application Number Suffixes**

N—New Application
M—Modification Request
R—Renewal Request
P—Party to Exemption Request

Issued in Washington, DC, on February 16, 2016.

**Don Burger,**

*Chief, General Approvals and Permits.*

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| **Modification to Special Permits** | | | |
| 16412–M | Nantong CIMC Tank Tank Equipment Co. Ltd., Jiangsu, Province | 4 | 03–31–2016 |
| 15628–M | Chemours Company FC, LLC., Wilmington, DE | 4 | 03–31–2016 |
| 15610–M | TechKnowServ Corp., State College, PA | 4 | 03–31–2016 |
| 16035–M | LCF Systems, Inc., Scottsdale, AZ | 4 | 04–30–2016 |
| 14437–M | Columbiana Boiler Company (CBCo) LLC, Columbiana, OH | 4 | 02–15–2016 |
| **New Special Permit Applications** | | | |
| 15767–N | Union Pacific Railroad Company, Omaha, NE | 3 | 02–29–2016 |
| 16001–N | VALTEK ASSOCIATES, INC., Malvern, PA | 3 | 03–31–2016 |
| 16477–N | Hydroid, Inc., Pocasset, MA | 4 | 03–15–2016 |
| 16495–N | TransRail Innovation Inc., Calgary | 4 | 03–31–2016 |
| 16524–N | Quantum Fuel Systems Technologies Worldwide, Inc., Lake Forest, CA | 4 | 03–15–2016 |
| 16463–N | Salco Products, Lemont, IL | 3 | 03–31–2016 |
| **Party to Special Permits Application** | | | |
| 16279–P | AEG Environmental Products & Services, Inc., Westminster, MD | 4 | 03–31–2016 |

[FR Doc. 2016–05682 Filed 3–15–16; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Hazardous Materials: Actions on Special Permit Applications

**AGENCY:** Office of Hazardous Materials Safety, Pipeline And Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of actions on special permit applications.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (October to October 2014). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on January 28, 2016.

**Don Burger,**

*Chief, Special Permits and Approvals Branch.*

| S.P. No. | Applicant | Regulations(s) | Nature of special permit thereof |
|---|---|---|---|
| | | **Modification Special Permit Granted** | |
| 15689–M | AVL Test Systems, Inc., Plymouth, MI. | 49 CFR 172.200, 177.834 | To modify the special permit to authorize additional packaging and mounting system for optional use. |
| 6530–M | Linde Gas North America, LLC, New Providence, NJ. | 49 CFR 173.302(c) | To modify the special permit to authorize Deuterium and Deuterium gas mixtures to be transported to certain cylinders filled to 110% of the cylinder marked service pressure. |
| 14867–M | GTM Manufacturing, LLC, Amarillo, TX. | 49 CFR 173.302a and 173.304. | To modify the special permit to authorize additional hazardous materials. |
| 12187–M | ITW Sexton, Decatur, AL | 49 CFR 173.304(a); 175.3; 178.65. | To modify the special permit to add Compressed air, n.o.s. and eliminate the restriction on the maximum pressure of the lading of 264 psig at 70 °F and 357 psig at 130 °F. |
| 16490–M | William T. Poe & Associates Inc. d/b/a Explosive Service International, Baton Rouge, LA. | 49 CFR 176.63; 176.83; 176.116(e); 176.120; 176.137(a)(7); 176.138(b); 176.144(e); 176.145(b); 176.164(e); 176.178(b). | To modify the special permit originally issued on an emergency basis to authorize an additional two years. |
| 16492–M | Construction Helicopters, Inc., Howell, MI. | 49 CFR 172.101 Hazardous Materials Table Column (9B), Subpart C of Part 172, 172.301(c), 172.302(c), 173.27(b)(2), 175.30, Part 178. | To modify the special permit to remove the provision ''training or qualification of a new crew member will not take place during the execution of this special permit.'' |
| 14625–M | KIK Piedmont, LLC, Gainesville, GA. | 49 CFR 173.306(a)(3)(v) | To modify the special permit to allow an additional DOT specification 2Q aluminum non-refillable inside container. |
| | | **New Special Permit Granted** | |
| 16366–N | Department of Defense, Scott AFB, IL. | 49 CFR 171.23(a) 173.302(a), Part 6, Chapter 5, Paragraph 5.1.1.2 of the ICAO T1, Chapter 6.2, paragraph 6.2.1.1.2 of the IMDG Code. | To authorize the transportation in commerce of compressed nitrogen gas (Division 2.2) in non-DOT specification welded steel cylinders. (modes 1, 3, 4) |
| 16523–N | FIBA Technologies, Inc., Littleton, MA. | 49 CFR 173.301(f), 173.301(g), 173.312(a)(2). | To authorize the manufacture, mark, sale and use of certain DOT specification 3-Series cylinders/tubes, UN pressure receptacles, and Multi-Element Gas Containers (MEGCs) without pressure relief devices (modes 1, 2, 3) |
| 16474–N | Retriev Technologies, Inc., Anaheim, CA. | 49 CFR Subparts C, D, and E of Part 172, 172.102(c)(1) Special Provision 130(d), 173.185(c), 173.185(d). | To authorize the manufacture, mark, sale and use of specifically designed packagings for the transportation in commerce of certain batteries without shipping papers, and certain marking and labeling when transported for recycling or disposal. (modes 1, 2, 3) |
| 16525–N | Air Products and Chemicals, Inc., Allentown, PA. | 49 CFR 173.187, 173.212, 173.240, 173.242, IMDG Code 6.2.1.1.2. | To authorize the transportation in commerce of a gas purification apparatus containing certain Division 4.1 and 4.2 hazardous materials in non-DOT specification cylinders (pressure vessels). (modes 1, 3) |
| 16535–N | National Aeronautics and Space Administration, Washington, DC. | 49 CFR 173.301(h)(3), 173.301(f)(1), 173.302a(a). | To authorize the transportation in commerce of non-DOT specification carbon composite overwrapped cylinders containing compressed nitrogen. (modes 1, 2, 4, 5) |
| 16540–N | Gas Liquefies Industrie, Paris, France. | 49 CFR 172.102(b)(3) Special Provision B77, 172.102(c)(7), 172.102(c)(8) Special Provision TP38, 178.274(b), 178.277(b)(1). | The manufacture, mark, sale and use a specification UN portable tank conforming to the requirements specified in § 172.102(c)(7) portable tank code T50 that has been designed, constructed, certified, and stamped in accordance with the latest edition of Section VIII, Division 1 of the ASME Code with a design margin of 3.5.1. The portable tank is used for the transportation in commerce of certain Division 2.3, Class 3, Division 6.1, and Class 8 materials. (modes 1, 3) |
| 16574–N | Veolia ES Technical Solutions, L.L.C., Lombard, IL. | 49 CFR 173.21(b), 173.51, 173.54(a), 173.56(b). | To authorize the one-time transportation in commerce of certain unapproved fireworks from the Aberdeen Proving Ground military facility located in Aberdeen, MD to Veolia ES Technical Solutions, L.L.C.'s disposal facility located in Sauget, IL for final disposal. (mode 1) |
| 16578–N | Schlumberger Technology Corporation, Sugar Land, TX. | 49 CFR 173.301(f), 173.302a, 173.304a. | To authorize the manufacture, mark, sale and use of non-DOT specification cylinders without pressure relief devices for the transportation in commerce of certain hazardous materials. (modes 1, 2, 4) |

| S.P. No. | Applicant | Regulations(s) | Nature of special permit thereof |
|---|---|---|---|
| **Emergency Special Permit Granted** | | | |
| | Kalitta Air, LLC, Ypsilanti, MI | 49 CFR 172.101 Table Column (9B), 172.204(c)(3), 173.27(b)(2),(3), and 175.30(a)(1). | To modify the special permit to correct the net weight of the explosives permitted to be transported. (mode 4) |
| | Kalitta Air, LLC, Ypsilanti, MI | 49 CFR 172.101 Table Column (9B), 172.204(c)(3), 173.27(b)(2),(3), and 175.30(a)(1). | To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4) |
| **New Special Permit Withdrawn** | | | |
| 16249–N ..... | Optimized Energy Solutions, LLC, Durango, CO. | 49 CFR 172.101 Table, Column (8C), 173.315. | To authorize the transportation in commerce of ethane, refrigerated liquid in DOT 113C120W tank cars. (mode 2) |
| **Denied** | | | |
| 7765–M ..... | Request by Carleton Technologies, Inc. Orchard Park, NY December 16, 2015. To modify the special permit to authorize a competent internal Carleton inspector to perform the required duties outlined in § 178.35(c). | | |

[FR Doc. 2016–05686 Filed 3–15–16; 8:45 am]
**BILLING CODE 4909–60–M**

## DEPARTMENT OF THE TREASURY

### Departmental Offices; Privacy Act of 1974, as Amended, System of Records Notice

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice that it proposes to add a new system of records to its inventory, ''Treasury/DO .016—Multiemployer Pension Reform Act of 2014 (MPRA).'' Treasury will use the system to account for all individuals eligible to vote in elections with respect to benefit suspensions under MPRA whose information is furnished by the plan sponsors proposing the benefit suspensions.

**DATES:** Comments must be received no later than April 15, 2016. This new system of records will be effective April 20, 2016 unless the Department receives comments that would result in a contrary determination.

**ADDRESSES:** You may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov,* in accordance with the instructions on that site. Electronic submissions through *www.regulations.gov* are encouraged.

Comments may also be mailed to the Department of the Treasury, MPRA Office, 1500 Pennsylvania Avenue NW., Room 1224, Washington, DC 20220. Attn: Deva Kyle. Comments sent via facsimile and email will not be accepted.

*Additional Instructions.* All comments received, including attachments and other supporting materials, 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 any other information in your comment or supporting materials that you do not want publicly disclosed. Treasury will make comments available for public inspection and copying on *www.regulations.gov* or upon request. Comments posted on the Internet can be retrieved by most Internet search engines.

**FOR FURTHER INFORMATION CONTACT:** Department of the Treasury, MPRA at (202) 622–1534 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury proposes to establish a new system of records entitled ''Treasury/DO .016—Multiemployer Pension Reform Act of 2014.'' The systems are maintained to support the provision of ballot packages to individuals identified as participants or beneficiaries of deceased participants by plan sponsors that have submitted an application for suspension of benefits under the Multiemployer Pension Reform Act of 2014, and may be used to provide technical support to voters in connection with the ballots and to check the integrity of the election.

As required by 5 U.S.C. 552a(r) of the Privacy Act, a report on this new system of records has been provided to the committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

The proposed new system of records, entitled ''Treasury/DO .016—Multiemployer Plan Reform Act of 2014'' is published in its entirety below.

Dated: March 2, 2016.

**Helen Goff Foster,**

*Deputy Assistant Secretary for Privacy, Transparency, and Records.*

**Treasury/DO .016**

**SYSTEM NAME:**

Multiemployer Pension Reform Act of 2014

**SYSTEM LOCATION:**

System records are located at one or more service providers under contract with the Department of the Treasury, Departmental Offices, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEMS:**

Individuals identified as participants or beneficiaries of deceased participants by plan sponsors that have submitted an application for suspension of benefits under the Multiemployer Pension Reform Act of 2014.

**CATEGORIES OF RECORDS IN THE SYSTEMS:**

Personal contact information, including, but not limited to:

- Mailing addresses;
- Phone numbers;
- Electronic mail (Email) addresses; and
- Information sufficient to tabulate electronic votes and check the integrity of voting systems.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:**

Multiemployer Pension Reform Act of 2014, Division O of the Consolidated and Further Continuing Appropriations Act 2015, Public Law 113–235.

**PURPOSES:**

The system is maintained to support the provision of ballot packages to individuals identified as participants or beneficiaries of deceased participants by plan sponsors that have submitted an application for suspension of benefits under the Multiemployer Pension Reform Act of 2014, and may be used to provide technical support to voters in connection with the ballots and to check the integrity of the election.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEMS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in these systems may be disclosed outside Treasury as a routine use pursuant to 5 U.S.C. 552a(b)(3), as follows:

A. To the Department of Justice (including United States Attorneys' Offices) or other federal agencies conducting litigation or in proceedings before any court or adjudicative or administrative body, when it is relevant or necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. Treasury or any component thereof;

2. Any employee of Treasury in his/her official capacity;

3. Any employee of Treasury in his/her individual capacity where the Department of Justice or Treasury has agreed to represent the employee; or

4. The United States or any agency thereof.

B. To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or General Services Administration pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. Treasury suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with Treasury's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, fiscal agents, financial agents, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for Treasury, when necessary to accomplish an agency function related to the system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to Treasury officers and employees.

G. To an appropriate federal, state, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person authorizing the disclosure.

H. To federal agencies, councils, and offices, such as the Office of Personnel Management, the Merit Systems Protection Board, the Office of Management and Budget, the Federal Labor Relations Authority, the Government Accountability Office, the Financial Stability Oversight Council, and the Equal Employment Opportunity Commission in the fulfillment of these agencies' official duties.

I. To the news media and the public, with the approval of the Senior Agency Official for Privacy, or her designee, in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of Treasury or is necessary to demonstrate the accountability of Treasury's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

K. To international, federal, state, local, tribal, or private entities for the purpose of the regular exchange of business contact information in order to facilitate collaboration for official business.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records in these systems are on paper and/or in digital or other electronic form. Digital and other electronic images are stored on a storage area network in a secured environment. Records, whether paper or electronic, may be stored in Departmental Offices or with one or more contracted service providers.

**RETRIEVABILITY:**

Electronic information may be retrieved, sorted, and/or searched by email address, name of the individual, or other data fields previously identified in this notice.

**SAFEGUARDS:**

Information in these systems is safeguarded in accordance with applicable laws, rules, and policies, including Treasury Directive 85–01, Department of the Treasury Information Technology (IT) Security Program. Further, security protocols for these systems of records will meet multiple National Institute of Standards and Technology security standards from authentication to certification and authorization. Records in these systems of records will be maintained in a secure, password protected electronic system that will use security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. Additional safeguards will vary by component and program. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a ''need to know,'' using locks, and password protection identification features. Treasury file areas are locked after normal duty hours and the facilities are protected by security personnel who monitor access to and egress from Treasury facilities.

**RETENTION AND DISPOSAL:**

Records are securely retained and disposed in accordance with Records Control Schedule N1–056–03–010, Item 1b2. Files will be retained for ten years. For records that become relevant to litigation, the files related to that litigation will be retained for the longer of ten years or three years after final court adjudication.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Assistant Secretary, Office of Tax Policy, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification of and access to any record contained in these systems of records, or seeking to contest its content, may submit a request in writing, in accordance with Treasury's Privacy Act regulations (located at *31 CFR 1.26*), to the Freedom of Information Act (FOIA) and Transparency Liaison, whose contact information can be found at *http://www.treasury.gov/FOIA/Pages/index.aspx* under ''FOIA Requester Service Centers and FOIA Liaison.'' If an individual believes more than one bureau maintains Privacy Act records concerning him or her, the individual may submit the request to the Office of Privacy, Transparency, and Records, FOIA and Transparency, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220.

No specific form is required, but a request must be written and:

- Be signed and either notarized or submitted under *28 U.S.C. 1746,* a law that permits statements to be made under penalty of perjury as a substitute for notarization;
- State that the request is made pursuant to the FOIA and/or Privacy Act disclosure regulations;
- Include information that will enable the processing office to determine the fee category of the user;
- Be addressed to the bureau that maintains the record (in order for a request to be properly received by the Department, the request must be received in the appropriate bureau's disclosure office);
- Reasonably describe the records;
- Give the address where the determination letter is to be sent;
- State whether or not the requester wishes to inspect the records or have a copy made without first inspecting them; and
- Include a firm agreement from the requester to pay fees for search, duplication, or review, as appropriate. In the absence of a firm agreement to pay, the requester may submit a request for a waiver or reduction of fees, along with justification of how such a waiver request meets the criteria for a waiver or reduction of fees found in the FOIA statute at *5 U.S.C. 552*(a)(4)(A)(iii).

You may also submit your request online at *https://rdgw.treasury.gov/foia/pages/gofoia.aspx* and call 1–202–622–0930 with questions.

**RECORD ACCESS PROCEDURES:**

See ''Notification procedure'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification procedure'' above.

**RECORD SOURCE CATEGORIES:**

Information contained in these systems is obtained from affected individuals and organizations.

**EXEMPTIONS CLAIMED FOR THESE SYSTEMS:**

None.

[FR Doc. 2016–05868 Filed 3–15–16; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Request for Citizens Coinage Advisory Committee Membership Applications

*Summary:* Pursuant to United States Code, Title 31, section 5135 (b), the United States Mint is accepting applications for membership to the Citizens Coinage Advisory Committee (CCAC) for a new member specially qualified to serve on the CCAC by virtue of his or her education, training, or experience in *numismatic curation.* The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of 11 voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of his or her education, training, or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the U.S. House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately six to eight times per year. The United States Mint is responsible for providing the necessary support, technical services, and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is interested in candidates who are recognized as having unique and valued talents or as an accomplished professional; have demonstrated experience, knowledge, interest, or background in a variety of fields, including numismatics, art, education, working with youth, or American heritage and culture; have demonstrated interest and a commitment to actively participate in CCAC meetings and activities, and a demonstrated understanding of the role of the CCAC and the obligations of a Special Government Employee; possess demonstrated leadership skills in their fields of expertise or discipline; possess a demonstrated desire for public service and have a history of honorable professional and personal conduct, as well as successful standing in their communities; and who are free of professional, political, or financial interests that could negatively affect their ability to provide impartial advice.

*Application Deadline:* April 1, 2016.

*Receipt of Applications:* Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing his or her reasons for seeking and qualifications for membership, by email to *info@ccac.gov,* by fax to 202–756–6525, or by mail to the United States Mint; 801 9th Street NW., Washington, DC 20220, Attn: Greg Weinman. Submissions must be postmarked no later than Friday, April 1, 2016.

*Notice Concerning Delivery of First-Class and Priority Mail:* First-class mail to the United States Mint is put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services, especially when sending time-sensitive material.

*For Further Information Contact:* William Norton, United States Mint Liaison to the CCAC; 801 Ninth Street NW., Washington, DC 20220; or call 202–354–7458.

Dated: March 10, 2016.

**Richard A. Peterson,**

*Deputy Director for Manufacturing and Quality, United States Mint.*

[FR Doc. 2016–05936 Filed 3–15–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Request for Citizens Coinage Advisory Committee Membership Applications

*Summary:* Pursuant to United States Code, Title 31, section 5135 (b), the United States Mint is accepting applications for appointment to the Citizens Coinage Advisory Committee (CCAC) as a member representing the *interests of the general public* in the coinage of the United States. The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.
- Advise the Secretary of the Treasury with regard to the events, persons, or places that the Committee recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of eleven voting members appointed by the Secretary of the Treasury:

- One person specially qualified by virtue of his or her education, training, or experience as nationally or internationally recognized curator in the United States of a numismatic collection;
- One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;
- One person specially qualified by virtue of his or her education, training, or experience in American history;
- One person specially qualified by virtue of his or her education, training, or experience in numismatics;
- Three persons who can represent the interests of the general public in the coinage of the United States; and
- Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately five to seven times per year. The United States Mint is responsible for providing the necessary support, technical services, and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is interested in candidates who are recognized as having unique and valued talents or as an accomplished professional; have demonstrated experience, knowledge, interest, or background in a variety of fields, including numismatics, art, education, working with youth, or American heritage and culture; have demonstrated interest and a commitment to actively participate in CCAC meetings and activities, and a demonstrated understanding of the role of the CCAC and the obligations of a Special Government Employee; possess demonstrated leadership skills in their fields of expertise or discipline; possess a demonstrated desire for public service and have a history of honorable professional and personal conduct, as well as successful standing in their communities; and who are free of professional, political, or financial interests that could negatively affect their ability to provide impartial advice.

*Application Deadline:* Friday, April 1, 2016.

*Receipt of Applications:* Any member of the public wishing to be considered for participation on the CCAC should submit a resume and cover letter describing his or her reasons for seeking and qualifications for membership, by email to *info@ccac.gov,* by fax to 202–756–6525, or by mail to the United States Mint; 801 9th Street NW., Washington, DC 20220; Attn: Greg Weinman. Submissions must be postmarked no later than Friday, April 1, 2016.

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*For Further Information Contact:* William Norton, United States Mint Liaison to the CCAC; 801 Ninth Street NW., Washington, DC 20220; or call 202–354–7458.

Dated: March 10, 2016.

**Richard A. Peterson,**

*Deputy Director for Manufacturing and Quality, United States Mint.*

[FR Doc. 2016–05935 Filed 3–15–16; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–NEW]**

### Proposed Information Collection (Community Residential Care) Activity: Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each new collection of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to identify areas for improvement in clinical training programs.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before May 16, 2016.

**ADDRESSES:** Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Brian McCarthy, Office of Regulatory and Administrative Affairs, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *Brian.McCarthy4@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Brian McCarthy at (202) 461–6345.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

The Notice of Proposed Rule Making (NPRM) package was not submitted to OMB for review at the time of publication of the NPRM.

*Title:* Community Residential Care—There is no form associated with this collection.

*OMB Control Number:* 2900–NEW.

*Type of Review:* New collection.

*Abstracts:* VA is authorized under 38 U.S.C. 1730 to assist veterans by referring them for placement, and aiding Veterans in obtaining placement, in Community Residential Care facilities (CRC). Under that authority, VA maintains a list of approved CRCs, and conducts periodic inspection of those facilities to ensure that the facility is maintained per standards published at 38 CFR 17.63.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 10,991 hours.

*Estimated Average Burden per Respondent:* 8.5 hours (510 minutes).

*Frequency of Response:* Annually.

*Estimated Annual Responses:* 1,293.

By direction of the Secretary.

**Kathleen M. Manwell,**

*Program Analyst, VA Privacy Service, Office of Privacy and Records Management, Department of Veterans Affairs.*

[FR Doc. 2016–05881 Filed 3–15–16; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Notice of Availability of a Draft Environmental Impact Statement for the Reconfiguration of VA Black Hills Health Care System; Comment Period Extension

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of availability; Comment period extension.

**SUMMARY:** The Department of Veterans Affairs (VA) published, in the **Federal Register** on October 30, 2015, the Notice of Availability of a Draft Environmental Impact Statement (EIS) for the Reconfiguration of VA Black Hills Health Care System (BHHCS) that analyzes the potential impacts of six alternatives for changes to VA's facilities in Hot Springs and Rapid City, South Dakota. Due to requests from the public and other stakeholders, VA is extending the closing date for the comment period for the Draft EIS through May 5, 2016.

**DATES:** All comments must be received by May 5, 2016.

**ADDRESSES:** Submit written comments on the VA BHHCS Reconfiguration Draft EIS online through *www.blackhillseis.com,* by email to *vablackhillsfuture@va.gov,* or by regular mail to Staff Assistant to the Director, VA Black Hills Health Care System, 113 Comanche Road, Fort Meade, SD 57741. Please refer to ''BHHCS Reconfiguration Draft EIS'' in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Staff Assistant to the Director, VA Black Hills Health Care System, at the address above or by email to *vablackhillsfuture@va.gov.*

Dated: March 10, 2016.

**William F. Russo,**

*Director, Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.*

[FR Doc. 2016–05837 Filed 3–15–16; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

Vol. 81 Wednesday,
No. 51 March 16, 2016

Part II

## Department of Transportation

Federal Transit Administration

49 CFR Part 674
State Safety Oversight; Final Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 674**

**[Docket No. FTA–2015–0003]**

**RIN 2132–AB19**

## State Safety Oversight

**AGENCY:** Federal Transit Administration (FTA), USDOT.

**ACTION:** Final rule.

**SUMMARY:** The Federal Transit Administration is issuing a final rule for State safety oversight of rail fixed guideway public transportation systems not regulated by the Federal Railroad Administration (FRA). This final rule replaces the current State Safety Oversight (SSO) rule, which will be rescinded no later than three years following the effective date of this rule. State Safety Oversight Agencies (SSOAs) and rail transit agencies (RTAs) will continue to comply until they come into compliance with these new regulations.

**DATES:** The effective date of this rule is April 15, 2016.

**FOR FURTHER INFORMATION CONTACT:** For program matters, Brian Alberts, Program Analyst, FTA Office of Transit Safety and Oversight, telephone 202–366–1783 or *Brian.Alberts@dot.gov.* For legal matters, Richard Wong, FTA Office of Chief Counsel, telephone 202–366–4011 or *Richard.Wong@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents for Supplementary Information



### I. Executive Summary

This rule replaces the existing regulations for state safety oversight of rail fixed guideway public transportation systems in 49 CFR part 659 that have been in place for the past twenty years and significantly strengthens states' authorities to prevent and mitigate accidents and incidents on public transportation systems.

In the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012), Congress directed FTA to establish a comprehensive public transportation safety program, one element of which is the State Safety Oversight (SSO) Program. (See 49 U.S.C. 5329). The purpose of today's final rule is to carry out the several explicit statutory mandates to strengthen the States' oversight of the safety of their Rail Transit Agencies (RTAs), including that States' oversight agencies have the necessary enforcement authority, legal independence, and financial and human resources for overseeing the number, size, and complexity of the RTAs within their jurisdictions.

On December 4, 2015, the President signed the Fixing America's Surface Transportation (''FAST'') Act (Pub. L. 114–94) into law, which did not modify the provisions included in MAP–21 that were the subject of the NPRM, but did augment FTA's safety authority by appending a new subparagraph (e)(8) ''Federal Safety Management'' to 49 U.S.C. 5329(e). However, because the FAST Act was enacted subsequent to publication of the SSO NPRM and the closure of the notice-and comment window, FTA is not including additional regulatory provisions about the new ''Federal Safety Management'' authority in today's rulemaking. To the extent FTA determines this new provision requires additional regulatory text, it will do so in a subsequent notice-and-comment rulemaking. Thus, for convenience, and accurate historical context, this rule will refer to MAP–21 throughout the preamble to signify the fundamental changes MAP–21 made to States' authorities and responsibilities for overseeing the safety of their rail transit fixed guideway systems.

In the legislative history of MAP–21, Congress identified several critical weaknesses in state oversight of rail transit system safety, including:

- Lack of adequate and consistent safety practices across the rail transit industry.
- Lack of regulatory, oversight, and enforcement authority for state agencies.
- Limited SSO program funding, staff, training, and other resources.
- Lack of SSO financial and legal independence from the rail transit agencies they oversee.

Today's final rule is a critical step in implementing new requirements for enhanced safety in public transportation. On February 5, 2016, FTA published for public review and comment the Public Transportation Agency Safety Plan NPRM (81 FR 6344) and a Notice of Availability of the proposed National Public Transportation Safety Plan, (81 FR 6372). In addition, FTA will be issuing a subsequent final rule addressing the Public Transportation Safety Certification Training Program.

- Legal Authority

Section 20021 of MAP–21, now codified at 49 U.S.C. 5329, enacted several new provisions that require FTA to establish a comprehensive public transportation safety program, the elements of which include a National Public Transportation Safety Plan; a training and certification program for Federal, state, and local transportation agency employees with safety responsibilities; Public Transportation Agency Safety Plans; and a strengthened State Safety Oversight Program.

- Summary of Key Provisions

The February 27, 2015, NPRM (80 FR 11001) proposed to make the following changes to strengthen the existing SSO program, which are being finalized today:

- States would assume greater responsibility for overseeing the safety of their rail fixed guideway systems.
- FTA would review and approve each State's SSO program standard, certifying whether States are meeting the statutory criteria and withholding funds from those States that are not.
- FTA would impose financial penalties on those States with non-existent or non-compliant safety oversight programs.

In general, in this final rule, FTA has decided to maintain much of what was proposed in the NPRM. However, the agency has made several key changes in response to public comments. For example, FTA is revising the notification and reporting requirements by removing incidents from the types of events that require notification and an

investigation, thus reducing the administrative burdens on both SSOAs and RTAs. In addition, FTA is withdrawing the proposal in the NPRM that required SSOAs to conduct an independent investigation of every accident and incident and instead will allow SSOAs to delegate that responsibility to an RTA, with the proviso that the SSOA conduct an independent review of the RTA's findings and conclusions. Finally, FTA is removing the text from Appendix A addressing principles of SMS (Safety Management Systems), and is replacing it with a table illustrating the reporting requirements for accidents, incidents, and occurrences, due to comments that the practice of SMS is more applicable to RTAs than SSOAs. SMS is more fully and appropriately addressed in the proposed National Public Transportation Safety (National Safety Plan) Plan and the Public Transportation Agency Safety Plan (Agency Safety Plan) rulemaking, which were both published in the **Federal Register** for public notice and comment on February 5, 2016. *See,* 81 FR 6372–3 and 81 FR 6344–71. The proposed National Safety Plan lays out FTA's strategic approach to safety performance, with proposed safety performance criteria for all modes of public transportation, and is based on the principles and methods of SMS. The Agency Safety Plan NPRM would require recipients to development and implement a comprehensive agency safety plan that incorporates key SMS components. FTA encourages readers to submit comments to the docket for both documents by April 5, 2016.

- Costs and Benefits

In general, FTA has retained the approach to costs and benefits contained in the NPRM. Thus, the agency quantified, to the extent possible, the costs associated with this rule, and, instead of quantifying estimated benefits, instead conducted a breakeven analysis, to take into account significant uncertainties in determining the benefits.

However, the agency has made several changes to both the rule and the analysis that have affected this analysis. First, in response to concerns raised by commenters, FTA has revised the notification and reporting obligations by removing incidents from the types of events that require notification and an investigation; this change will reduce the administrative burdens on both State Safety Oversight Agencies (SSOAs) and Rail Transit Agencies (RTAs). In addition, FTA conducted a second review of the estimated recurring and non-recurring regulatory costs under the proposed regulations to SSOAs and RTAs, using a wage rate more closely aligned to the skillsets required of them. Further, FTA has revised its labor costs to include a 56 percent allowance for employee fringe benefits based on Bureau of Labor Statistics data for 2014. The labor cost for investigations has also been revised to reflect a higher cost for this specialty, along with the number of labor hours.

The costs of the rule are also offset by the presence of Federal funding, whereas over the previous two decades, the costs of administering the SSO program was borne by the States as an unfunded Federal mandate. FTA notes that Congress has authorized approximately $22 million in grant funds each year to the States to offset the annual costs for the purpose of making this rule revenue-neutral between the Federal government and the States. Also, RTAs may use FTA grant funds to meet their obligations under this final rule.

FTA conducted a breakeven analysis to determine what amount of the quantified benefits would need to accrue to outweigh the costs for both this rulemaking and the requirements for Public Transportation Agency Safety Plans for RTAs. Primarily, FTA looked at the safety events reported to FTA's National Transit Database and, in a more conservative analysis, only the five accidents investigated by the National Transportation Safety Board (NTSB) since 2004 which were related to inadequate safety oversight programs would need to be avoided in order to meet the cost of the rule. The first analysis, based on all rail incidents, showed that the breakeven level of incident reduction was 1.1%. The second analysis looked only at NTSB-investigated incidents and found a breakeven level at a reduction of 0.69 incidents per year of that severity, even if no other incidents were affected.

## II. Rulemaking Background

Congress provided the framework for a comprehensive public transportation safety program in section 20021 of the Moving Ahead for Progress in the 21st Century Act (''MAP–21''), (Pub. L. 112–141, now codified at 49 U.S.C. 5329). The four key components of the program are the National Public Transportation Safety Plan, authorized by subsection 5329(b); the Public Transportation Safety Certification Training Program, authorized by subsection 5329(c); the Public Transportation Agency Safety Plans, authorized by subsection 5329(d); and the State Safety Oversight Program, authorized by subsection 5329(e).

On February 27, 2015, FTA published a Notice of Proposed Rulemaking (NPRM) for state safety oversight of rail fixed guideway public transportation systems (80 FR 11001). The NPRM provided an extensive summary of the history behind the SSO program, beginning with FTA's predecessor agency, the Urban Mass Transportation Administration being created as a grant-making and research-and-development program under the Urban Mass Transportation Act of 1964, and tracing the evolution of the agency's safety role through legislative amendments following various public transportation accidents, some of which resulted in recommendations from the NTSB.

The current SSO program for rail fixed guideway transit safety dates back to section 3029 of the 1991 Intermodal Surface Transportation Efficiency Act (''ISTEA'') (Pub. L. 102–240). In enacting section 3029, Congress determined that the States, not FTA, should be the principal oversight authorities for rail transit within their jurisdictions, given that public transportation is an inherently local activity which, with few exceptions, does not cross state boundaries.

On December 27, 1995, FTA promulgated its initial SSO rule (49 CFR part 659) (60 FR 67034), with an effective date of January 1, 1997, to provide States a full year to enact state statutes and regulations to carry out the new safety mandates—States were required to designate an SSOA, create a system safety program standard for rail transit agencies to follow, conduct safety audits every three years, and investigate accidents and hazardous conditions. Transit agencies, in turn, had to develop a system safety program plan, conduct internal safety audits, conduct accident investigations at the direction of the SSOA, and submit corrective action plans for the SSOA's approval. Ten years later, FTA amended the SSO rule (70 FR 22562, April 29, 2005), to clarify the roles and responsibilities of States and their SSOAs; set a new definition of ''hazard'' and requirements for hazard management plans; revise the requirements for SSOAs to conduct investigations; create a 21-point check list for an RTA's System Safety Program Plans (SSPPs); establish baselines for accident notification; and set forth a framework for corrective action plans. However, these amendments provided no additional enforcement power to the SSOAs, and very little enforcement power to FTA—only the option of withholding up to five percent of an

RTA's urbanized area formula funding if FTA were to find a state not in compliance with the SSO regulations.

In MAP–21, Congress directed FTA to establish a more rigorous and comprehensive SSO Program. See 49 U.S.C. 5329(e). To meet the statutory mandate, today's final rule now specifies that a state must submit its SSO program standard to FTA for approval and to obtain FTA certification of its program standard. In addition, a state must demonstrate its SSOA's financial and legal independence from the RTAs it oversees; its ability to effectively oversee the safety of the rail fixed guideway public transportation systems throughout the state through the adoption and enforcement of Federal and relevant state safety laws, investigatory authority, and an audit procedure; an appropriate staffing level for its SSOAs; and the proper training and certification of the SSOA's personnel.

Today's final rule also requires public accountability. SSOAs must provide an annual status report to FTA, the Governor of the State, and the Board of Directors of the RTA that also will be available to the general public. In addition, FTA will publish and submit an annual evaluation of all SSO programs to Congress.

**III. Summary of Comments and Section-by-Section Responses**

Fifty-two individuals and organizations submitted comments to the docket for this rulemaking, including transit agencies, state governments, industry trade associations, and concerned individuals.

*Section 674.1 Purpose*

This section explained that the purpose of these regulations is to carry out the mandate of 49 U.S.C. 5329(e) for States to perform oversight of rail fixed guideway public transportation systems within their jurisdictions.

*Comments Received:* Numerous commenters expressed concerns that FTA is pursuing a rulemaking for State Safety Oversight without having issued the other rulemakings required under 49 U.S.C. 5329, such as the National Public Transportation Safety Plan and Public Transportation Agency Safety Plans. These commenters stated it would be difficult for them to provide comprehensive comments on the SSO NPRM without full knowledge of the regulatory structure that FTA will propose to implement all the requirements under 49 U.S.C. 5329.

*Agency Response:* The purpose of today's rulemaking is to implement the specific SSO requirements at 49 U.S.C. 5329(e). States can enact enabling legislation to bring their SSOAs into conformity with these requirements without the National Public Transportation Safety Plan in place, or a rulemaking for Public Transportation Agency Safety Plans. Readers should note in particular that 49 U.S.C. 5329(d)(2) provides an RTA's System Safety Program Plan (SSPP) developed pursuant to 49 CFR part 659 shall remain in effect until FTA publishes a final rule for Public Transportation Agency Safety Plans.

SSOAs will continue to oversee RTAs' SSPPs until the RTAs are required to adopt Public Transportation Agency Safety Plans in compliance with the future rulemaking under 49 U.S.C. 5329(d). In the meantime, states should be setting up the necessary framework to enable their SSOAs to perform the oversight functions enumerated at 49 U.S.C. 5329(e).

FTA is including this section in the final rule without change.

*Section 674.3 Applicability*

This section explained that these regulations apply to States with rail fixed guideway public transportation systems, the SSOAs that oversee the safety of those systems, and entities that own or operate rail fixed guideway public transportation systems with Federal financial assistance from FTA.

*Comments Received:* FTA did not receive any comments on this section.

*Agency Response:* FTA is including this section in the final rule without change.

*Section 674.5 Policy*

This section identified three separate, explicit policies that underlie these regulations: First, FTA proposed using the principles and methods of Safety Management Systems (SMS) as the basis for these regulations, and has similarly proposed SMS in other regulations and policies FTA has issued under the authority of 49 U.S.C. 5329. Second, the primary responsibility for overseeing the safety of RTAs lies with the States—and a State's SSOA must have sufficient authority and resources to oversee the number, size, and complexity of rail fixed guideway public transportation systems that operate within that State. Third, FTA is obliged to make Federal funds available to eligible States to help them develop and carry out their SSO programs—and certify whether those programs are adequate to promote the purposes of the public transportation safety programs under 49 U.S.C. 5329.

*Comments Received:* Nine commenters responded to this section, with five providing varying views on FTA's SMS approach. Some did not see how the 21 elements currently required in an RTA's SSPP could be integrated into the four components of SMS (*i.e.,* safety policy, safety risk management, safety assurance, and safety promotion), while others asserted there is no difference between a fully implemented safety plan and SMS. Some expressed concerns of a significant delay in safety implementation if RTAs must start over with SMS as their means for safety management.

Three commenters requested that FTA provide a clarification of the terms ''sufficient authority,'' ''sufficient resources,'' and ''qualified personnel'' as used in this section. Two commenters asked FTA to publish criteria for determining whether a State's program is compliant with the Federal certification criteria and requirements. Commenters also asked FTA to identify under what circumstances FTA would withhold funds. Other commenters asked FTA to conduct outreach on the SSOA certification criteria and requirements before establishing the formal requirements and criteria for certification. Finally, one commenter asked whether the NPRM's omission of the System Security Plan currently required by 49 CFR 659.21 was intentional.

*Agency Response:* In this rule and in other actions, FTA has proposed adopting the principles and methods of SMS as the basis for enhancing the safety of public transportation. A number of transit agencies are using SMS principles in their safety plans, and other transit agencies have started the transition to SMS-based safety plans. Thus, it is important that SSOAs have an understanding of an SMS-based approach to safety. However, FTA has determined it is not necessary to include the policy statement related to SMS in the SSO rule. FTA is developing guidance and training to assist SSOAs in building their SMS competencies so that they would be able both to effectively review and approve an SMS-based Agency Safety Plan and oversee their RTA's implementation of SMS.

FTA believes that the more prescriptive 21-point checklist imposed on RTAs through System Safety Program Plans (SSPPs) is no longer needed because SMS will allow agencies to identify and address the risks on that current checklist that are applicable to that agency. One of the many benefits of SMS is that it is flexible; it does not impose a one-size-fits-all methodology. Rather, SMS can be tailored to the mode, size, and complexity of any transit agency in any

operating environment. Simply put, SMS requires a transit agency to identify its own safety risks, and to target its human and financial resources to manage the potential consequences of those risks.

FTA does not agree with the handful of commenters who expressed concern regarding the transition from the existing 21-point SSPP to SMS. As one commenter noted, the 21 points of the SSPP can readily be addressed within the four components of SMS—Safety Management Policy, Safety Risk Management, Safety Assurance, and Safety Promotion.

As stated above, some RTAs are using SMS principles as the basis for their safety programs, and others are making the transition; however, FTA recognizes that the transition to SMS will not be immediate. Thus, FTA will provide both SSOAs and the RTAs they oversee a reasonable time frame in which to implement the new SMS approach. As an RTA develops its flexible, site-specific, and proactive Agency Safety Plan, FTA expects it to do so in cooperation with the SSOA, which will aid in familiarizing the SSOA with the RTA's Agency Safety Plan and help the SSOA oversee its implementation.

With regard to the commenters who sought a clarification or definition of the terms ''sufficient authority,'' ''sufficient resources,'' and ''qualified personnel,'' and what would trigger the withholding of funds, FTA believes that these will be determined on a case-by-case and state-by-state basis. To reiterate, the statute (49 U.S.C. 5329(e)(4)(A)) sets forth the baseline requirements—that an SSOA has the authority to review, approve, oversee, and enforce the implementation of an RTA's safety plan; the authority to conduct investigations; and the resources necessary to do so. With regard to the qualifications of personnel, specifically, FTA's Notice of Proposed Rulemaking for the Safety Certification Training Program, published on December 3, 2015, (80 FR 75639), addresses these concerns, as will the Safety Certification Training Program final rule, which will be published subsequent to this rule for State Safety Oversight.

FTA has made significant efforts to assist the States through webinars, conference calls, workshops, and the availability of technical assistance regarding the criteria and requirements for SSOA certification. FTA has worked closely with the States as they developed certification work plans in support of their grant applications for SSO funds. FTA agrees with the commenters who asked that any updates to the certification criteria be made only following an opportunity to provide comment. Indeed, any subsequent amendments to today's final rule at part 674 will go through the normal regulatory process, which includes notice-and-comment and publication in the **Federal Register**.

With regard to the omission of the System Security Plan from today's rulemaking, the Transportation Security Administration (TSA), an agency of the United States Department of Homeland Security (DHS), has the prerogative and responsibility for all rulemakings on security in public transportation. Specifically, under the Implementing the Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53), and the September 2004 Memorandum of Agreement between DOT and DHS and the September 2005 modal annex between FTA and TSA, DHS is tasked with the responsibility for carrying out a national strategy for public transportation security to minimize security threats and to maximize the ability of public transportation agencies to mitigate damage from terrorist attacks and other major incidents. While this does not preclude RTAs from implementing measures securing their assets, it is no longer the responsibility of the SSOAs to oversee those measures. FTA recognizes, of course, that some of the steps an RTA takes to ensure the personal safety and security of its riders and employees will overlap with steps it takes to secure its system from a terrorist attack; for example, the steps an agency takes are part of a threat and vulnerability assessment. An RTA's expenses for both safety and security will continue to be eligible for Federal reimbursement under 49 U.S.C. Chapter 53.

*Section 674.7 Definitions*

The NPRM proposed a number of definitions for terms used repeatedly throughout the SSO rule and the other safety programs authorized by 49 U.S.C. 5329.

*Comments Received:* Forty entities submitted comments on several proposed definitions. For the convenience of the reader, FTA is organizing the comments to specific definitions and its responses in alphabetical order.

''*Accident.''* The previous SSO rule at 49 CFR part 659 did not define the term ''accident,'' although requirements for RTAs to notify SSOAs of accidents were identified at 49 CFR 659.33 (''Accident notification.''). In the NPRM, FTA proposed a definition of ''accident'' that incorporated many of the events specified in 49 CFR 659.33, but FTA proposed replacing the ''two or more individuals transported away from the scene for medical treatment'' notification threshold with any accident causing a ''serious injury,'' which focused on the level of injury incurred, rather on the number of individuals transported away from the scene for medical treatment. As FTA stated in the NPRM, the purpose of this change was to provide better alignment with the nomenclature used by other transportation modes, including the FAA and the NTSB, and to provide clarity during data analysis to identify safety trends.

Many commenters did not agree with the proposed change. Several requested that FTA revert back to the current threshold in 49 CFR 659.33, which they felt is a sufficiently clear, objective threshold for RTAs to determine whether an incident must be reported to the SSOA. Other commenters stated that it would be difficult, if not impossible, to determine if an event met the definition of ''serious injury'' due to medical privacy laws and the inability to obtain such information from hospitals. Some commenters stated that often the extent of one's injuries may not be immediately apparent to RTAs and discovery would likely exceed the 2-hour reporting threshold. One commenter suggested removing ''serious injury'' from the definition and incorporating the terms ''incapacitating injury'' and ''non-incapacitating injury.'' Also, several commenters suggested that FTA limit the NPRM's proposed notification threshold of ''property or equipment damage equal to or greater than $25,000'' to damage to rail transit property, noting that the proposed threshold could include both rail transit and non-rail transit property.

Some commenters expressed concerns regarding the removal of the term ''collision'' from the definition of ''accident,'' noting that under 49 CFR 659.33, collisions at a grade crossing and collisions between two rail transit vehicles or between one rail transit vehicle and a rail transit non-revenue vehicle require notification to the SSOA. Two commenters suggested that the definition of ''accident'' retain the requirement for notifications of grade crossing collisions, regardless of the cost of property or equipment damage.

One commenter suggested that the term ''fatality'' in the definition of ''accident'' include the language in 49 CFR 659.33 that describes a fatality as one that occurs ''at the scene'' or ''within thirty (30) days of a rail transit-related incident.'' Another commenter asked FTA to clarify whether both mainline and non-mainline derailments

were now considered ''accidents,'' noting that 49 CFR 659.33 required notification only of mainline derailments. Finally, one commenter suggested that the definition of ''accident'' be consistent throughout the U.S. Department of Transportation, including both FTA and FRA.

*Agency Response:* FTA does not agree with the commenters who suggested that the definition of ''accident'' require injuries to two or more people. FTA believes that a serious injury to a single person is of sufficient concern to warrant designation as an ''accident.'' However, ambulance transportation away from the accident may not necessarily be an accurate indicator of the actual gravity of the event, given the tendency of ambulance operators to transport individuals with minor injuries. Furthermore, by limiting the notification requirement to ''serious injuries,'' today's rule will eliminate many of the ''non-serious'' injuries that were reported under 49 CFR part 659 simply because two or more passengers accepted an offer of medical transportation away from an accident scene, regardless of any discernible injury to the passenger. Also, today's final rule will retain the term ''serious injury'' as proposed in the NPRM, bringing FTA's notification standard into conformity with FAA's and the NTSB's thresholds. While FTA acknowledges that it may be difficult to ascertain the precise type of injury due to medical privacy laws and the difficulty in obtaining medical records from hospitals and treatment centers, the nature of an injury is not so important as the need to notify an SSOA of an accident in a timely manner. If an injury initially thought to be ''minor'' turns out to be ''serious,'' or results in a fatality, the RTA should notify the SSOA within two hours of its discovery so that the SSOA may conduct an appropriate follow-up investigation, which may involve the participation of the RTA. In this regard, FTA does not agree with the commenter who suggested removing ''serious injury'' from the definition and incorporating the terms ''incapacitating injury'' and ''non-incapacitating injury,'' since those terms have not been commonly used in the SSO program and the use of those terms would not be consistent with the practice of other USDOT or Federal transportation safety agencies.

With regard to the elimination of $25,000 threshold for property or equipment damage and the inclusion of the term ''collision'' in the definition of ''accident,'' FTA is removing the $25,000 threshold because most collisions involving rail transit vehicles exceed $25,000 in property or equipment damage, and its removal eliminates any need to separate rail transit property from non-rail transit property in making an assessment of damages. FTA is also amending the definition of ''accident'' to include a collision involving a rail transit vehicle regardless of whether that collision occurs at a grade crossing, because any collision or derailment, at any location, is an ''accident'' for purposes of notifying the SSOA, with the SSOA having the discretion to determine the scope of the subsequent investigation. Readers should please see the table clarifying the notification and reporting procedures in a new Appendix A to today's rule. Consistent with the requirement under 49 CFR part 659 to report fatalities occurring within 30 days of an accident, FTA is retaining this timeframe.

''*Accountable Executive.''* The NPRM introduced the concept of an ''Accountable Executive''—the leader at the top of an organization who is ultimately responsible for safety, and offered a definition of the term that is consistent with the historical practice of SMS in other forms of transportation and other industries.

*Comments Received:* One commenter expressed concern about how the definition of ''Accountable Executive'' would be applied to an SSOA, since an SSOA does not manage an RTA or have control over the capital and human resources of an RTA. The commenter noted that if this title is to apply to SSOA officials, as used in the proposed section 674.27, titled ''State safety program standards,'' the definition needs further explanation.

*Agency Response:* Under the definition in the proposed section 674.7, the Accountable Executive is identified as the leader of a public transit agency who is ultimately responsible for carrying out the various safety functions of the agency, such as the Transit Asset Management Plan, and the agency's Public Transportation Agency Safety Plan. Under the proposed section 674.27(a)(3), a State's SSO program standard would identify an individual who serves as the ''functional equivalent'' of an Accountable Executive, but the proposed rule did not, and the final rule is not, requiring the SSOA to designate an individual with that formal title. Because of the nature of their role, SSOAs would not need to designate an Accountable Executive. Rather, SSOAs would need to be fully conversant with the requirements of the Agency Safety Plan and clearly demonstrate their capability to oversee and understand an RTA's implementation of those requirements in the RTA's safety plan; as well as have the necessary authority to direct oversight functions, whether that authority rests with in an individual or a board. FTA has revised the final rule at section 674.27(a)(3) accordingly, but has not made any change to the definition of an ''Accountable Executive.''

''*Event.''* The NPRM defined an ''event'' as an ''accident, incident, or occurrence,'' for the purpose of including virtually any type of safety concern.

*Comments Received:* Several commenters disagreed with FTA's broad definition of ''event,'' asserting that the term is unnecessary, redundant, and confusing. One commenter expressed concern that the proposed definition could reasonably be interpreted to encompass almost everything that occurs in a rail transit system, suggesting instead that the definition be revised to exclude minor instances and ''occurrences'' that do not affect transit operations. Another commenter suggested FTA abandon this complex redefinition process, which is not consistent with terminology used in the transit industry or by the U.S. Department of Homeland Security (DHS). This commenter suggested that accidents and incidents be defined as unplanned happenings and ''event'' be defined as a planned activity, consistent with DHS's usage.

*Agency Response:* The final rule keeps the proposed definition of ''event.'' The actions required of an RTA or an SSOA under each of the three types of events, however—two-hour notification, thirty-day reporting, and self-monitoring—will continue to differ as described in the definitions of ''accident,'' ''incident,'' and ''occurrence'' as described in Appendix A to the final rule.

While FTA is aware of the DHS terminology that differentiates ''planned'' from ''unplanned'' activities, the definitions in today's final rule will be used consistently not just within 49 CFR part 674, but across FTA's National Public Transportation Safety Plan and its other safety rulemakings. In addition, FTA has adjusted the National Transit Database's (NTD) safety reporting module to reflect these definitions of ''accident,'' ''incident,'' ''occurrence,'' and ''event.'' See Docket FTA–2014–0009 (January 2015).

''*Hazard.''* Given the importance of hazard identification, analysis, tracking and control in ensuring the safe operation of rail transit, the NPRM proposed a definition of ''hazard'' as ''any real or potential condition that can

cause injury, illness, or death; damage to or loss of the facilities, equipment, or property of a rail fixed guideway public transportation system; or damage to the environment.'' The proposed definition is substantially similar to the definition of hazard in 49 CFR 659.5.

*Comments Received:* Several commenters felt that the proposed definition of ''hazard'' was too broad, and that too many items would need to be reported regardless of risk and therefore the rule could be overly burdensome. These commenters thought that it would be impractical to require the reporting of all hazards and incidents to an SSOA, as well as the burden it would place upon the RTA.

*Agency Response:* FTA is mindful of the reporting burdens for RTAs, thus, the final rule does not require that hazards be reported from the RTA to the SSOA or from the SSOA to FTA, as hazards are unrelated to the focus of today's rule, which requires certain events to be reported and documented. Although a hazard can cause an accident, it is not a reportable event in itself. However, hazard identification and analysis are absolutely critical to risk identification and mitigation; they are the first two steps in the process that help an RTA identify and address safety concerns before those concerns escalate into an accident or incident. FTA fully expects an RTA to implement its internal safety risk management process, including hazard identification and risk management, which are similar to the hazard management programs currently required under 49 CFR 659.19(f), which already requires hazard identification, hazard tracking, and hazard control and elimination.

''*Incident.''* Section 674.5 of the NPRM defined an ''incident'' as an event that exceeds the definition of ''occurrence,'' but does not rise to the level of an ''accident,'' and provided as examples, near misses, close calls, railyard derailments, non-serious injuries, and violations of safety standards.

*Comments Received:* A number of commenters expressed concern over the broadness of the term ''incident'' and the associated notification reporting burdens. These commenters felt that requiring all incidents to be reported and investigated would create excessive paperwork burdens that would divert scarce SSOA resources and contribute little towards safety.

Notably, one large RTA in the Northeast stated that in 2014, it experienced 1,264 rail incidents, 400 of which were reported to its SSOA. This RTA spent an average of 40 hours per accident/incident investigation, ranging from minor incidents taking less than 8 hours to investigate, to major events that required weeks. Monitoring corrective action plans took an additional number of hours which the RTA did not quantify, but noted that some monitoring activities stretched into years. The RTA noted that its SSOA has access to their database which allows the SSOA to review all 1,264 incidents, and reserves the right to conduct an independent investigation of any incident.

An SSOA from a Western state stated that it currently spends a minimum of 8 hours investigating every incident or accident that has been reported to it pursuant to 49 CFR 659.35. Similarly, an RTA from the Midwest stated that under the current rule, there were six reportable incidents in 2014, but applying the standard proposed in the NPRM would elevate this number to over three hundred. Another RTA from the West Coast claimed that requiring notification of every near-miss could add hundreds of hours of reporting time to each RTA as well as increasing the burdens of the SSOAs which must investigate each report. Likewise, another large transit agency in the Northeast stated that expanding its obligation to report incidents to its SSOA would increase its reporting burden by more than 17 times its current burden.

In the NPRM, FTA asked whether the Final Rule should include a definition of ''near miss'' and ''close call'' for the purpose of incident notification and reporting. In response, several commenters stated that near misses and close calls should not be treated as ''incidents'' because neither results in an injury or property damage. One commenter suggested there be a separate category for near misses and close calls. Another commenter noted, however, that the lack of a common definition would create inconsistencies by allowing RTAs and SSOAs to create their own definitions. One commenter felt that RTAs and SSOAs should have the discretion to define their own locally-developed thresholds. Others recommended the removal of the terms ''near miss'' and ''close call'' altogether, stating there would be far greater safety benefits from implementing a voluntary, non-punitive close call reporting system as recommended by the 2012 TRACS (Transit Advisory Committee for Safety) report, rather than increasing the paperwork burdens for both rail and oversight agencies.

Additionally, several commenters questioned the $25,000 damage threshold separating an accident from an incident, claiming that applying the lower threshold would create an undue burden on RTAs and their SSOAs, overwhelming agencies with minor investigative tasks and paperwork. One RTA stated that it experiences about 10 events a month where property damage does not exceed $25,000, but may result in a service delay, such as a missing third-rail cover board, objects struck by a train, or vandalism and theft. The RTA asked that SSOAs and RTAs be allowed to determine for themselves which incidents should be reported and investigated. Finally, one commenter asked that SSOAs and RTAs be given discretion to establish additional reporting thresholds for incidents beyond the definition contained in this rule.

*Agency Response:* FTA acknowledges the concerns of commenters who stressed the administrative burdens imposed by the notification and investigation of all incidents; thus, FTA has revised the definition of ''incident'' as well as the requirements of sections 674.33 and 674.35 in the final rule to alleviate some of those burdens. Nevertheless, a definition of incident is essential to an SSOA's oversight of the safety of RTAs. Specifically, FTA agrees with those commenters who suggested removing near misses, close calls, and violations of safety rules and policies from the ''incident'' category because FTA recognizes that these events do not typically result in personal injuries or property damage that would need to be reported to an SSOA. Instead, the final rule is placing these types of events into the definition of ''occurrence'' because they may be indicative of underlying safety risks that need to be collected, tracked, and analyzed by the RTA.

The final rule keeps the NPRM's categorization of non-serious injuries as ''incidents.'' Also, the final rule keeps the current threshold under 49 CFR 659.33 whereby an RTA must notify its SSOA of injuries that result in medical transportation away from the scene. However, rather than retaining the ''two or more individuals'' threshold under 49 CFR 659.33, the triggering event for notification is now one or more individuals, because even non-serious injuries suffered by a passenger or employee are safety events that need to be reported by the RTA to FTA. FTA does not believe that this change will translate to a significant increase in paperwork burdens. Although incidents must be reported, they will not necessarily require investigations by the SSOA, as had been proposed in section 674.35 of the NPRM.

Also, the final rule removes the $25,000 property damage threshold separating incidents from accidents. The

$25,000 figure dates back to the 2005 amendments to 49 CFR part 659 but had limited usefulness for purposes of safety, since even minor collisions routinely exceed that threshold. Instead, in the final rule, the determining factor is a simple operational determination of whether the damage to facilities, equipment, rolling stock, or infrastructure has disrupted the operations of the RTA. Removal of the arbitrary $25,000 threshold will relieve RTA personnel of the need to perform on-the-spot estimates of property damage to determine whether to notify the SSOA of the incident.

With regard to a commenter's question whether an SSOA may establish incident reporting thresholds more strict than those in today's rule, FTA stresses today's rule sets minimum reporting requirements for the SSOA under 49 U.S.C. 5329. If an SSOA wants to establish additional notification requirements, the SSOA may do so, consistent with its authority under state law.

''*Individual.''* The NPRM included a definition of ''individual'' stemming from the definition in the previous rule at 49 CFR 659.5. However, under today's final rule, the term ''individual'' is replaced by the term ''person,'' which is used in the definition of ''accident.''

''*Investigation.''* The NPRM proposed a definition of ''investigation'' as ''the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.'' The proposed definition was substantially similar to 49 CFR 659.5. The dozens of comments received regarding this definition concerned the potential paperwork burden triggered by the obligation to investigate accidents and incidents as proposed in the NPRM, rather than on the substance of the definition itself. Therefore, this definition remains unchanged.

''*National Public Transportation Safety Plan.''* FTA received no comments on this definition, thus the final rule keeps the definition as proposed.

''*NTSB.''* One commenter requested that this acronym be spelled out in the Definitions section, similar to FTA and FRA, thus the final rule does so.

*Occurrence.* The NPRM defined ''occurrence'' as ''an Event with no injuries, where damage occurs to property or equipment but does not affect transit operations.''

*Comments Received:* Several commenters suggested that this definition be omitted from the SSO rule because occurrences do not raise the same level of concerns as reportable accidents and incidents, and maintaining records of occurrences is a paperwork burden that serves no productive safety purpose. Some commenters said the definition was ambiguous and confusing as to whether occurrences must be reported to an SSOA and investigated by an SSOA. Many SSOAs who commented on the NPRM cited the administrative burden of tracking thousands of occurrences every year and requested less-burdensome alternatives.

*Agency Response:* FTA does not agree with those commenters who suggested that there be no definition of ''occurrence.'' FTA also disagrees with the commenter who suggested that ''occurrence'' need not be defined if it need not be reported. FTA believes it is critical to define and identify what type of events would constitute an occurrence, and that tracking occurrences is an essential element of the RTA's safety risk management activities. Specifically, occurrences may be indicative of underlying safety risks that could lead to a reportable ''accident'' or ''incident,'' particularly those that occur on a frequent or repeated basis. FTA encourages RTAs and SSOAs to collect, track, and analyze data on occurrences to develop leading indicators, to prevent the likelihood of future events, and to inform the development of mitigations that may be applied across the public transportation industry. Consistent with the discussion of ''incidents,'' above, FTA is moving close calls, near misses, and violations of a safety standard to the category of ''occurrence'' since they do not give rise to a fatality, injury, or property damage disrupting the operations of the RTA, but are serious enough to warrant heightened attention by both the RTA and its SSOA.

Finally, several commenters had differing views on the definition of ''occurrences'' with regard to property damage, personal injuries, impact on rail transit operations, and the types of vehicles involved. FTA believes the table in Appendix A will help to delineate the differences between ''accidents,'' ''incidents,'' and ''occurrences'' and will contribute towards a common definition of each event.

''*Passenger.''* The NPRM defined a ''passenger'' as ''a person who is on board, boarding, or alighting from a vehicle on a rail fixed guideway public transportation system for the purpose of travel,'' which is the longstanding definition of ''passenger'' under 49 CFR 659.5.

*Comments Received:* FTA received several comments on this definition. Several commenters asked that the definition of ''passenger'' be expanded to include a person waiting to board a train in a station or on a platform. Another asked that the term ''patron'' be added to the SSOA rule, which, under the current SSO annual reporting requirements, is defined as ''an individual waiting for or leaving rail transit at stations, in mezzanines, on stairs, escalators, or elevators, in parking lots, and other transit-controlled property.''

*Agency Response:* FTA is deleting the definition of ''passenger'' from the SSO rule because it is no longer relevant to the notification and reporting requirements of this rule. Instead, FTA is adding a new definition for ''person,'' which is a more comprehensive term that includes passengers as well as patrons and RTA employees. FTA believes the notification and reporting obligations in section 674.33 of the final rule are broad enough to include anyone involved in an accident or incident occurring on the property of an RTA, whether that person is a passenger, patron, pedestrian, or employee. This approach is consistent with the current reporting program under 49 CFR part 659 and the NTD reporting manual.

''*Public Transportation Safety Certification Training Program.''* Section 5329(e) of Title 49 U.S.C. requires the proper training and certification of state safety oversight personnel, and 49 U.S.C. 5329(c) authorizes a training program for SSO and RTA personnel responsible for safety oversight. The NPRM included a definition of ''Public Transportation Safety Certification Program'' to reference these new requirements.

*Comments Received:* One commenter recommended adding ''contractors'' to ''employees of public transportation agencies directly responsible for safety oversight'' since many RTAs engage contractors or consultants to aid in the responsibility of safety oversight. Another commenter noted that currently, there are no minimal training requirements of Chief Executive Officers or other top transit agency executives other than the Chief Safety Officers.

*Agency Response:* The applicability of the training and certification requirements to SSOA personnel and their support contractors has been addressed in FTA's Safety Certification Training Program Interim Provisions (Feb. 27, 2015; 80 FR 10619) and NPRM (Dec. 5, 2015, 80 FR 75639) and will be further refined in the rulemaking for the Public Transportation Safety Certification Training Program.

Insofar as safety training for transit agency executives, FTA noted in its

Safety Certification Training Program NPRM that 49 U.S.C. 5329(c)(1) only contemplates the minimum requirements for Federal and state personnel who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies who are directly responsible for safety oversight. Thus, this rule does not require that executive management and board members for RTAs take safety training, nor does this rule preclude transit agency leadership from participating in various safety training courses and exercises, and FTA strongly encourages their participation.

*''Risk Control.''* The NPRM included a definition of ''risk control,'' but FTA is revising the definition to one of ''Risk Mitigation'' to more accurately reflect the terminology amongst SMS practitioners. There were no significant comments on the NPRM definition.

*''Serious Injury.''* One of the more significant changes proposed in the NPRM was the revision of the accident notification requirement from ''injuries requiring immediate medical attention away from the scene for two or more individuals'' to ''one or more persons suffers a serious injury.'' When FTA amended the 49 CFR part 659 rules in 2005, FTA acknowledged that the two-or-more person threshold was intended to capture ''serious events,'' even if the injuries themselves were minor, believing that the accident itself, regardless of the type of injury, warranted notification and investigation. As explained in the NPRM for this rulemaking, however, a definition of ''serious injury'' should align with the nomenclature and thresholds used in other transportation agencies with more extensive safety experience, such as the FAA and the NTSB. Also, a tighter definition of ''serious injury'' would improve data analysis and better identify safety trends.

*Comments Received:* A number of commenters disagreed with the proposed definition of ''serious injury,'' citing difficulty in determining the precise scope of a person's injuries at the scene of an event; the medical training required to determine whether a person's injuries meet the definition of ''serious;'' the need to monitor an individual's condition for days after an event to determine the seriousness of his or her injuries; and the difficulty in obtaining hospitalization and medical records due to Federal and state medical privacy laws. Several pointed out that the NPRM definition of ''serious injury'' treated bone fractures with the same seriousness as a fatality, thus requiring the same onerous standard of investigation, regardless of indication of fault or negligence on the part of the RTA.

As discussed above under the definition of ''accident,'' two commenters suggested that, instead of ''serious injury,'' the SSO rule use alternative terms such as ''incapacitating injuries'' (*i.e.,* the injury prevents the individual from walking away from the accident scene) and ''non-incapacitating injuries'' (*i.e.,* the injury is readily observable but does not prevent the person from walking away from the scene) as distinguishing factors. Another commenter suggested refining the definition to specify those injuries ''that can be determined by Transit Agency representatives at the site of an event,'' or ''known or observable by the Transit Agency.'' Other commenters suggested that the rule divide ''injuries'' into two categories—serious and non-serious.

*Agency Response:* FTA respects the views of commenters who would prefer a continuation of reporting and notification thresholds under 49 CFR part 659. In enacting MAP–21, however, Congress made it very clear that public transportation safety cannot proceed with business-as-usual and that FTA, SSOAs, and RTAs must all increase their efforts to improve the safety of public transportation. Towards that goal, FTA will proceed with aligning its accident notification thresholds to conform to the NTSB's, the independent Federal agency charged by Congress with investigating significant accidents in all forms of transportation.

FTA does not expect SSOA or RTA safety personnel to undergo medical training in order to determine whether an injury meets the threshold of ''serious.'' Instead, FTA expects safety personnel to exercise a common sense approach when evaluating injuries. As several commenters pointed out, some injuries may be readily known or observable at the scene of an event that would trigger the two-hour notification window, while other injuries may not be apparent until the person undergoes a medical examination, at which point notification would be required.

Regarding the commenters who suggested that a bone fracture does not have the same urgency of notification as a fatality, FTA recognizes that a bone fracture may not be readily apparent until the person undergoes a more thorough medical examination away from the scene of the accident, which is likely to occur more than two hours after the event. FTA also recognizes that while both a fatality and a serious injury would trigger the notification obligation, the scope of the actual investigation for each would differ, which is addressed in the discussion of section 674.35, ''Investigations,'' below.

FTA appreciates the recommendations from commenters who suggested using ''incapacitating injury'' and ''non-incapacitating injury'' as a means to determine ''serious injuries.'' But as noted above, the goal of this rulemaking is to bring the accident reporting practices into conformity with those of other Federal agencies with safety reporting and investigation procedures, thus this final rule is adopting the FAA and NTSB definition of ''serious injury.'' Finally, insofar as the suggestion that the rule set a definition of ''non-serious injury,'' FTA notes that such a term has not been defined by the NTSB or other Federal transportation safety agencies, and FTA is reluctant to invent such a definition. Although there is no requirement to report injuries that are not serious injuries, FTA encourages RTAs and their SSOAs to work together to determine whether injuries other than ''serious injuries'' should be reported to the SSOA.

*''Transit Agency Safety Plan.''* Although FTA received no comment regard it use of this term in the NPRM, FTA is replacing it with ''Public Transportation Agency Safety Plan,'' which is the terminology used by the authorization statute, 49 U.S.C. 5329(d).

*Section 674.9 Transition From Previous Requirements for State Safety Oversight*

When mandating a strengthened SSO program in MAP–21, Congress recognized the States would need a period of transition in order to enact conforming statutes and regulations, particularly those States whose legislatures meet only part-time or biennially. Congress also recognized that FTA itself would need time to issue implementing rulemakings, and to go through a public notice and comment process. Thus, MAP–21 authorized the statute authorizing the current SSO program, 49 U.S.C. 5330, to remain in effect for three years after FTA promulgates its final rule creating a new SSO program that conforms with 49 U.S.C. 5329(e).

*Comments Received:* Nearly all of the commenters on this section supported the three-year transition process. However, several argued that the clock should commence only after FTA has issued its entire set of final rules implementing MAP–21's new requirements—the National Public Transportation Safety Plan, the Public Transportation Safety Certification

Training Program, and the Public Transportation Agency Safety Plans. Some asked for a delay so that RTAs and SSOAs would have a more comprehensive view of the new MAP–21 safety program and to ensure consistency, while one state DOT predicted it would need an underlying Federal mandate before its state legislature would enact enabling legislation. Other commenters expressed confusion regarding the language used by FTA in the NPRM, noting that the statute allowed a three-year transition, while the NPRM stated that 49 CFR part 659 would expire immediately upon the effective date of the new rule.

*Agency Response:* FTA does not agree with those commenters who suggested that the three-year clock not begin until FTA has promulgated all of its safety-related rulemakings. Congress was very clear in section 20030(e) of MAP–21, that 49 U.S.C. 5330 will be repealed three years after the effective date of the final rule issued by the Secretary of Transportation under 49 U.S.C. 5329(e), not after FTA completes the broader totality of rulemakings required under section 5329. Further, nearly all of the changes to the SSO program included in 5329(e) and today's final rule are not dependent on the other requirements of section 5329 and are instead designed to strengthen the SSO program.

FTA notes that the vast majority of states with rail fixed guideway public transportation systems had successfully established SSOAs prior to MAP–21, and expects states to modify their existing SSO programs to comply with 49 U.S.C. 5329(e) without waiting for the other FTA rulemakings to become final. FTA is well aware that many RTAs will not have safety plans compliant with 49 U.S.C. 5329(d)(1) in place for SSOAs to oversee and monitor until FTA promulgates a final rule for Public Transportation Agency Safety Plans, but this comprises only a portion of an SSOA's obligations. Moreover, the safety plans developed by RTAs for compliance with 49 CFR part 659 are expressly acceptable under the relevant statue, 49 U.S.C. 5329(d)(2), until FTA has promulgated a final rule for Public Transportation Agency Safety Plans. During this transition period, FTA expects states to provide their SSOAs with the necessary statutory and regulatory authority to implement MAP–21's requirements, and to remove any administrative and financial conflicts of interest. Once FTA issues the final rule for Public Transportation Agency Safety Plans, SSOAs should have the internal framework in place to oversee an RTA's compliance with its updated safety plan. FTA commends the SSOAs who have made progress towards full compliance, as evidenced by the Certification Work Plans (CWPs) submitted to FTA as part of the SSO Formula Grant Program (see 79 FR 13380, March 10, 2014).

With regard to the expiration date of 49 CFR part 659, the NPRM did not clearly explain the differences between the effective date of a rule and the mandatory compliance date. While rules have an effective date of thirty days after publication in the **Federal Register**, the compliance deadline can take place at a later date, as was the case with the 2005 amendments to the current 49 CFR part 659. Thus, to clarify, today's final rule will have an effective date of thirty days following publication in today's **Federal Register**, but States, SSOAs, and RTAs have a compliance deadline up to three years after the effective date of today's final rule.

FTA is aware, through its review of the CWPs, that some states will need three years following publication of this final rule before becoming fully compliant with the rule, and for that reason, FTA will retain 49 CFR part 659 for those states which have not yet implemented a fully compliant program. Conversely, the new rules at 49 CFR part 674 will serve as the appropriate regulation for those states that have achieved compliance ahead of the three-year deadline.

*Subpart B—Role of the State*

*Section 674.11 State Safety Oversight Program*

This section of the NPRM addressed the law, rules, and administrative standards that FTA expected states to enact as the minimum requirements for overseeing the safety of rail fixed guideway public transportation systems in the State; the financial, physical, and human resources necessary to establish and maintain an SSOA; and the system of checks and balances, within state government, that holds an SSOA accountable for its actions.

*Comments Received:* The majority of commenters to this section noted that the text of the proposed rule is very general; it did not provide specific criteria, definitions, or instructions for determining whether a state's SSO program is in compliance with the Federal standards. Commenters expressed concern that it would be difficult for States to enact enabling legislation without explicit FTA directions for that purpose. Some commenters suggested that FTA provide an SSO program standard or a template, or elaborate on the term ''relevant State law.'' One commenter recommended that the relevant statutes and regulations adopted by states be reviewed and approved by FTA for relevance and applicability.

Some commenters also addressed the human resources requirements of this section, noting that SSOAs are expected to staff up their programs within a limited time frame and with limited resources, particularly with regard to ensuring that SSOA personnel have completed the Safety Certification Training Program. They asked whether FTA would allow individuals with specialized rail safety-related expertise but without the FTA-mandated certifications, such as FRA-certified rail inspectors, to assist SSOAs. Several commenters asked FTA to clarify the principles, methods, and criteria it would use in determining that a state has demonstrated an ''appropriate'' staffing level, and to define the specific education and skills required of qualified SSOA personnel.

*Agency Response:* With regard to the proposed administrative procedures, the requirements in this section have been drawn directly from the statute, 49 U.S.C. 5329(e). FTA does not agree with those commenters who asked that the rule lay out explicit criteria, definitions, or minimum standards with 49 U.S.C. 5329(e) because the agency wishes to provide as much deference as possible to states to fashion their own legislation for their own needs. FTA recognizes that states must be allowed to follow their own unique procedures in adopting enabling statutes and regulations with minimal Federal interference.

Nevertheless, FTA believes it has addressed most of the concerns of the commenters without any need to amend the text of this rule. Over the past several months, FTA has provided extensive technical assistance to states in developing Certification Work Plans (CWPs) for the revised SSO program. In 2013, FTA reached out to SSOA program managers, providing a template and explaining what would be required in their CWP in order to be eligible for the SSO Formula Grant funds. FTA reviewed the CWPs and their underlying documentation, compared them to the statutory criteria, and engaged in one-on-one technical assistance calls with SSOAs to ensure that their CWPs were adequate to ensure their eligibility to receive the formula grants. In addition, FTA initiated quarterly conference calls with the SSOAs, established regional points of contact for the SSOAs, and in October 2015, hosted a five-day workshop for SSOA program managers to train them on SMS principles and to provide an

opportunity for face-to-face dialogue with FTA staff. FTA believes that technical assistance has helped clarify many of the misunderstandings about FTA's implementation of the SSO program. Indeed, most states are making substantial progress towards meeting the new requirements. FTA will continue to review and evaluate CWPs on a state-by-state basis, and will certify the compliance of each state as it accomplishes all the various elements within its CWP.

With regard to human resources, FTA recognizes that there is a limited pool of certified and knowledgeable individuals who possess the necessary certifications to perform SSO functions. FTA has revised the text of this rule to allow the use of Federal, state, and local experts or the hiring of contractors who are undergoing or who are making progress towards compliance with FTA's Safety Certification Training Program. Individuals who have not completed or are not enrolled in the training program may contribute on an ad hoc basis based on their specialized area of expertise, provided that they are under the supervision of individuals who have received the necessary training and certifications.

FTA declines to establish regulatory standards to determine whether an SSOA's staffing level is ''appropriate.'' Each state is unique in terms of the number of RTAs under its oversight and the resources available to it, and mandating specific staffing levels violates the principles of Federalism. Specifically, Federalism requires that each state be allowed to develop an appropriate level of enforcement authority unique to that state, and FTA is willing to accept flexibility within those approaches, provided that the SSOA possesses the necessary enforcement authority to implement its SSO program.

*Section 674.13 Designation of Oversight Agency*

This section of the NPRM simply reiterated the statutory requirements for the designation and establishment of an SSOA that are codified at 49 U.S.C. 5329(e)(4)(A)—financial and legal independence; audit, investigation and enforcement authority; safeguards against conflicts of interest between an SSOA and the RTAs under the SSOA's oversight; and an annual report on the safety of each RTA's system to a state's governor, FTA, and to the RTA's board of directors or equivalent entity.

*Comments Received:* Similar to the concerns raised under the previous section, several commenters stated that FTA needed to promulgate the remaining safety rules under 49 U.S.C. 5329 before a state could designate a SSOA.

One commenter suggested that an SSOA's reports to an RTA's Board of Directors be limited to the years coinciding with triennial audits, using the Triennial Audit Report as the basis for a comprehensive evaluation, while another suggested that the annual report be provided to the General Manager of an RTA instead of the Board of Directors, given that the agency's Chief Safety Officer reports directly to the general manager or CEO rather than to the Board. Another commenter supported submitting the annual report to the Board of Directors, which is consistent with the NTSB's recommendation following its investigation of the June 2009 WMATA Red Line accident.

*Agency Response:* As stated in the responses in the previous section, the final rule closely follows the text of the statute. FTA allows states maximal flexibility to enact the necessary statutory and regulatory provisions for their own SSO programs. And as noted earlier, states do not need to wait for the remaining FTA rulemakings before designating an SSOA to implement 49 U.S.C. 5329. The system safety program plans developed by RTAs under 49 CFR part 659 remain in effect, and existing SSOAs must continue to provide oversight of those plans. For those states who are establishing a new SSOA or re-designating an SSOA, FTA believes today's rule provides adequate guidance and direction for providing an SSOA with financial and legal independence; the authority to approve, oversee, and enforce a Public Transportation Agency Safety Plan; and adequate investigative and enforcement authority, without the need to wait for FTA to publish the remaining safety rules.

FTA does not agree with the commenters who suggested that SSO reports be issued on a triennial basis or to the General Manager in lieu of the Board of Directors. The direction of 49 U.S.C. 5329 is clear—the reports must be provided ''at least once annually'' and to the ''board of directors or equivalent entity,'' although nothing in today's final rule prevents an SSOA from providing an additional copy to a general manager and anyone else responsible for safety at the RTA.

*Section 674.15 Designation of Oversight Agency for Multi-State System*

The text of the proposed rule closely followed the statutory process prescribed for safety oversight of an RTA operating across state lines: the states may choose either to apply uniform safety standards and procedures to an RTA through an SSO program standard that complies with 49 U.S.C. 5329 and is approved by the Administrator, or they may choose to designate a single entity that meets the requirements for an SSOA to serve as the oversight agency for that RTA, again through a program approved by the Administrator.

*Comments Received:* FTA did not receive comments specific to this section.

*Agency Response:* The proposed section is included in the final rule without change.

*Section 674.17 Use of Federal Financial Assistance*

The text of the proposed rule set forth the administrative requirements for recipients of the State Safety Oversight Program grants; how the grants may be used for both operational and administrative expenses, including employee training; the formula under which the funds will be apportioned; the maximum Federal share of eligible expenses; and restrictions on the source of the state's matching share.

*Comments Received:* Several of the commenters to this section questioned the sufficiency of the currently authorized SSO funding levels, stating that they were not enough to offset the incremental costs of a strengthened state safety oversight program. One commenter opined that if Federal grants are insufficient to cover the costs of complying with all of the proposed regulatory requirements, the new rule may result in an overall weakening of state oversight programs, rather than strengthening them.

Other commenters took this opportunity to question FTA's cost calculations, claiming the wage rate used is considerably lower than the average wage rate in their states; consultant costs are expected to be greater than FTA's estimates; training costs will be higher due to increased out-of-state travel; FTA's estimate of labor hours do not adequately account for all the tasks envisioned under this rule, and the cost savings of SMS have not yet been fully demonstrated in the aviation industry. One SSOA expressed a concern that prior to MAP–21, its program was financially underwritten by the rail systems under its jurisdiction, and the SSOA has been unable to secure its state's commitment to provide the 20 percent local match.

*Agency Response:* FTA appreciates the concerns expressed by commenters that the current levels of Federal financial assistance may be insufficient to support a fully-compliant SSO

program. While FTA recognizes that the allocation of funds may be insufficient in some states to cover the totality of their oversight expenses, the amount of available funds is capped by 49 U.S.C. 5336(h)(4), which authorizes 0.5 percent of the amounts made available to urbanized areas under 49 U.S.C. 5307 to be used for SSOA activities. In FY 2013, this amount totaled $21,945,771, and in FY 2014, $22,293,250. Further, FTA established a formula to distribute the funds in an equitable manner, consistent with the statutory criteria set forth in 49 U.S.C. 5329(e)(6)(B)(i) (see, 79 FR 13380). FTA notes that the Federal matching funds are intended to supplement, not replace, existing state oversight expenditures, and that states should not reduce their expenditures down to the minimum 20 percent local share, particularly if it would result in a diminution or weakening of safety oversight.

In response to concerns from commenters regarding the cost estimations in the NPRM, FTA has revised those costs in the Cost-Benefit Analysis section of today's publication. Regarding the SSOA whose state has not yet committed funding to constitute the local match, FTA will work with that state to establish a local match, noting the severe consequences outlined in sections 674.19 and 674.21, which not only could result in the withholding of SSO grant funds from the SSOA, but also the withholding of FTA grant funds from the entire state.

*Section 674.19 Certification of a State Safety Oversight Program*

In 49 U.S.C. 5329(e), Congress set the framework for FTA certification of an SSO program; specifically, the mandate that the Administrator make a determination not only whether an SSO program meets the technical requirements of the statute, but whether that SSO program is adequate to promote the purposes of the National Public Transportation Safety Plan and the other goals and objectives of 49 U.S.C. 5329.

This section of the proposed rule set forth the requirements and the process for certification of a state's SSO program. Specifically, section 674.19(a) provided that the Administrator must determine whether an SSO program meets the requirements of the statute; section 674.19(b) required the Administrator to issue either a certification or a denial of certification for each state's SSO program; section 674.19(c) provided that in the event the Administrator issues a denial of a certification, he or she must provide the state a written explanation and an opportunity to modify its SSO program to merit the issuance of certification, and ask the governor to take all possible steps to correct the deficiencies that are precluding the issuance of a certification.

Section 674.19(c) also elaborated on the Administrator's authority to impose financial penalties for non-compliance, highlighting three options: (1) The Administrator can withhold SSO grant funds from the State; (2) The Administrator can withhold not more than five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSO program can be certified; or (3) The Administrator can require all of the rail fixed guideway public transportation systems governed by the SSO program to spend up to 100 percent of their Federal funding under 49 U.S.C. Chapter 53 for ''safety-related improvements'' on their systems, until such time as the SSO program can be certified.

Section 674.19(d) stated that in deciding whether to issue a certification for a state's SSO program, the Administrator will evaluate whether the SSOA has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the RTAs that operate within the state, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth in a sufficient level of detail in the state's SSO program.

*Comments Received:* Nearly thirty commenters responded to this section. The majority expressed the belief that FTA needed to define explicit criteria, standards or requirements by which SSO programs will be determined to be ''compliant'' or ''certified.'' Several repeated requests that FTA clarify what constituted ''sufficient authority,'' ''appropriate staffing levels,'' or ''qualified personnel.'' Without this specific information, commenters felt that FTA's enforcement of the rule would be arbitrary and capricious.

Several commenters repeated concerns noted previously that FTA needs to complete all of its safety rulemaking activities before a state or an SSOA can develop a comprehensive and compliant SSO program. These commenters were unwilling to commit to adopting SSO program standards or making costly and time-intensive revisions to their current System Safety Program Standard without knowing whether they would be consistent with FTA's final regulations.

Several commenters focused on the financial penalties associated with non-compliance, stating that withholding funds from transit agencies due to the non-compliance of an oversight agency was excessive and unfair, when it was the state, not the transit agency, that failed to implement a certified SSO program. Others noted that withholding funds from transit agencies because an SSOA failed to obtain certification did nothing to improve the SSOA's ability to develop a compliant SSO program.

Finally, some commenters asked FTA to define a ''safety-related improvement'' as used in the proposed section 674.19(c), with one noting that any infrastructure renewal program could meet this definition because maintaining a ''state of good repair'' is integral to safety.

*Agency Response:* Certifications of compliance will be based on a particular SSOA's internal readiness to oversee the RTAs within its jurisdiction, using the criteria set forth in the statute and this section of the rule. Similar to FTA's current work plan certifications to determine a state's eligibility to receive matching grant funds from FTA, certifications under this section will also proceed on a case-by-case basis, recognizing the need for flexibility when dealing with a diverse cast of state legislatures, chief executives, constitutional and statutory constructs, and SSO regulations. FTA believes that the information and technical assistance it has provided to the SSOAs under the work plan certifications has been open and transparent, and FTA will continue to provide customized, targeted assistance to each SSOA as appropriate.

With regard to the fairness of withholding funds from transit agencies within a state whose SSOA has not yet been certified by FTA, FTA is legislatively bound to carry out the statutory remedy prescribed by Congress. FTA believes Congress was very clear when it set forth the penalties for a state's inability or unwillingness to establish an SSO program that complied with MAP–21's new requirements, with 49 U.S.C. 5329(e)(7(D)(ii) specifically directing FTA to withhold up to five percent of a state's section 5307 funding for all affected recipients in the state, as an incentive to enlist the participation of local officials in ensuring that the state will provide the SSO with the necessary legal authority and independence and will commit the necessary resources.

FTA declines to provide a definition for a ''safety-related improvement'' in today's rule because the scope and nature of the improvement will be unique and individualized to each situation, based on FTA's review of a particular SSOA and the RTAs

operating within that SSOA's jurisdiction.

*Section 674.21 Withholding of Federal Financial Assistance for Noncompliance*

This section of the proposed rule provided that in those instances in which the Administrator has discretion to impose financial penalties for noncompliance with the SSO requirements, in making a decision whether to do so, and determining the nature and amount of a financial penalty, the Administrator must consider the extent and circumstances of the noncompliance, the operating budgets of both the SSOA and the RTAs that will be affected by the penalty, and such other matters as justice may require.

There is one instance in which the Administrator will be unable to exercise any discretion to mitigate a very harsh financial penalty for noncompliance with the SSO requirements. If a state fails to establish an SSO program approved by the Administrator within three years of the effective date of today's final rule, FTA will be prohibited by law from obligating any Federal financial assistance to *any* entity in that state that is otherwise eligible to receive funding through any of the FTA programs authorized by 49 U.S.C. Chapter 53. *See* 49 U.S.C. 5329(e)(3). In other words, if, for whatever reason, a state is unable or unwilling to come into compliance with the final rule for State Safety Oversight within three years after this final rule takes effect, all FTA grant funds for all of the public transportation agencies, designated recipients, subrecipients, and Metropolitan Planning Organizations in that state will be cut off. The statute is designed to provide every incentive to a state to develop and carry out an SSO program that is compliant with the regulations.

*Comments Received:* Comments received to this section were similar to the comments received for the preceding section. Commenters asked for additional clarifications, definitions, and criteria regarding its terms; expressed concerns regarding the unfairness of the statutory penalty due to actions by the state that were beyond their control; and asked FTA to consider alternatives to the termination of funds.

*Agency Response:* FTA assures transit agencies that any cutoff of Federal funding will not be immediate and without adequate notification. Section 674.19 provides important due process guarantees to the state and potentially affected transit agencies. In the event the Administrator issues a denial of a certification, he or she must provide the state a written explanation and an opportunity to modify its SSO program to merit the issuance of certification, and ask the governor to take all possible steps to correct the deficiencies that are precluding the issuance of a certification.

In addition, transit agencies fearing a total and immediate termination of FTA funding should note that section 674.19(c) provides the Administrator with the authority to impose a range of financial penalties as authorized by Congress at 49 U.S.C. 5329(e)(7)(D). The statute provides the Administrator three options in imposing a financial penalty: (1) The Administrator can withhold SSO grant funds from the state; (2) the Administrator can withhold not more than five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the state or urbanized area in the state, until such time as the SSO program can be certified; or (3) the Administrator can require all of the rail fixed guideway public transportation systems governed by the SSO program to spend up to 100 percent of their Federal funding under 49 U.S.C. Chapter 53 for safety-related improvements on their systems, only until such time as the SSO program can be certified. The appropriate use of each remedy, however, will be determined by FTA on a case-by-case basis.

FTA will make every effort to provide technical assistance to a state prior to terminating funds to transit agencies within that state, but Congress believed that withholding funds from transit agencies would help the state to recognize that public transportation is a shared benefit with shared responsibilities, and that states and their sub-entities must share the burden of ensuring adequate oversight so that transportation is provided in a safe and responsible manner.

*Section 674.23 Confidentiality of Information*

When FTA first promulgated its State Safety Oversight rule in 1995, FTA recognized that RTAs often face litigation arising from accidents, and that the release of accident investigation reports can compromise both the defense of litigation and the abilities of RTAs to obtain comprehensive, confidential analyses of accidents. Thus, the current rule at 49 CFR 659.11 provides that a state ''may withhold an investigation report that may have been prepared or adopted by the oversight agency from being admitted as evidence or used in a civil action for damages. . . .'' Any questions whether to admit investigation reports into evidence for litigation are left to the courts to determine, in accordance with the relevant state law and the courts' rules of evidence.

The NPRM proposed to clarify, and slightly expand, the rule at 49 CFR 659.11 by specifying that SSOAs and RTAs may withhold investigation reports prepared in accordance with this rule from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report. In addition, the NPRM proposed to clarify, and slightly expand, the current rule by specifying that FTA's SSO regulations would ''not require public availability of any data, information, or procedures pertaining to the security of a rail fixed guideway public transportation system or its passenger operations.''

*Comments Received:* The majority of commenters expressed concerns whether the proposed language would supersede state public records laws. Some pointed out that FTA's language was insufficient to overcome their state's laws, asking FTA to strengthen protections for confidential information collected by SSOAs and RTAs during the scope of an accident investigation, while others noted that their states already have provided protection for this kind of information.

*Agency Response:* Unlike NTSB accident reports, which cannot be admitted into evidence or used in civil litigation in a suit for damages arising from an accident, there is no such protection under the SSO program. (See 49 U.S.C. 1154(b) regarding NTSB investigations). Rather, under today's final rule, states may enact state statutes regarding the admissibility into evidence of accident investigation of reports conducted in compliance with this Part, noting that any protections must be based on state, not Federal, law and rules of evidence.

With regard to records in the possession of FTA, FTA will maintain the confidentiality of accident investigations and incident reports to the maximum extent permitted under Federal law, including the various exemptions under the Freedom of Information Act.

*Subpart C—State Safety Oversight Agencies*

*Section 674.25 Role of the State Safety Oversight Agency*

This section of the NPRM proposed to continue the requirement of 49 CFR part 659 that the SSOA establish minimum standards for the safety of all RTAs within its oversight jurisdiction, review and approve the Public Transportation

Agency Safety Plans, investigate hazards or risks that threaten the safety of an RTA, and bear primary responsibility for investigating accidents occurring on a rail transit system. This proposed section also allowed an SSOA to retain the services of a contractor for assistance in investigating accidents and incidents and for expertise the SSOA does not have within its own organization, but stated that all personnel and contractors employed by an SSOA must comply with the requirements of the Safety Certification Training program.

*Comments Received:* A number of commenters on this section repeated earlier concerns that they would be unable to implement these requirements until FTA promulgated the other safety rules under MAP–21 and they asked that the deadline for this rule be extended until stakeholders had a comprehensive understanding of the entire safety regulatory structure. Several other commenters suggested that the Public Transportation Agency Safety Plans that SSOAs will oversee follow the existing 21-point SSPP, with its familiar annual updates, approvals, and internal audits.

A significant number of commenters expressed concerns with SSOAs having the primary responsibility for investigating all accidents, incidents, hazards, or risks. Numerous commenters cited the resources and time it would take to investigate every accident and incident, turning SSOAs into investigative agencies rather than oversight agencies, and claiming that the new matching grant funds are inadequate to underwrite this heightened level of activity. One commenter asserted that this investigatory role would require an RTA to lock down an accident scene until an SSOA investigator arrived, which could be severely disruptive to service.

Various commenters offered alternatives to the NPRM's approach. Several proposed that an SSOA be able to accept an RTA's investigatory work, with one asking whether FTA means for an SSOA ''to investigate'' or ''cause to be investigated.'' One suggested that the regulatory language be amended to state that the SSOA is one of the responsible parties to an investigation, while another suggested that the regulatory language be amended to allow SSOAs to delegate their investigative authority, with one more noting that the NPRM did not provide SSOAs with the authority to delegate investigative activities to the RTA.

FTA received several comments regarding the use of contractors and their qualifications. Numerous commenters supported the use of contractors, noting that there was only a limited pool of qualified individuals who could perform the work, but noted that requiring contractor personnel to meet the requirements of the Public Transportation Safety Certification Training Program would impede an SSOA's ability to perform its new duties, particularly if a contractor is being employed to perform a very narrow scope of work.

*Agency Response:* FTA recognizes that a number of SSOAs will need to revise and reissue their minimum standards for safety of rail fixed guideway public transportation once FTA promulgates the other safety rules required by 49 U.S.C. 5329 to ensure that their state standards are consistent with FTA regulations. FTA, though, notes that SSOAs have been given three years after the effective date of today's final rule in which to modify their procedures to receive, approve and oversee the Public Transportation Agency Safety Plans from RTAs within their jurisdictions. FTA also notes the distinction between process and content—SSOAs must have a process in place by which they will review, approve, and oversee implementation of an RTA's Safety Plan. The exact content of those plans, however, are the responsibility of each RTA, following FTA's publication of the Public Transportation Agency Safety Plan Final Rule. Comments concerning whether the 21-point SSPP should be retained for the agencies overseen by SSOAs are more appropriately addressed in the rulemaking on the Public Transportation Agency Safety Plans and FTA anticipates that SSOAs and any other interested parties will participate in that rulemaking. Further, as noted above, the SSPP required under 49 CFR part 659 will remain in effect until FTA issues a final rule for Public Transportation Agency Safety Plans.

With regard to the primary investigatory role that the NPRM would have imposed upon SSOAs, FTA is making revisions in section 674.35 of the final rule to acknowledge that while an SSOA does not have to investigate all accidents, hazards, and risks, an SSOA does have the primary role for approving and overseeing the investigative processes of an RTA, and has the authority to require the RTA to initiate an investigation. This requires an RTA to address the risks and hazards on its property and to investigate all accidents, but still requires the SSOA to exercise sufficient oversight to ensure that the RTA is meeting its requirements.

In the final rule, FTA is retaining the requirement that an SSOA bears the primary responsibility for investigating any allegation of noncompliance with elements of an RTA's Public Transportation Agency Safety Plan, which is a duty that cannot be delegated to an RTA. In addition, under the final rule, SSOAs have primary responsibility for investigating accidents.

Regarding the use of contractors, FTA recognizes that the pool of qualified individuals with transit rail safety expertise is limited, and that contractors may be called upon to perform specific tasks on behalf of an SSOA, rather than taking on the more extensive duties required of an SSOA. For that reason, FTA is revising the last paragraph of section 674.25 to require personnel and contractors to comply with the Training Certification Program ''as applicable.''

As an administrative note, FTA is removing the proposed paragraph 674.25(b) which simply stated that the basic principles and methods of SMS are located in Appendix A. Because of the wider applicability of SMS to transit agencies and their functions, SMS is being addressed in the National Public Transportation Safety Plan and the Public Transportation Agency Safety Plan rulemaking.

*Section 674.27 State Safety Program Standards*

This section of the proposed rule required each SSOA to adopt and distribute a written SSO program consistent with the National Public Transportation Safety Plan, the rules for Public Transportation Agency Safety Plans and the Safety Certification Training Program, and the principles and methods of SMS. Under the proposed rule, the SSO program would identify the processes and procedures that govern the activities of the SSOA, addressing the oversight authority of the SSOA; the SSOA's processes for developing its standards; how the SSOA will apply the principles and methods of SMS; the process by which the SSOA will receive and evaluate submissions by an RTA; the triennial audit process; accident notification procedures; investigations; corrective action plans; and annual FTA review of the program standard.

*Comments Received:* Similar to the comments received on other sections, some commenters cited difficulty in responding to this section until FTA issues all of the safety rules under 49 U.S.C. 5329. Others asked FTA not to judge or evaluate an SSOA's compliance with this section until three years have passed. Some asked FTA to establish a template or to provide explicit criteria

by which FTA would evaluate a State's SSO program standard, while others suggested that an SSOA be allowed to delegate or defer accident investigations to the NTSB, FTA, FRA, Occupational Health and Safety Administration (OSHA), or to the RTA itself.

*Agency Response:* FTA has responded to these general comments elsewhere in today's publication. The NPRM's proposed rule text was designed to build upon the existing requirements in 49 CFR 659.15 and 659.17. FTA is adopting these requirements in the final rule, albeit with the following changes: (1) The proposed text in paragraph 674.27(a)(3) regarding SMS is being deleted because SMS principles are more applicable to RTAs than an SSOA; (2) the paragraph titled ''Accident and incident notification'' now reflects accidents only; and (3) the paragraph titled ''Investigations'' is amended to reflect the SSOA's role under section 674.35. Also, FTA is making technical edits to insert the correct title of the Public Transportation Agency Safety Plan.

Although FTA appreciates the suggestions that an SSOA be allowed to delegate or defer accident investigations to other Federal agencies such as FTA, FRA, NTSB or OSHA, those agencies do not have the resources to investigate every reportable accident, and FTA does not have the authority to direct them to do so. FTA notes, however, that several of those agencies have independent statutory authority regarding accident investigations, and FTA believes that those agencies will use their investigative resources where and when appropriate.

*Section 674.29 Public Transportation Agency Safety Plans: General Requirements*

This section of the proposed rule required an SSOA to ensure that an RTA's Public Transportation Agency Safety Plan is compliant with the regulations FTA is promulgating at 49 CFR part 673, and is consistent with the National Public Transportation Safety Plan and the SSO program standard established by the SSOA.

*Comments Received:* Several commenters requested that FTA identify explicit criteria by which an SSOA would assess whether an RTA is in compliance, claiming that the terms used by the NPRM were ambiguous and would lead to confusion and inconsistencies in the RTA's safety plans. Others requested a return to the existing certification process of an RTA's SSPP under 49 CFR part 659.

*Agency Response:* One of the most significant changes in state safety oversight under today's rulemaking is the transition from the simple review-and-approval of an RTA's system safety program plan to the more hands-on, proactive role that Congress required for SSOAs in evaluating the effectiveness of an RTA's safety program. This means that SSOAs will need to make determinations based on their own expertise and authority. Rather than working from a set of prescriptive Federal standards, SSOAs must develop their own locally-developed state safety program standards and hold RTAs accountable to those standards. FTA does not agree that the text of the proposed rule is ''ambiguous'' or will lead to ''inconsistencies,'' however, we have made modifications to the regulatory text to more closely align with the statutory requirements for public transportation agency safety plans.

*Section 674.31 Triennial Audits: General Requirements*

The longstanding rule at 49 CFR 659.29 requires an SSOA to conduct an ''on-site review'' of an RTA's SSPP at least once every three years. The NPRM proposed to continue this timeframe, allowing an SSOA to conduct a complete audit of an RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, or on an on-going basis over a three-year timeframe. In the preamble of the NPRM, FTA suggested that this schedule be established with the consent of the RTA.

Also, in this section of the proposed rule, at the conclusion of the three-year audit cycle an SSOA would issue a report with findings and recommendations that include, at minimum, an analysis of the effectiveness of the Public Transportation Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary. The RTA would be given an opportunity to comment on the findings and recommendations arising from the audit.

*Comments Received:* Several commenters representing SSOAs expressed concerns that the NPRM's suggestion that the three-year cycle be established in conjunction with the RTA gave too much authority to the subject of the audit and could be perceived as diminishing the authority of the auditor, particularly if FTA expected the auditor to perform an independent review. Others noted that some SSOAs and RTAs have cooperative relationships and have been able to schedule and coordinate their triennial audits. Several commenters asked FTA to determine requirements for the audit cycle—not the SSOA—and when RTA approval is required, with a number of commenters indicating that an SSOA should not be required to obtain an RTA's approval to conduct audits.

*Agency Response:* FTA agrees with the SSOAs who expressed concerns that RTAs should not have veto power over the scheduling of an SSOA's audit. Although the NPRM expressed optimism that the SSOA and RTA could cooperatively determine the scheduling of the triennial audit to best coordinate RTA resources and schedules, ultimately it is the responsibility of the SSOA, as the oversight agency, to exercise its authority in the manner established in its SSO program standard, and it is not up to the RTA to approve the scheduling or timing of an audit. Therefore, FTA has removed language relating to the RTA ''agreeing'' to the audit schedule but otherwise has adopted the NPRM's language without substantive change.

*Section 674.33 Accident notification*

This section of the NPRM incorporated the two-hour notification window for certain types of accidents in the longstanding rule at 49 CFR 659.33, with two significant changes. The first change was the addition of the term ''incident'' to the category of notifiable events. The second change was the proposal that FTA be notified along with the SSOA.

As proposed in the ''Definitions'' section of the NPRM, an ''incident'' was defined as a near miss, close call, a violation of a safety standard that poses a hazard to a rail fixed guideway public transportation system, or property damage in an amount equal to or greater than $25,000. This was based on FTA's view that a near miss or close call may be as much or more important as a reporting threshold for detecting hazards and mitigating risk as an accident that results in personal injury or property damage, and that a violation of a safety standard called for notification, regardless of whether the violation led to personal injury or property damage.

FTA also requested simultaneous notification of accidents and incidents as a means of increasing FTA's awareness of these events. FTA was aware of electronic notification systems that a number of RTAs are using to inform multiple parties of accidents, including the notification system that railroads provide to the FRA via the National Response Center, and FTA believed that adding FTA to an automated list of addressees would require minimal effort, noting that the

specific manner of reporting would be determined via an electronic reporting manual that would be issued following publication of this rule.

*Comments Received:* As discussed in the ''Definitions'' section above, FTA received numerous comments regarding the definition of ''incident'' and the undue burden it would impose if RTAs were required to report all accidents and incidents to their SSOAs. SSOAs who commented did not disagree so much about the notifications it would receive of both accidents and incidents, but rather, on the obligation to investigate every notifiable event, as required in the proposed section 674.35, ''Investigations,'' below.

FTA also received comments regarding the manner of providing simultaneous notification to FTA via the same method used by the RTA to notify its SSOA. Several noted that the notification procedures should be established by regulation, rather than through an electronic reporting manual that can be changed whenever FTA decides to make a change. One commenter suggested using a negotiated rulemaking to gain the approval of SSOAs and RTAs in developing notification and reporting thresholds. A couple of commenters noted that rather than requiring an RTA to send separate notifications to FRA, OSHA, NTSB, the SSOA, and now FTA, FTA should consider utilizing the National Response Center model whereby one notification received from an RTA is delivered simultaneously to the relevant governmental agencies. Finally, one commenter suggested that because this rule is intended to promote greater state diligence and authority in overseeing rail transit safety, the SSOAs should be the parties responsible for notifying FTA.

*Agency Response:* In response to the concerns raised by the commenters, FTA is deleting ''incidents'' as an event triggering the two-hour notification window in this section. FTA believes that an SSOA's resources are best used by investigating accidents, while incidents will continue to be investigated by the RTA and reported to FTA within 30 days of the event through the National Transit Database (NTD) safety and security reporting module. Noting the heightened safety oversight role for SSOAs under 49 U.S.C. 5329(e) and today's rule, FTA expects SSOAs to be aware of all reportable incidents occurring at RTAs under their oversight, and to that point, FTA will provide SSOAs with electronic access to the NTD to allow them to review NTD accident reports on a regular basis. In addition, States may allow or require SSOAs to request these reports directly from the RTA.

With regard to the FTA notification process, FTA is retaining this requirement in the final rule. Although it was not feasible to prescribe an exact notification process in today's rule, particularly since FTA would have been doing so without the notice and comment process requested by stakeholders, FTA will be working with stakeholders to develop guidance for an electronic notification process. FTA appreciates the concern of the commenter who suggested that the SSOA should have the primary responsibility for notifying FTA, but since it is the RTA that must create the initial notification, FTA believes it is more practicable for the RTA to add FTA to its addressee list rather than requiring the SSOA to do so.

FTA also appreciates the commenters who suggested that FTA utilize the National Reporting Center (NRC) as a means of distributing accident reports to relevant governmental agencies. FTA notes, however, that only commuter railroads and a handful of rail transit agencies covered under the FRA's regulatory jurisdiction are required to submit reports to the FRA's NRC (see 49 CFR 225.3), which excludes the vast majority of RTAs from this requirement. Extending the NRC reporting mandate to all RTAs would also require approval from the White House Office of Management and Budget under the Paperwork Reduction Act, which FTA and FRA are not prepared to pursue at the present.

*Section 674.35 Investigations*

In enacting MAP–21, Congress decided that both FTA and the States, through their SSOAs, would have concurrent authority to investigate any accident involving the safety of a rail transit vehicle or taking place on the property of an RTA. Because MAP–21 provided SSOAs with the financial resources to conduct investigations, and required professional training and certification of their employees to investigate accidents, this section of the NPRM proposed to require an SSOA to conduct an ''independent investigation'' of any accident or incident that an RTA reports to the SSOA. Also, the proposed rule would have required the SSOA to issue a written report on its investigation of an accident or incident that identified the factors that caused or contributed to the accident or incident, described the SSOA's investigation activities, and set forth a corrective action plan, as necessary or appropriate. The report was to be transmitted to the RTA for review and concurrence, and if an RTA did not concur in an SSOA's investigation report, the SSOA could allow the RTA to submit a written dissent from the report, and the SSOA could include the RTA's dissent in the report, albeit at the discretion of the SSOA.

In addition, this section of the proposed rule would have required all personnel and contractors conducting investigations for an SSOA to be trained to conduct investigations in accordance with the Safety Certification Training program.

*Comments Received:* All thirty-six commenters to this section disagreed with the proposed language that would require an SSOA to conduct an ''independent investigation'' of any reportable accident or incident. As addressed in previous sections, commenters primarily cited the significant time and resource burden it would place on SSOAs and the inadequacy of the Federal grant funds to cover the incremental costs of conducting these investigations.

Numerous commenters pointed to the adequacy of the investigation process under the existing 49 CFR part 659 process. According to one commenter, SSOAs often delegate the investigatory process to the RTA and accept the conclusions of the RTA's investigation, but only after a rigorous review, comment, and approval period whereupon the SSOA has the ability to reject investigation reports that do not adequately address all of the causal and contributing factors, lack appropriate corrective actions, or suffer from any similar deficiency. Other commenters noted that the SSOA's role is one of oversight, and that while the RTA should bear the responsibility to generate its own accident investigation report, the SSOA should retain the final decision whether an independent accident investigation is warranted.

One commenter expressed dismay that if an RTA did not concur in an SSOA's investigation report, its only recourse was to submit a written dissent, which the SSOA could include at its discretion. The commenter claimed that unless the dissent was included, there would be no record documenting the RTA's attempts to develop an alternative solution.

*Agency Response:* FTA finds these arguments persuasive. Consistent with the current practice under 49 CFR part 659, SSOAs will retain their oversight role only, and may continue to direct RTAs to conduct initial inspections and investigations. However, under the strengthened SSO regimen of 49 U.S.C. 5329, an SSOA must conduct an independent review of an RTA's

investigative findings. Should an SSOA determine that an RTA's investigation is inadequate, it may conduct its own independent investigation. In addition, FTA may initiate its own investigation under the authority prescribed at 49 U.S.C. 5329(f) and implemented in the proposed Public Transportation Safety Program at 49 CFR part 670.

With regard to the commenter who objected to the SSOA's discretion to exclude an RTA's dissent from the SSOA's investigatory report, FTA recognizes that it is the SSOA, and not the RTA, that is ultimately responsible for the outcome of the investigation, and therefore has the discretion to determine whether a written dissent is relevant to the report.

*Section 674.37 Corrective Action Plans*

This section of the proposed rule stated that in any instance in which an RTA must develop a corrective action plan (CAP), the SSOA must first review and approve the plan before the RTA carries it out. The rationale was to ensure that the RTA is taking adequate steps to avoid or mitigate the risks and hazards that led to the plan, has adopted a realistic schedule for taking the corrective actions, and identified the persons responsible for taking the corrective actions.

Also the proposed rule required the RTA to periodically report its progress in carrying out a corrective action plan, and authorized the SSOA to monitor the RTA's progress through unannounced, on-site inspections, or any other means the SSOA deemed necessary or appropriate. Additionally, in any instance in which the NTSB had conducted an investigation, an SSOA could evaluate whether the NTSB's findings and recommendations warranted a corrective action plan by the RTA, and if so, the SSOA had the authority to order the RTA to develop and carry out a corrective action plan.

*Comments Received:* FTA received numerous comments on this section of the NPRM. Most commenters agreed that it should be the responsibility of the RTA, and not the SSOA, to develop a CAP. Rail transit agencies are more knowledgeable about their systems, and are therefore better suited for developing CAPs, which would then be submitted to the SSOA for their review and approval. One SSOA noted the positive relationship it has with its RTA in which the RTA develops a CAP and shares it with the SSOA, with both parties working collaboratively to address any concerns that arise.

A number of commenters expressed concerns with the proposal that an SSOA review and approve a CAP before an RTA can begin its implementation. They felt this would not make sense where the RTA discovers an imminent hazard or risk, or a potential catastrophic event that required immediate corrective action that should not wait for a time-intensive approval process.

Several commenters noted that it would be problematic for an SSOA to conduct unannounced on-site inspections of an RTA during the course of monitoring implementation of a CAP because of safety rules at the RTA that might require escorts in hazardous areas.

*Agency Response:* FTA agrees with those commenters who characterized CAPs as a joint effort to be developed in a collaborative manner, particularly since both an SSOA and an RTA have a shared and critical interest in safety. FTA agrees with commenters that an RTA should be given the opportunity to present a CAP to an SSOA for its review and approval, particularly since the RTA is most familiar with the risks and hazards within its system. While FTA does not believe it is the responsibility of the SSOA to develop CAPs for an RTA, ultimately it is the responsibility of the SSOA, as the oversight agency, to ensure that RTAs are developing and implementing appropriate CAPs.

With regard to the pre-approval process, FTA agrees with those commenters who described the impracticality of awaiting SSOA approval of a CAP to address an immediate or imminent risk or hazard, and FTA is modifying the language in section 674.37(a) of the final rule accordingly.

With regard to the commenters who raised safety concerns regarding unannounced, unplanned on-site inspections, FTA acknowledges that this requirement does not override an RTA's own safety policies and procedures, particularly where SSOA staff may want to enter trackways and other potentially hazardous areas. FTA strongly encourages SSOAs to ensure that their personnel conducting the inspections have completed the necessary qualifications and training, attended the requisite safety briefings, and possess the appropriate safety equipment prior to engaging in a track inspections or similar activity, which are part of the qualifications required for SSOA personnel addressed in subsection 674.11(e) of the final rule.

*Section 674.39 State Safety Oversight Agency Annual Reporting to FTA*

This section of the proposed rule was based on the structure of the current 49 CFR 659.39, insofar as the data and information SSOAs must report to FTA on an annual basis, with a few additions and revisions, as follows. First, under proposed subsection 674.39(a)(2), an SSOA would be obliged to submit evidence once a year that each of its employees and contractors is in compliance with the applicable Safety Training Certification requirements. Second, under proposed subsection 674.39(a)(4), an SSOA would be obliged to submit a summary of the triennial audits completed during the preceding year, and the RTA's progress in carrying out any CAPs arising from those audits. Third, under proposed subsection 674.39(a)(5), an SSOA would be obliged to submit evidence of its review and approval of any changes to Public Transportation Agency Safety Plans during the preceding year.

*Comments Received:* Six commenters responded to this section, with one indicating that a publicly available report would be useful for annual review, discussion, and training within an RTA. Conversely, some commenters questioned the need for FTA to expand reporting requirements to include ''incidents'' such as safety rule violations, and stated the annual reports would do little to assist FTA, the State, and the RTA's board of directors in assessing the functional safety of an RTA. One commenter asked if FTA would allow electronic submission of the reports, with another suggesting FTA improve its existing online annual reporting system for the National Transit Database.

*Agency Response:* FTA agrees with the commenter who views the annual reports as useful. FTA does not agree with the commenter who questions the need for additional reporting, however, MAP–21 calls on FTA, SSOAs, and RTAs to establish a more vigorous and extensive safety program. Tracking ''incidents'' as leading indicators of potential safety hazards is a vital component of the stronger safety program under 49 U.S.C. 5329. Although FTA appreciates the suggestions from commenters regarding improvements to FTA's electronic submissions portal, those comments do not require amendments to the proposed text. Therefore, FTA is adopting the proposed rule text without substantive change.

*Section 674.41 Conflicts of Interest*

The proposed subsection 674.41(a) incorporated a fundamental change enacted by MAP–21: an SSOA must now be both financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA. See 49

U.S.C. 5329(e)(4)(A)(i). The only exception to this requirement would be an instance in which the Administrator has issued a waiver based on the relatively small annual fixed guideway revenue mileage in a state (less than one million actual and projected (*i.e.,* new construction) revenue miles, in total), or the relatively small number of unlinked passenger trips carried by all the rail transit systems in a state, on an annual basis (fewer than ten million actual and projected unlinked passenger trips, in total). See, 49 U.S.C. 5329(e)(4)(B).

The proposed subsection 674.41(b) would fundamentally change the current rule to make it clear that an SSOA may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the SSOA. Also, the proposed rule would delete the reference in the current rule to state law determinations of conflict of interest. Again, however, the Administrator could issue a waiver from this requirement on the basis of the relatively small annual fixed guideway revenue mileage (less than one million miles) in a state or the relatively small number of unlinked passenger trips per year (less than 10 million unlinked trips) in a state, using the same thresholds as specified in proposed section 674.41(a). Finally, the proposed subsection 674.41(c) would make it clear that a contractor may not provide its services to both an SSOA and an RTA under the oversight of that SSOA. There is no waiver available with respect to this particular requirement.

*Comments Received:* The commenters responding to this section generally agreed that rail transit safety is highly specialized, and is problematic to implement, given that there are very few contractors available with the skill and expertise to assist either transit agencies or SSOAs with the program. One of the commenters stated that the proposed prohibition on conflicts of interest is not supported by 49 U.S.C. 5329 and suggested that FTA withdraw these prohibitions. Another recommended that the final rule make clear that the SSOA may request a waiver from this requirement, given the broad number of consultants employed by an RTA under its jurisdiction. One commenter suggested that the rule specify a minimum requirement for an SSOA to verify a contractor is not providing services to both an SSOA and an RTA, noting there is no regulatory requirement or means established for the SSOA to be made aware of the contractors providing services to the RTAs it oversees to ensure compliance with this requirement.

One commenter asked whether an SSOA will be able to use a consultant previously employed by an RTA to assist with the development of its program standard, while another recommended that FTA add a new subsection that would prohibit an SSOA from employing former RTA personnel to oversee that transit agency.

*Agency Response:* FTA is aware there is a small number of consultants in the field of rail transit safety. Given the uniqueness of the market, SSOAs may have difficulty finding consultants who are not also employed by RTAs. Although 49 U.S.C. 5329 does not expressly prohibit a conflict of interest for consulting contractors, the longstanding rule at 49 CFR 659.41 currently states that the SSOA shall prohibit a party or entity from providing services to both the SSOA and the RTA, if the state recognizes a conflict of interest. FTA notes that SSOAs and RTAs have been able to comply with 49 CFR 659.41 without the need to seek a waiver or otherwise being hindered in their ability to carry out their respective duties. However, FTA is also aware of the growth of large, multi-faceted consultancy firms that are capable of providing services to both SSOAs and RTAs. Thus, FTA is adding a waiver provision to the final rule at 674.41(c), similar to that in 674.41(a) and (b), which allows the Administrator to waive a consultant's conflict of interest if the SSOA can demonstrate adequate administrative and legal separation between a contractor employed by an SSOA and an RTA.

With respect to the suggestion to prohibit an SSOA from employing former RTA personnel to oversee that system, FTA believes that is a matter for the RTA, as an employer, to establish as a term and condition of that employee's post-employment restrictions, noting the views from commenters regarding the lack of trained safety personnel capable of carrying out rail transit safety oversight responsibilities. It is not feasible for FTA to establish a means whereby an SSOA could determine whether a consulting contractor is already providing services to an RTA within that SSOA's jurisdiction. Nevertheless, FTA believes that the SSOA can readily determine whether a conflict exists through the SSOA's contracting or bidding process, in which a contractor must disclose any potential conflicts of interest.

*General: Economic Burden*

*Comment Summary:* FTA received six comments regarding the NPRM's economic burden estimates. Several commenters claimed that FTA had underestimated the level of burden due to the increased oversight requirements, in particular the lack of funding for the additional requirements; omission of oversight activities; the added burden of reporting and data management, and an underestimate of labor hours and cost.

One commenter estimated the cost of implementing the proposed rule for their transit agency for the first year, noting that this cost would not be eligible for the capital grant funding assistance provided by FTA, thereby burdening local funding partners with an unfunded mandate instead. Another respondent commented on a number of omitted oversight tasks that would be detrimental to the SSOA's ability to implement the minimum requirements of the proposed SSO program, but did not specify what they were.

Two commenters mentioned the increased burden of additional notifications, investigations and reporting requirements resulting from broadened definitions of accidents, incidents and occurrences, without potential increase in safety benefits. Another commenter noted the additional costs of data collection, management and analysis, a cornerstone of implementing SMS. While the RTA currently collects this data, it is not all on the same data systems or on compatible data systems. The RTA would need to develop data systems and analytical tools to meet the requirements of other safety rules still pending, making it difficult to know the cost of the rule.

One commenter said that the labor hours and costs were grossly underestimated, despite which the estimated costs show a four-fold increase over current costs. Also, they noted that other rules will further change the current rail safety program rule (49 CFR part 659) requirements.

*FTA Response:* It is difficult for FTA to respond to RTA cost estimates of the likely burden of the new proposed rule without knowledge of specific data or knowing what the additional burdens would be if they are not specified. The requirements of the SSO rule pertain to responsibilities that an SSOA will carry out and only slightly impact the RTAs through additional reporting and investigations. The additional economic cost to the RTAs is not expected to be significant and MAP–21 authorized FTA to provide supplemental funding to SSOAs to offset their oversight expenses.

In response to the comments to the NPRM, FTA has undertaken the following actions that will reduce the economic burden estimates of the proposed final SSO rule. First, RTAs

will now only be required to report incidents that affect the operations of the RTA. This means near misses/close calls or safety rule and policy violations are no longer required to be reported to the SSOA or FTA, eliminating the cost of conducting an investigation. However, RTAs are still required to collect this information and make it available to SSOAs or FTA during an investigation or audit to reduce recurrences and support the practice of SMS. The reduction in the number of injuries triggering the accident notification threshold from two individuals down to one person could increase the number of accidents reported by about 7,000 incidents per year, but redefining ''accident'' to include only serious injuries is likely to reduce the number of overall events triggering notification and a subsequent investigation. Based on an FTA study on the cost of reporting to NTD, the new requirements will not significantly increase reporting costs for agencies, likely less than a few thousand dollars across the industry in the first year, and half of that in subsequent years. Similarly, the additional accidents that must be investigated under the new definitions will not be too burdensome since they will require a lower level of investigation effort than the more serious incidents involving fatalities and derailments, likely less than $100,000 a year for the RTAs and SSOAs.

FTA recognizes that relevant safety information may be stored electronically and require investment in data systems to better analyze the data to support SMS practices. SMS is mentioned by reference in the proposed rule since SSOAs will be responsible for ensuring that SMS principles are adopted into the transit agency safety plans and practiced to improve safety performance. The full cost of implementing SMS principles will be included in the Public Transportation Agency Safety Rule. Similarly, the costs of training are included in the Public Transportation Safety Certification Training Program.

FTA acknowledges that the labor costs were underestimated in the NPRM since it did not include full labor costs. Consequently, the labor costs have been revised to include a 56 percent allowance for employee fringe benefits based on Bureau of Labor Statistics data for 2014. In addition, the labor cost for investigations has also been revised to reflect a higher cost for this specialty, and the numbers for labor hours for investigations have also been revised based on comments received through the NPRM. The economic burden estimates for the final rule are now revised to reflect the redefined role of the SSOA in accident investigations.

*Appendix A: Safety Management Systems (SMS) Framework*

FTA is removing the SMS Appendix that appeared as Appendix A in the NPRM and, instead, is republishing it in the proposed Public Transportation National Safety Plan. FTA is replacing Appendix A with a table addressing the notification and reporting requirements for accidents, incidents, and occurrences; and providing representative examples of each. FTA has published the SMS Framework at: *http://www.fta.dot.gov/documents/FTA_SMS_Framework.pdf,* and interested stakeholders have an additional opportunity to provide comment through the National Public Transportation Safety Plan docket (FTA–2015–0017).

## IV. Rulemaking Analyses and Notices

All comments received on or before the close of business on the comment closing date indicated above were considered and are available for examination in the docket at the above address.

### Executive Orders 13563 and 12866; USDOT Regulatory Policies and Procedures

Executive Orders 12866 and 13563 direct Federal 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. Also, Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. In addition, FTA is required by 49 U.S.C. 5329(h) to ''take into consideration the costs and benefits of each action the Secretary proposes to take under'' section 5329.

FTA has determined this rulemaking is a non-significant regulatory action within the meaning of Executive Order 12866 and is non-significant within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. FTA determined that this final rule is not economically significant because it will not result in an effect on the economy of $100 million or more. The proposals set forth in today's rule will not adversely affect the economy, interfere with actions taken or planned by other agencies, or generally alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

*Existing 49 CFR Part 659 Program Requirements and Activities*

As stated in the Background section above, this rule replaces a set of regulations that have been in place since December 27, 1995, and codified at 49 CFR part 659. As such, this rule applies to a discrete subsection of the public transportation industry—recipients of Federal funds under 49 U.S.C. chapter 53 that operate rail fixed guideway transit systems not subject to the jurisdiction of the FRA; the states in which those rail systems operate; and the SSOAs that exercise oversight over the safety of those rail systems.

Through the implementation of 49 CFR part 659, the states, SSOAs, and RTAs affected by 49 U.S.C. 5329(e) already engage in core activities that address many of this rule's requirements. In practical terms, many of the changes required by this rule serve to increase the frequency and/or comprehensiveness of activities that are already performed, such as reviews, inspections, field observations, investigations, safety studies, data analysis activities, and hazard management. Costs of the rule are therefore presented as the difference between the costs of SSOA and RTA activities as required under the final rule, less the costs of activities under the current program (49 CFR part 659).

*Costs to States of Implementing 49 CFR Part 659, Based on CY 2011–2013*

Pursuant to 49 CFR part 659, FTA collects annual information from the SSOAs regarding the hours they expend to implement SSO requirements for the RTAs in their jurisdictions. Based on this information, when totals are averaged for the last three reporting years (CY 2011–CY 2013), FTA has determined that the 28 covered SSOAs expend approximately 108,484 total hours per year implementing 49 CFR part 659 requirements. While these hours average out to roughly 3,774 per state per year, there is wide variation across the states in terms of the total level of effort devoted to compliance with 49 CFR part 659. Some states, such as California, oversee multiple RTAs with two or more full-time equivalents (FTEs) devoted to each system. Most states covered by 49 CFR part 659, however, have one rail fixed guideway system and devote between 0.5 and 1 FTEs per year to implementing 49 CFR part 659 requirements for that system, supplemented by contractor resources for major activities, such as triennial reviews and accident investigations.

The table below illustrates the break-down of activities and labor hours

currently expended to implement 49 CFR part 659 by states and SSOAs. In order to facilitate comparison with today's rule, the table uses activities required under 49 CFR part 674. Readers should note that some activities reflect a zero dollar cost because they were not required under 49 CFR part 659. Costs per hour are based on the 2014 Bureau of Labor Statistics (BLS) average wage rate of $44.47 per hour for state and local government operations managers, including a load factor for fringe benefits [1] that brings the total loaded cost per hour to $69.37. Given the special training required for accident investigators, a separate wage rate of $65 per hour is used for investigators, which yields a total loaded cost of $101.40 per hour when the same fringe benefit adjustment is made. The level of effort equates to an annual cost of approximately $7.7 million for states and SSOAs to implement 49 CFR part 659 requirements nationwide.

The table also identifies one-time, non-recurring activities with an asterisk (*). These activities, such as establishing standards and procedures, are performed initially to establish the System Safety Program Standard for a state implementing 49 CFR part 659. These costs are listed to reflect the reality that new states and RTAs are joining the SSO program each year. In fact, since January 1, 1997, when the December 27, 1995, rule implementing 49 CFR part 659 went into effect, the SSO program has grown by 40 percent, increasing from 19 SSOAs and 32 RTAs to 28 SSOAs and 48 RTAs. However, for calculation purposes, non-recurring costs of existing activities are considered sunk costs.

BASELINE: ANNUAL SSOA ACTIVITY TO IMPLEMENT REQUIREMENTS UNDER 49 CFR PART 659

[Mapped to provisions of proposed rule]

| State oversight agency activity | Labor hours | Total cost |
|---|---|---|
| • Explicit Acknowledgement of State Responsibility to Oversee Safety of Rail Transit Agencies in Engineering, Construction and Operations * | 0 | $0 |
| • Demonstrate Authority to Adopt and Enforce State and Federal Regulations * | 0 | 0 |
| • Demonstrate Adequate/Appropriate Staffing Level * | 0 | 0 |
| • Demonstrate Qualification and Certification of Staff * | 0 | 0 |
| • Demonstrate by Law Prohibition against Receiving Funding from Rail Transit Agency * | 0 | 0 |
| § 674.13 Designation of oversight agency: | | |
| • Legal and Financial Independence Procedures and Disclosures * | 0 | 0 |
| • Annual Updates and Legal and Financial Independence Disclosures | 0 | 0 |
| • Documentation of No Provision of Transit Service | 0 | 0 |
| • Documentation of No Employment for Personnel Administering Rail Transit Programs | 0 | 0 |
| • Establish and Document Authority to Review, Approve, Oversee, and Enforce Agency Safety Plan * | 0 | 0 |
| • Establish and Document Investigative and Enforcement Authority * | 0 | 0 |
| § 674.15 Designation of oversight agency for multi-state system | 0 | 0 |
| § 674.17 Use of Federal financial assistance: | | |
| • Identifying and Providing Appropriate Match for Grant Program * | 0 | 0 |
| • SSO Grant Management and Reporting Activities | 0 | 0 |
| § 674.19 Certification of a State Safety Oversight Program: | | |
| • Certification Pre-Submittal Documentation to FTA | 0 | 0 |
| • Work Plan and Quarterly Updates to FTA | 0 | 0 |
| • Initial Certification Documentation | 2,860 | 198,407 |
| • Final Certification Documentation | 0 | 0 |
| • Maintenance of Annual Certification | 0 | 0 |
| § 674.21 Withholding of Federal financial assistance for noncompliance | 0 | 0 |
| § 674.23 Confidentiality of information: | | |
| • Develop and adopt procedures/regulation to withhold an investigation report from being admitted as evidence or used in a civil action * | 0 | 0 |
| § 674.25 Role of the State safety oversight agency: | | |
| • Establish minimum standards for the safety of rail transit agencies * | 0 | 0 |
| • Update minimum standards as needed or required | 0 | 0 |
| • Review and Approve Agency Safety Plan (§ 674.29 Public Transportation Agency Safety Plans: General requirements) | 3,840 | 266,393 |
| • Review and Approve Supporting and Referenced Procedures | 3,072 | 213,114 |
| • Review and Approve Annual Updates to Agency Safety Plan and Supporting and/or Referenced Procedures | 3,072 | 213,114 |
| • Oversee the Transit Agency's execution of its Public Transportation Agency Safety Plan | 8,448 | 586,065 |
| • Enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate | 0 | 0 |
| • Ensure that a Public Transportation Agency Safety Plan meets the requirements for Public Transportation Agency Safety Plans at 49 U.S.C. 5329(d) and the regulations that are or may be codified at 49 CFR Part 673 | 0 | 0 |
| • Investigate any hazard or risk that threatens the safety of a Rail Transit Agency | 19,200 | 1,331,965 |
| • Investigate any allegation of noncompliance with a Public Transportation Agency Safety Plan | 0 | 0 |
| • Exert primary responsibility to investigate each Rail Transit Agency accident | 0 | 0 |
| • Enter into agreements with contractors | 0 | 0 |
| • Comply with the requirements of the Public Transportation Agency Safety Certification Training Program | 3,840 | 266,393 |
| § 674.27 State safety program standards: | | |

[1] BLS data shows that wages are 64.1 percent of total compensation costs while benefits are 35.9 percent. This is based on an employer cost for employee compensation BLS News Release from September 2013 (*http://www.bls.gov/news.release/pdf/ecec.pdf*). Therefore, to derive the total compensation costs based on wages, one must factor wages by 1.56 (64.1 + 35.9/64.1). Benefits included in this adjustment include paid leave, supplemental pay, insurance, retirement and savings, and legally required benefits such as social security and Medicare.

BASELINE: ANNUAL SSOA ACTIVITY TO IMPLEMENT REQUIREMENTS UNDER 49 CFR PART 659—Continued

[Mapped to provisions of proposed rule]

| State oversight agency activity | Labor hours | Total cost |
|---|---|---|
| • Develop and adopt program standard * | 1,400 | 97,122 |
| • Develop and adopt program procedures * | 1,400 | 97,122 |
| • Develop and adopt Safety Management Systems oversight principles and oversight methods * | 0 | 0 |
| • Review and update program standard and procedures | 2,912 | 202,015 |
| § 674.31 Triennial audits: general requirements: | | |
| • Conduct Three Year Audit | 9,216 | 639,343 |
| • Document Results and Findings | 13,440 | 932,376 |
| § 674.33 Notifications: Accidents and other incidents: | | |
| • Receive and track notification of accidents | 0 | 0 |
| • Report to FTA | 0 | 0 |
| § 674.35 Investigations: | | |
| • Prepare Accident Investigation Report | 5,376 | 545,126 |
| • Review, Approve and/or Adopt Accident Investigation Reports | 6,144 | 623,002 |
| § 674.37 Corrective action plans | 15,360 | 1,065,572 |
| § 674.39 State Safety Oversight Agency annual reporting to FTA | 3,528 | 244,749 |
| § 674.41 Conflicts of interest | 0 | 0 |
| Travel | 5,376 | 372,950 |
| *Total Recurring Hours and Costs* | *105,684* | 7,700,586 |
| *Total Non-recurring Hours and Costs* | *2,800* | *$194,245* |

* Non-recurring cost.

*Costs to Rail Transit Agencies of Implementing 49 CFR Part 659, Based on CY 2011–2013*

Based on information collected from SSOAs in annual reports and previous assessments conducted by the Government Accountability Office and the NTSB, FTA has also established the level of effort required to implement 49 CFR part 659 requirements for the 48 RTAs covered by the regulation. Based on this data, FTA has determined that each year, RTAs expend approximately 156,668 hours implementing relevant 49 CFR part 659 requirements.

While these hours average out to approximately 3,264 per RTA per year, there is variation in the rail transit industry based on the size of rail fixed guideway systems. The nation's five largest RTAs each employ between 6 and 15 full-time equivalents who work exclusively on 49 CFR part 659 activities. Most of the remaining RTAs devote between 0.5 and 2 FTEs to implement 49 CFR part 659 activities. Major activities performed by the RTAs to implement 49 CFR part 659 include developing safety and security plans and procedures; conducting internal reviews and audits to assess the implementation of safety and security plans; conducting accident and incident investigations; identifying, assessing and resolving hazards and their consequences; managing safety data acquisition and analysis; coordinating with emergency response planning; and communicating with/responding to the SSO agency through reports, meetings, teleconferences, emails, training, submittals and support for field observations and reviews.

Using the same 2014 BLS wage data and fringe adjustment as above (for a total loaded rate of $69.37 for staff time and $101.40 for investigations), FTA has determined that the rail transit industry spends about $11.8 million per year to implement the 49 CFR part 659 requirements nationwide. FTA's table below reflects non-recurring costs required for new RTAs covered by 49 CFR part 659, and for existing RTAs to address new extensions and capital projects, once they become operational, as averaged over the last three years.

BASELINE: ANNUAL RAIL TRANSIT AGENCY ACTIVITY TO IMPLEMENT REQUIREMENTS UNDER 49 CFR PART 659

[Mapped to provisions of proposed rule]

| Rail transit agency activity | Labor hours | Cost |
|---|---|---|
| Conduct accident investigations | 30,000 | $3,042,000 |
| Prepare accident investigation reports | 19,168 | 1,329,745 |
| Investigate unacceptable hazardous conditions | 14,030 | 973,306 |
| Prepare unacceptable hazardous condition reports | 12,032 | 834,698 |
| Implement hazard management process | 32,312 | 2,241,587 |
| Prepare and submit corrective action plans | 19,090 | 1,324,334 |
| Coordinate hazard management program activities with state oversight | 23,848 | 1,654,412 |
| Maintain safety data | 3,570 | 247,662 |
| Make submissions to state oversight agency | 2,618 | 181,619 |
| *Total Recurring Hours and Costs* | *156,668* | *11,829,364* |
| *Total Non-recurring Hours and Costs* | *0* | *0* |

*Limitations Under the Current Program*

Based on the assessment provided in the two tables above, collectively the States, the SSOAs and the RTAs expend approximately 262,000 labor hours or $19.5 million in recurring costs to implement 49 CFR part 659 requirements each year. While this level of effort helps make the transit industry among the safest modes of surface transportation, it has not been sufficient to prevent major accidents with multiple fatalities from occurring over the last decade. As discussed in the preamble to the NPRM, the rail transit industry remains vulnerable to catastrophic events.

Since 2004, the NTSB has investigated (or preliminarily investigated) 19 major rail transit accidents, and has issued 25 safety recommendations to FTA, including six Urgent Recommendations. In conducting these investigations, the NTSB found a variety of probable causes for these accidents, among them: equipment malfunctions; equipment in poor or marginal condition, including equipment that can pose particular risks to safety, such as signal systems; lack of vehicle crashworthiness; employee fatigue and fitness for duty issues; and employee error, such as inattentiveness or failure to follow an RTA's operating procedure. The NTSB also identified the lack of a strong safety culture and a lack of adequate oversight both by the RTAs' SSOAs and FTA. Deficiencies in oversight—of the kind being addressed by this rulemaking—were specifically identified as a contributing factor for 5 of the 19 major accidents. As a result, the NTSB made improving the operational safety of the rail transit industry one of its Top Ten Most Wanted Items in 2014.

FTA has also observed that while other modes of surface transportation, such as highway and commercial motor carrier, freight railroad and commercial trucking have achieved significant improvements in safety performance over the last decade, the public transportation industry's safety performance has not improved. Over the last decade, the rail transit industry actually has experienced increases in several key categories, including the number and severity of collisions, the number of worker fatalities and injuries, and the number and severity of passenger injuries. In this respect, the public transportation industry, and the nation's RTAs in particular, are outliers to the overall U.S. DOT modal safety experience.

Perhaps coincidentally, FTA also notes that the current level of expenditure by the states and RTAs on safety oversight activities falls considerably below one percent of the roughly $4 billion that FTA awards to RTAs each year. A review of safety programs administered by other U.S. DOT modal administrations, such as the FRA, the Federal Highway Administration (FHWA), the Federal Motor Carrier Safety Administration (FMCSA), and the Federal Aviation Administration (FAA), demonstrates that at least one percent of the Federal investment is typically devoted to safety oversight activities and programs in most other related modes of transportation. Other transportation modes have determined that this level of investment in safety returns positive dividends in safety performance while also addressing tight budget margins in the transportation industry.

Combined with a lack of resources devoted to safety oversight, FTA has observed that the operating, maintenance and service environments of the nation's RTAs continue to change. Rail transit ridership is at an all-time high, while rail transit equipment and infrastructure is in a deteriorated condition. The heavier service cycles required to meet rising demand in some of the nation's largest urbanized areas create challenges for aging infrastructure with potential safety implications. FTA's Transit Asset Management (TAM) NPRM, authorized at 49 U.S.C. 5326, will address some of these challenges through the institution of formal asset management programs.

In addition, this rule also implements the agency's decision to adopt the framework and principles of SMS. This decision was preliminarily communicated in a May 13, 2013, ''Dear Colleague'' letter to the public transportation industry. FTA's incorporation of SMS in this rule and in the subsequent Public Transportation Agency Safety Plan rule will allow SSOAs and RTAs to address the nexus between safety and state of good repair more effectively.

*MAP–21 Requirements To Address Known Gaps in Oversight*

MAP–21 creates a new regulatory role for FTA and the states that responds to known gaps in oversight and safety performance. For example, to address noted FTA and NTSB concerns regarding conflicts of interest and the ability of SSO agencies to act independently in the interest of public safety, 49 U.S.C. 5329(e)(4)(i) specifies that each SSO agency must have financial and legal independence from each of the rail fixed guideway public transportation systems in its jurisdiction.

To address the need for an enhanced safety regulatory program, 49 U.S.C. 5329(e)(2)(A–B) directs states to assume oversight responsibility for RTAs in engineering and construction, as well as in revenue service. This requirement increases the number of states subject to the SSO regulations from 28 to 30, and increases the number of RTAs from 48 to 60 nationwide.

*MAP–21 SSO Grant Program—Costs to States*

The statutory changes to the SSO program include a new grant program to assist with the costs of compliance. Federal financial assistance is now available to states to help them develop and carry out their SSO programs, and may be used, specifically, for up to eighty percent of both the operational and administrative expenses of SSOAs, including the expenses of employee training.

On March 10, 2014, FTA announced its apportionment of $21,945,771 in funding to eligible States for their SSO activities for Federal Fiscal Year 2013, and $22,293,250 for Federal Fiscal Year 2014. 46 FR 13380. For purposes of cost-benefit analysis, this funding is a transfer and is excluded from the calculations.

The table below compares and contrasts the specific activities performed, the labor hours and the total costs expended under the existing 49 CFR part 659 requirements (as discussed above) with FTA's proposal for the program authorized at 49 U.S.C. 5329(e) and required by today's final rule. Readers should note that the 49 CFR part 659 labor hours and costs reflect 28 SSOAs and 48 RTAs, while the labor hours and costs under today's rule reflect 30 SSOAs and 60 RTAs. As discussed above, new definitions in 49 U.S.C. 5329 expand state safety oversight requirements to include RTAs in construction and engineering phases of development.

Labor estimates for the activities in this rule are derived based on the hours required to complete them as reported by States already implementing the specific activities; the estimates and general discussion provided in the Senate Conference Report accompanying the Public Transportation Safety Act of 2010 (S. 3638, 111th Congress); and the experience of FTA's legal, policy, grant making and safety team.

This table shows a significant increase in the level of oversight activity performed to implement today's rule. Through the SSO grant program, this

additional oversight activity will be funded, thus resulting in little or no additional cost to the states.

COMPARISON TABLE—COSTS TO STATE SAFETY OVERSIGHT AGENCIES

| State oversight agency activity | Current labor hours | Current cost | Proposed labor hours | Proposed cost |
|---|---|---|---|---|
| § 674.11 Develop State Safety Oversight Program: | | | | |
| • Explicit Acknowledgement of State Responsibility to Oversee Safety of Rail Transit Agencies in Engineering, Construction and Operations * | 0 | $0 | 1,200 | $83,248 |
| • Demonstrate Authority to Adopt and Enforce State and Federal Regulations * | 0 | 0 | 1,200 | 83,248 |
| • Demonstrate Adequate/Appropriate Staffing Level * | 0 | 0 | 3,000 | 208,120 |
| • Demonstrate Qualification and Certification of Staff * | 0 | 0 | 3,000 | 208,120 |
| • Demonstrate by Law Prohibition against Receiving Funding from Rail Transit Agency * | 0 | 0 | 600 | 41,624 |
| § 674.13 Designation of oversight agency: | | | | |
| • Legal and Financial Independence Procedures and Disclosures * | 0 | 0 | 2,400 | 166,496 |
| • Annual Updates and Legal and Financial Independence Disclosures | 0 | 0 | 600 | 41,624 |
| • Documentation of No Provision of Transit Service | 0 | 0 | 60 | 4,162 |
| • Documentation of No Employment for Personnel Administering Rail Transit Programs | 0 | 0 | 60 | 4,162 |
| • Establish and Document Authority to Review, Approve, Oversee, and Enforce Agency Safety Plan * | 0 | 0 | 30,000 | 2,081,196 |
| • Establish and Document Investigative and Enforcement Authority * | 0 | 0 | 30,000 | 2,081,196 |
| § 674.15 Designation of oversight agency for multi-state system | 0 | 0 | 3,000 | 208,120 |
| § 674.17 Use of Federal financial assistance: | | | | |
| • Identifying and Providing Appropriate Match for Grant Program * | 0 | 0 | 6,000 | 416,239 |
| • SSO Grant Management and Reporting Activities | 0 | 0 | 3,000 | 208,120 |
| § 674.19 Certification of a State Safety Oversight Program: | | | | |
| • Certification Pre-Submittal Documentation to FTA | 0 | 0 | 2,400 | 166,496 |
| • Work Plan and Quarterly Updates to FTA | 0 | 0 | 3,000 | 208,120 |
| • Initial Certification Documentation | 2,860 | 198,407 | 300 | 20,812 |
| • Final Certification Documentation | 0 | 0 | 600 | 41,624 |
| • Maintenance of Annual Certification | 0 | 0 | 600 | 41,624 |
| § 674.21 Withholding of Federal financial assistance for noncompliance | 0 | 0 | 0 | 0 |
| § 674.23 Confidentiality of information: | | | | |
| • Develop and adopt procedures/regulation to withhold an investigation report from being admitted as evidence or used in a civil action * | 0 | 0 | 3,000 | 208,120 |
| § 674.25 Role of the State safety oversight agency: | | | | |
| • Establish minimum standards for the safety of rail transit agencies * | 0 | 0 | 30,000 | 2,081,196 |
| • Update minimum standards as needed or required | 0 | 0 | 6,000 | 416,239 |
| • Review and approve Agency Safety Plan (§ 674.29 Public Transportation Agency Safety Plans: general requirements) | 3,840 | 266,393 | 9,600 | 665,983 |
| • Review and Approve Supporting and Referenced Procedures | 3,072 | 213,114 | 9,600 | 665,983 |
| • Review and Approve Annual Updates to Agency Safety Plan and Supporting and/or Referenced Procedures | 3,072 | 213,114 | 4,800 | 332,991 |
| • Oversee the Rail Transit Agency's execution of its Public Transportation Agency Safety Plan | 8,448 | 586,065 | 60,000 | 4,162,392 |
| • Enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate | 0 | 0 | 1,200 | 83,248 |
| • Ensure that a Public Transportation Agency Safety Plan meets the requirements for Public Transportation Agency Safety Plans at 49 U.S.C. 5329(d) and the regulations that are or may be codified at 49 CFR Part 673 | 0 | 0 | 1,200 | 83,248 |
| • Investigate any hazard or risk that threatens the safety of a Rail Transit Agency | 19,200 | 1,331,965 | 60,000 | 4,162,392 |
| • Investigate any allegation of noncompliance with a Public Transportation Agency Safety Plan | 0 | 0 | 0 | 0 |
| • Exert primary responsibility to investigate each Rail Transit Agency accident | 0 | 0 | 0 | 0 |
| • Enter into agreements with contractors | 0 | 0 | 6,000 | 416,239 |
| • Comply with the requirements of the Public Transportation Agency Safety Certification Training Program | 3,840 | 266,393 | 24,000 | 1,664,957 |
| § 674.27 State safety program standards: | | | | |
| • Develop and adopt program standard * | 1,400 | 97,122 | 6,000 | 416,239 |
| • Develop and adopt program procedures * | 1,400 | 97,122 | 6,000 | 416,239 |
| • Develop and adopt Safety Management Systems oversight principles and oversight methods * | 0 | 0 | 6,000 | 416,239 |
| • Review and update program standard and procedures | 2,912 | 202,015 | 600 | 41,624 |
| § 674.31 Triennial audits: General requirements: | | | | |
| • Conduct Three Year Audit | 9,216 | 639,343 | 36,000 | 2,497,435 |
| • Document Results and Findings | 13,440 | 932,376 | 12,000 | 832,478 |

COMPARISON TABLE—COSTS TO STATE SAFETY OVERSIGHT AGENCIES—Continued

| State oversight agency activity | Current labor hours | Current cost | Proposed labor hours | Proposed cost |
|---|---|---|---|---|
| § 674.33 Notifications: Accidents and other incidents: | | | | |
| • Receive and track notification of accidents | 0 | 0 | 1,000 | 69,373 |
| • Report to FTA | 0 | 0 | 1,000 | 69,373 |
| § 674.35 Investigations: | | | | |
| • Prepare Accident Investigation Report | 5,376 | 545,126 | 16,743 | 1,697,704 |
| • Review, Approve and/or Adopt Accident Investigation Reports | 6,144 | 623,002 | 7,680 | 778,752 |
| § 674.37 Corrective action plans | 15,360 | 1,065,572 | 18,000 | 1,248,718 |
| § 674.39 State Safety Oversight Agency annual reporting to FTA | 3,528 | 244,749 | 2,400 | 166,496 |
| § 674.41 Conflicts of interest | 0 | 0 | 600 | 41,624 |
| Travel, where not included with other items | 5,376 | 372,950 | 1,200 | 83,248 |
| *Total Recurring Hours and Costs* | *105,684* | 7,700,586 | *294,443* | *21,208,607* |
| *Total Non-recurring Hours and Costs* | *2,800* | *194,245* | *127,200* | *8,824,271* |

* Non-recurring cost.

*MAP–21 SSO Grant Program—Costs to Rail Transit Agencies*

As discussed above, this NPRM implements the framework and principles of SMS. The costs included in the table below reflect FTA's estimation regarding the likely requirements of SMS adoption by the RTAs in critical areas overseen by the SSO program—investigations, inspections, and reviews; safety data acquisition and analysis; and safety performance monitoring. The cost estimates in the NPRM included potential costs associated with the Public Transportation Agency Safety Plan required under 49 U.S.C. 5329(d). FTA is deleting those costs from this rulemaking and instead will account for them in the Public Transportation Agency Safety Plan rulemaking.

This table depicts significant increases for the labor hours in several activities currently performed to implement 49 CFR part 659, indicating enhanced activity in the specific area based on the more rigorous MAP–21 SSO program, as well as the requirements of additional collaboration and coordination with a significantly expanded SSO function in the state. Safety performance monitoring will become a critical component of the SSO program and the estimates above include labor hours for developing and adopting SMS principles and conducting oversight.

The reader should note that for the proposed MAP–21 columns, this table includes 60 RTAs, in contrast to the 48 RTAs covered by the current 49 CFR part 659 requirements. Even if no other changes were addressed, increasing the number of covered RTAs by 25 percent would raise the total cost of the SSO program considerably.

COMPARISON TABLE—COSTS TO RAIL TRANSIT AGENCIES

| Rail transit agency activity | Current labor hours | Current cost | Proposed labor hours | Proposed cost |
|---|---|---|---|---|
| Conduct accident investigations | 30,000 | $3,042,000 | 38,000 | $3,853,200 |
| Prepare accident investigation reports | 19,168 | 1,329,745 | 24,000 | 1,664,957 |
| Investigate unacceptable hazardous conditions | 14,030 | 973,306 | 60,000 | 4,162,392 |
| Prepare unacceptable hazardous condition reports | 12,032 | 834,698 | Included in above | 0 |
| Implement hazard management process | 32,312 | 2,241,587 | 60,000 | 4,162,392 |
| Prepare and submit corrective action plans | 19,090 | 1,324,334 | 24,000 | 1,664,957 |
| Coordinate hazard management program activities with state oversight. | 23,848 | 1,654,412 | 30,000 | 2,081,196 |
| Maintain safety data | 3,570 | 247,662 | 4,000 | 277,493 |
| Make submissions to state oversight agency | 2,618 | 181,619 | 9600 | 665,983 |
| *Total Recurring Hours and Costs* | *156,668* | *11,829,364* | *249,600* | *18,532,569* |
| *Total Non-recurring Hours and Costs* | *0* | *0* | *0* | *0* |

* Non-recurring cost.

*Total Estimated Impact of Final Rule*

Based on the tables provided above, FTA estimates that minimum implementation of this rule, as well as potential costs associated with the Public Transportation Agency Safety Plan for RTAs, will require, for Year 1 of the new program, a total of approximately $30.0 million for the 30 states to implement, and a total of roughly $26 million for the 60 RTAs to implement. Expenditures in subsequent years consist only of recurring costs and thus will be slightly lower, at roughly $21.2 million for the states and $18.5 million for the RTAs.

Compared to current spending levels of SSO activities, the proposed rule would require an *incremental* $13.5 million per year on the part of SSOAs and $6.7 million for RTAs, compared to current spending levels. This represents a combined increase of roughly $20.0 million per year over current levels. Incremental costs in Year 1 would be somewhat higher, at roughly $29 million, due to some one-time costs under the proposed rule.

| | Existing regulation | | Proposed regulation | |
|---|---|---|---|---|
| | *Recurring costs* | *Non-recurring costs* | *Recurring costs* | *Non-recurring costs* |
| SSOAs | $7,700,586 | $194,245 | $21,208,607 | $8,824,271. |
| Rail Transit Agencies | $11,829,364 | $0 | $18,532,569 | $0. |
| FTA Costs: | | | | |
| Total, Year 1 | $19,529,951 (Recurring Costs only, Non-recurring Costs Considered Sunk) | | $48,565,448 (Recurring and Non-Recurring Costs). | |
| Total, Future Years | $19,529,951 (Recurring Costs Only) | | $39,741,177 (Recurring Costs Only). | |
| Overall Difference, Year 1: | $29,035,497. | | | |
| Overall Difference, Future Years | $20,211,226. | | | |

In terms of the actual costs to the States, FTA is providing approximately $22 million in grant funds each year to the States to offset this rule's annual costs. This funding is treated as a transfer for the purposes of cost-benefit analysis. In addition, since the states already expend an estimated $7.7 million to implement 49 CFR part 659 requirements, most of the existing expenditure will cover the 20 percent local match required in FTA's grant program. FTA therefore finds that that the states will bear little new net costs as a result of this rule. With regard to costs to the RTAs, FTA currently provides funding that RTAs may use for these purposes, but, since there is no safety-focused grant program similar to that for SSOs and each RTA receives and uses its formula funds differently, FTA is unable to provide an estimate of how much FTA funding will be used here.

FTA believes that a significant portion of the incremental expenses may comprise activities that are already performed—and management information systems that are already maintained—by rail transit departments other than the safety department, such as operations, maintenance and performance monitoring. For instance, FTA reviews at RTAs and SSO audits confirm that all RTAs use and maintain formal systems to track rules checks performed on operators; inspections and preventative/corrective maintenance activities for vehicles and infrastructure; reports regarding the occurrence and cause of events resulting in service delays lasting longer than a prescribed period of minutes; and unusual occurrences reported during revenue service. Therefore, the cost estimate calculated above may overstate the true incremental costs of the changes to the SSO program, but is nevertheless used here to provide a conservative estimate.

Doing more to analyze and assess this information from a safety perspective is at the core of SMS, and FTA anticipates that this level of active review of operations and maintenance data will ultimately result in cost savings for many RTAs, as has been the case in the aviation and trucking industries. Initially, however, FTA anticipates that RTAs will be required to spend an additional $6.7 million per year (after year 1) to implement SMS, which equates to approximately $112,000 per RTA. Larger RTAs will be required to assume a larger portion of these costs, while smaller RTAs likely will spend considerably less.

The safety benefits of the proposed changes are difficult to estimate quantitatively because they involve numerous small but important changes to state and agency safety practices, and because the overall rate of serious injuries on RTAs is already quite low. These changes to the SSO regulations address longstanding deficiencies in the current SSO structure and improve the ability of SSOAs to carry out their mission of improving safety on fixed guideway transit systems. In addition, NTSB has advocated for many of these changes based on their investigation of rail transit accidents, their analysis of the current SSO structure, and their expertise in ensuring safe operation across all modes of transportation. FTA likewise believes that the revised SSO structure and associated activities will enhance the safety of rail fixed guideway transit systems, increasing accountability and decreasing transit-related incidents, injuries, and fatalities.

That said, although this rule would not on its own implement SMS, it does create the organizational structure needed for SMS to be successful. Thus, FTA has considered how other transportation modes that are in the process of implementing SMS or similar systematic approaches to safety have estimated the benefits of their programs in reducing incidents and adverse outcomes. For example, although no two programs are identical, FRA in both its Final Rule implementing its System Safety Program (SSP) and NPRM on its Risk Reduction Program (RRP) provided evidence that both programs could lead to meaningful reductions in serious crashes and conducted breakeven analyses that found that approximately a 0.01 reduction in the incidents and accidents under consideration would lead to a cost-neutral SSP rule and an approximately 0.02 reduction (rounding up) for the RRP rule.[2] Enhancements brought about by SMS also have supported transportation and oversight agencies in mitigating the impacts of those events that do occur.

FTA has, therefore, considered what percentage of potential safety benefits this rule would need to achieve in order to ''break even'' with the costs. FTA notes that this break-even analysis is not intended to be the full analysis of the potential benefits of SMS for transit safety, which will be conducted in FTA's subsequent safety rulemakings; rather, it is intended to provide some quantified estimate of the potential benefits of the changes to the SSO program in today's rule. Further, FTA notes that this analysis may understate the potential benefits because FTA did not have information on some non-injury related costs associated with many incidents, particularly regarding property damage and travel delays.

First, over the last six years, as reported by the SSO agencies in their annual reports to FTA, the rail transit industry has averaged approximately 975 safety events meeting 49 CFR part 659 accident reporting thresholds per year (*i.e.,* what must be reported by an RTA to an SSOA). In an average year, these events include 135 fatalities (of which approximately 85 per year involve suicides and trespassers) and 645 injuries requiring hospitalization away from the scene. Using U.S. DOT guidance regarding the valuation of

[2] See FRA's SSP NPRM (77 FR 55371, Sept. 7, 2012) and RRP NPRM (80 FR 10949, Feb. 27, 2015).

fatalities and injuries,[3] these incidents have an economic value of $1.906 billion per year. Rail transit incidents also entail costs related to vehicle and infrastructure damage, delays and disruptions to commuters, and emergency response costs. For example, the May 2008 collision between two light-rail vehicles in Newton, Massachusetts, caused $8.6 million in property damage and caused significant service delays during the evening rush hour. Some incident costs, such as passenger delays, could not be comprehensively quantified due to data limitations, despite FTA's request for data in the NPRM.

As an illustrative calculation, based on the above analysis, in order for the benefits of this rule to break even with the costs to both SSOs and RTAs, this rule would only need to prevent 1.1 percent of these accidents per year, which does not include potentially significant unquantified costs related to property damage and disruption. FTA believes that this level of accident reduction will likely be attainable based on the enhancements to the SSO program and the associated improvements in RTA safety practices that lend themselves to greater awareness of risk and hazards.

FTA also performed a narrower analysis of the potential safety benefits of the proposed regulation by reviewing the rail transit incidents specifically identified by the NTSB as related to inadequate safety oversight programs. Of the 19 major rail transit accidents the NTSB has investigated (or preliminarily investigated) since 2004, five had probable causes that included inadequate safety oversight on the part of the RTA or FTA. These incidents and the corresponding damages and costs are detailed below.

| Date | Agency | Fatalities | Minor injuries | Moderate injuries | Severe injuries | Cost of property damage |
|---|---|---|---|---|---|---|
| 2/3/2004 | Chicago Transit Authority (CTA) | 0 | 42 | 0 | 0 | $62,000 |
| 7/11/2006 | Chicago Transit Authority (CTA) | 0 | 125 | 21 | 6 | 1,004,900 |
| 6/22/2009 | Washington Metropolitan Area Transit Authority (WMATA). | 9 | 38 | 12 | 2 | 12,000,000 |
| 1/26/2010 | Washington Metropolitan Area Transit Authority (WMATA). | 2 | 0 | 0 | 0 | 0 |
| 7/20/2010 | Miami-Dade Transit (MDT) | 0 | 16 | 0 | 0 | 406,691 |
| Total | | 11 | 221 | 33 | 8 | 13,500,000 |

Again using U.S. DOT guidance regarding the valuation of fatalities and injuries,[4] FTA used a value of $9.4 million per fatality. NTSB's qualitative injury levels were converted to the Abbreviated Injury Scale and monetized as follows: Minor is assumed to be AIS–1 ($28,200), Moderate is assumed to be AIS–2 ($441,800), and Severe is (conservatively) assumed to be AIS–3 ($987,000).

As such, the total quantifiable cost for the five incidents is approximately $145.6 million (fatalities: $103.4 million, minor injuries: $6.2 million, moderate injuries $14.6 million, severe injuries: $7.9 million, property damage: $13.5 million) or approximately $14.6 million per year over a ten year period. The average cost per incident was $29.1 million, plus unquantified losses from travel delays and emergency response. The most costly incident, the 2009 WMATA crash, had total costs of over $100 million, including $93 million in monetized injuries and fatalities and $12 million in property damage. While improved safety oversight cannot necessarily prevent all rail transit accidents, preventing even a single incident on the scale of the 2009 WMATA Red Line crash would yield societal benefits that exceed the incremental costs of compliance across multiple years of implementation, especially when considering FTA's funding of this program. Benefits would also accrue from the prevention of multiple, less severe incidents, including those where only property damage or travel delays occur.

When considering the incremental costs to SSOs and RTAs, this rule would need to prevent less than 0.69 accidents per year significant enough to be investigated by NTSB and identified as being caused by inadequate safety oversight in order to break even, even in the absence of any other impacts.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354; 5 U.S.C. 601–612), FTA has evaluated the likely effects of the proposals set forth in this rulemaking on small entities, and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The recipients of the SSO grant funds are eligible states, and the entities that will carry out the oversight of rail fixed guideway public transportation—the SSOAs—are state agencies. For this reason, FTA certifies that this rule will not have a significant economic effect on a substantial number of small entities.

**Unfunded Mandates Reform Act of 1995**

This rulemaking will not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 109 Stat. 48). The Federal share for the grants made under 49 U.S.C. 5329(e)(6) is eighty percent. This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $155 million or more in any one year (2 U.S.C. 1532).

**Executive Order 13132 (Federalism Assessment)**

This rulemaking has been analyzed in accordance with the principles and criteria established by Executive Order 13132 (Aug. 4, 1999), and FTA has determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA also determined that this action would not preempt any state law or state regulation or affect the states' abilities to discharge traditional State governmental functions. Moreover, consistent with Executive Order 13132, FTA has examined the direct compliance costs of the rule on state and local governments and determined that the collection and analysis of the

[3] Kathryn Thomson and Carlos Monje ''Guidance on Treatment of the Economic Value of a Statistical Life in U.S. Department of Transportation Analyses'' June 25, 2015. Office of the Secretary of Transportation, *http://www.transportation.gov/office-policy/transportation-policy/guidance-treatment-economic-value-statistical-life.*

[4] *Id.*

data is eligible for Federal funding as part of the SSO program costs.

**Executive Order 12372 (Intergovernmental Review)**

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities were applied during this rulemaking.

**Paperwork Reduction Act**

In compliance with the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), and the OMB regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. FTA acknowledges that this rule requires the collection of information to facilitate State safety oversight of rail fixed guideway public transportation systems, including, specifically, annual status reporting on the safety of rail fixed guideway public transportation systems, triennial auditing of RTAs' compliance with their public transportation agency safety plans, requests for FTA certification of SSO programs, and completion of Public Transportation Safety Certification Training programs—all of which are mandated by 49 U.S.C. 5329(e).

FTA sought comment on whether the information collected would have practical utility; whether its estimation of the burden of the proposed information collection was accurate; whether the burden could have been minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information could have been enhanced.

Readers should note that the information collection is specific to each state and its SSOA, to facilitate and record the SSOA's exercise of its oversight responsibilities. The paperwork burden for each state and its SSOA is proportionate to the number of rail fixed guideway public transportation systems within that state, the modal types of those systems (*e.g.,* rapid rail, light rail, or streetcar), and the size and complexity of those RTAs. Moreover, the labor-burden of the reporting requirements such as annual reporting and triennial auditing are largely borne by the SSOA staff that will be financed, in part, by the Federal financial assistance under 49 U.S.C. 5329(e)(6).

Also, readers should note that FTA already collects information from states and SSOAs in accordance with the requirements of 49 U.S.C. 5330 and the regulations at 49 CFR part 659. Please see FTA's recent Notice of Request for Revisions of an Information Collection, submitted to OMB, published at 78 FR 51810–1 (August 21, 2013), which describes the SSOAs' development of program standards and their review and approval of System Safety Program Plans and System Security Plans for rail fixed guideway public transportation systems; the triennial, on-site reviews that SSOAs conduct of RTAs; and various other reporting, such as SSOAs' review and approval of accident reports and corrective action plans, and submittal of annual reports of safety and security oversight activities and certifications of compliance with 49 U.S.C. 5330. Most if not all of the information collection from States and SSOAs under section 5330 and 49 CFR part 659 is being carried over into the new SSO program and the specific requirements proposed in today's rulemaking.

Heretofore, there has been no Federal financial assistance available to states and their SSOAs to defray the costs of information collection under 49 U.S.C. 5330 and the longstanding regulations at 49 CFR part 659. The costs of information collection associated with today's rule are eligible for reimbursement under the SSO grants authorized by 49 U.S.C. 5329(e)(6).

*Type of Review:* OMB Clearance. Updated information collection request.

*Respondents:* Currently there are 30 states with 60 rail fixed guideway public transportation systems. Twenty-eight of these states have already established an SSO program and designated an SSOA; two more have indicated their intention to do so in the near future. The PRA estimate is based on a total of 30 states establishing SSOAs and seeking Federal financial assistance under 49 U.S.C. 5329(e)(6), per year.

*Frequency:* Information will be collected at least once per year.

*Estimated Total Annual Burden Hours:* 305,130, estimated as follows: Annually, each SSOA would devote approximately 1,980.5 hours to information collection activities for each of the RTAs in the state's jurisdiction. Combined, the SSOAs would devote approximately 118,860 hours on those information collection activities that year. The local governments affected by 49 U.S.C. 5329(e) and today's rulemaking, including the 60 rail fixed guideway public transportation systems, would spend an estimated annual total of 186,300 hours on information collection activities, or approximately 3,105 hours each. Also, the states and SSOAs would spend approximately 50 hours each in the preparation of applications for Federal financial assistance for their SSO programs, for a combined estimate of 1,500 hours per year.

**National Environmental Policy Act**

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) requires Federal agencies to analyze the potential environmental effects of their proposed actions in the form of a categorical exclusion, environmental assessment, or environmental impact statement. This rulemaking is categorically excluded under FTA's environmental impact procedure at 23 CFR 771.117(c)(20), pertaining to planning and administrative activities that do not involve or lead directly to construction, such as the promulgation of rules, regulations, and directives. FTA has determined that no unusual circumstances exist in this instance, and that a categorical exclusion is appropriate for this rulemaking.

**Executive Order 12630 (Taking of Private Property)**

This rulemaking will 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 (March 15, 1998).

**Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)**

Executive Order 12898 (Feb. 8, 1994) directs every Federal agency to make environmental justice part of its mission by identifying and addressing the effects of all programs, policies, and activities on minority populations and low-income populations. The U.S. DOT environmental justice initiatives accomplish this goal by involving the potentially affected public in developing transportation projects that fit harmoniously within their communities without compromising safety or mobility. Additionally, FTA has issued a program circular addressing environmental justice in public transportation, C 4703.1, *Environmental Justice Policy Guidance for Federal Transit Administration Recipients.* This circular provides a framework for FTA grantees as they integrate principles of environmental justice into their transit decision-making processes. The circular includes recommendations for state departments of transportation, metropolitan planning organizations, and public transportation systems on (1) how to fully engage

environmental justice populations in the transportation decision-making process; (2) how to determine whether environmental justice populations would be subjected to disproportionately high and adverse human health or environmental effects of a public transportation project, policy, or activity; and (3) how to avoid, minimize, or mitigate these effects.

**Executive Order 12988 (Civil Justice Reform)**

This rulemaking meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform (Feb. 5, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 13045 (Protection of Children)**

FTA analyzed this rulemaking under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (April 21, 1997), and certifies that this rule will not cause an environmental risk to health or safety that may disproportionately affect children.

**Executive Order 13175 (Tribal Consultation)**

FTA analyzed this rulemaking under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (Nov. 6, 2000) and finds that the action will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; will not preempt tribal laws; and will not impose any new consultation requirements on Indian tribal governments. Therefore, a tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

FTA has analyzed this rulemaking under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that this action is not a significant energy action under the Executive Order, given that the action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

**Privacy Act**

In accordance with 5 U.S.C. 553(c), U.S. DOT solicits comments from the public to better inform its rulemaking process. U.S. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

**Statutory/Legal Authority for This Rulemaking**

This rulemaking is issued under the authority of section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP–21), now codified at 49 U.S.C. 5329(e)(10)(C), which requires the Secretary of Transportation to prescribe regulations for state safety oversight of rail fixed guideway public transportation systems. Also, pursuant to 49 U.S.C. 5329(f)(7), the Secretary is authorized to issue regulations to carry out the general provisions of a Public Transportation Safety Program.

**Regulation Identification Number**

A Regulation Identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 49 CFR Part 674**

Grant programs—Transportation, Mass transportation, Reporting and recordkeeping requirements, Safety.

Issued in Washington, DC, under the authority delegated at 49 CFR 1.91.

**Therese McMillan,**

*Acting Administrator.*

■ For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5329(e), 5329(f), and the delegations of authority at 49 CFR 1.91, FTA hereby amends Chapter VI of Title 49, Code of Federal Regulations, by adding part 674 to read as follows:

## PART 674—STATE SAFETY OVERSIGHT

**Subpart A—General Provisions**



**Subpart B—Role of the State**



**Subpart C—State Safety Oversight Agencies**



**Appendix to Part 674—Notification and reporting of accidents, incidents, and occurrences.**

**Authority:** 49 U.S.C. 5329(e) and (f), as amended by section 20021(a) of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141) and the delegations of authority at 49 CFR 1.91.

### Subpart A—General Provisions

**§ 674.1 Purpose.**

This part carries out the mandate of 49 U.S.C. 5329(e) for State safety oversight of rail fixed guideway public transportation systems.

**§ 674.3 Applicability.**

This part applies to States with rail fixed guideway public transportation systems; State safety oversight agencies that oversee the safety of rail fixed guideway public transportation systems; and entities that own or operate rail fixed guideway public transportation systems with Federal financial assistance authorized under 49 U.S.C. Chapter 53.

**§ 674.5 Policy.**

(a) In accordance with 49 U.S.C. 5329(e), a State that has a rail fixed guideway public transportation system within the State has primary responsibility for overseeing the safety of that rail fixed guideway public transportation system. A State safety oversight agency must have sufficient authority, resources, and qualified personnel to oversee the number, size, and complexity of rail fixed guideway public transportation systems that operate within a State.

(b) FTA will make Federal financial assistance available to help an eligible State develop or carry out its State safety oversight program. Also, FTA will certify whether a State safety oversight program meets the requirements of 49 U.S.C. 5329(e) and is adequate to promote the purposes of the public transportation safety programs codified at 49 U.S.C. 5329.

**§ 674.7 Definitions.**

As used in this part:

*Accident* means an Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision involving a rail transit vehicle; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause. An accident must be reported in accordance with the thresholds for notification and reporting set forth in Appendix A to this part.

*Accountable Executive* means a single, identifiable individual who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

*Administrator* means the Federal Transit Administrator or the Administrator's designee.

*Contractor* means an entity that performs tasks on behalf of FTA, a State Safety Oversight Agency, or a Rail Transit Agency, through contract or other agreement.

*Corrective action plan* means a plan developed by a Rail Transit Agency that describes the actions the Rail Transit Agency will take to minimize, control, correct, or eliminate risks and hazards, and the schedule for taking those actions. Either a State Safety Oversight Agency or FTA may require a Rail Transit Agency to develop and carry out a corrective action plan.

*Event* means an Accident, Incident or Occurrence.

*FRA* means the Federal Railroad Administration, an agency within the United States Department of Transportation.

*FTA* means the Federal Transit Administration, an agency within the United States Department of Transportation.

*Hazard* means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a rail fixed guideway public transportation system; or damage to the environment.

*Incident* means an event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a rail transit agency. An incident must be reported to FTA's National Transit Database in accordance with the thresholds for reporting set forth in Appendix A to this part. If a rail transit agency or State Safety Oversight Agency later determines that an Incident meets the definition of Accident in this section, that event must be reported to the SSOA in accordance with the thresholds for notification and reporting set forth in Appendix A to this part.

*Investigation* means the process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

*National Public Transportation Safety Plan* means the plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

*NTSB* means the National Transportation Safety Board, an independent Federal agency.

*Occurrence* means an Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a rail transit agency.

*Person* means a passenger, employee, contractor, pedestrian, trespasser, or any individual on the property of a rail fixed guideway public transportation system.

*Public Transportation Agency Safety Plan* (PTASP) means the comprehensive agency safety plan for a transit agency, including a Rail Transit Agency, that is required by 49 U.S.C. 5329(d) and based on a Safety Management System. Until one year after the effective date of FTA's PTASP final rule, a System Safety Program Plan (SSPP) developed pursuant to 49 CFR part 659 will serve as the rail transit agency's safety plan.

*Public Transportation Safety Certification Training Program* means either the certification training program for Federal and State employees, or other designated personnel, who conduct safety audits and examinations of public transportation systems, and employees of public transportation agencies directly responsible for safety oversight, established through interim provisions in accordance with 49 U.S.C. 5329(c)(2), or the program authorized by 49 U.S.C. 5329(c)(1).

*Rail fixed guideway public transportation system* means any fixed guideway system that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration, or any such system in engineering or construction. Rail fixed guideway public transportation systems include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

*Rail Transit Agency (RTA)* means any entity that provides services on a rail fixed guideway public transportation system.

*Risk* means the composite of predicted severity and likelihood of the potential effect of a hazard.

*Risk mitigation* means a method or methods to eliminate or reduce the effects of hazards.

*Safety risk management* means a process within a Rail Transit Agency's Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.

*Serious injury* means any injury which:

(1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received;

(2) Results in a fracture of any bone (except simple fractures of fingers, toes, or nose);

(3) Causes severe hemorrhages, nerve, muscle, or tendon damage;

(4) Involves any internal organ; or

(5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

*State* means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

*State Safety Oversight Agency (SSOA)* means an agency established by a State that meets the requirements and performs the functions specified by 49 U.S.C. 5329(e) and the regulations set forth in this part.

*Vehicle* means any rolling stock used on a rail fixed guideway public transportation system, including but not limited to passenger and maintenance vehicles.

**§ 674.9 Transition from previous requirements for State safety oversight.**

(a) Pursuant to section 20030(e) of the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141; July 6, 2012) (''MAP–21''), the statute now codified at 49 U.S.C. 5330, titled ''State safety oversight,'' will be repealed three years after the effective date of the regulations set forth in this part.

(b) No later than three years after the effective date of the regulations set forth in this part, the regulations now codified at part 659 of this chapter will be rescinded.

(c) A System Safety Program Plan (SSPP) developed pursuant to 49 CFR

part 659 shall serve as the rail transit agency's safety plan until one year one year after the effective date of the Public Transportation Agency Safety Plan final rule, which will be codified in part 673 of this chapter.

## Subpart B—Role of the State

### § 674.11 State Safety Oversight Program.

Within three years of April 15, 2016, every State that has a rail fixed guideway public transportation system must have a State Safety Oversight (SSO) program that has been approved by the Administrator. FTA will audit each State's compliance at least triennially, consistent with 49 U.S.C. 5329(e)(9). At minimum, an SSO program must:

(a) Explicitly acknowledge the State's responsibility for overseeing the safety of the rail fixed guideway public transportation systems within the State;

(b) Demonstrate the State's ability to adopt and enforce Federal and relevant State law for safety in rail fixed guideway public transportation systems;

(c) Establish a State safety oversight agency, by State law, in accordance with the requirements of 49 U.S.C. 5329(e) and this part;

(d) Demonstrate that the State has determined an appropriate staffing level for the State safety oversight agency commensurate with the number, size, and complexity of the rail fixed guideway public transportation systems in the State, and that the State has consulted with the Administrator for that purpose;

(e) Demonstrate that the employees and other personnel of the State safety oversight agency who are responsible for the oversight of rail fixed guideway public transportation systems are qualified to perform their functions, based on appropriate training, including substantial progress toward or completion of the Public Transportation Safety Certification Training Program; and

(f) Demonstrate that by law, the State prohibits any public transportation agency in the State from providing funds to the SSOA.

### § 674.13 Designation of oversight agency.

(a) Every State that must establish a State Safety Oversight program in accordance with 49 U.S.C. 5329(e) must also establish a SSOA for the purpose of overseeing the safety of rail fixed guideway public transportation systems within that State. Further, the State must ensure that:

(1) The SSOA is financially and legally independent from any public transportation agency the SSOA is obliged to oversee;

(2) The SSOA does not directly provide public transportation services in an area with a rail fixed guideway public transportation system the SSOA is obliged to oversee;

(3) The SSOA does not employ any individual who is also responsible for administering a rail fixed guideway public transportation system the SSOA is obliged to oversee;

(4) The SSOA has authority to review, approve, oversee, and enforce the public transportation agency safety plan for a rail fixed guideway public transportation system required by 49 U.S.C. 5329(d);

(5) The SSOA has investigative and enforcement authority with respect to the safety of all rail fixed guideway public transportation systems within the State;

(6) At least once every three years, the SSOA audits every rail fixed guideway public transportation system's compliance with the public transportation agency safety plan required by 49 U.S.C. 5329(d); and

(7) At least once a year, the SSOA reports the status of the safety of each rail fixed guideway public transportation system to the Governor, the FTA, and the board of directors, or equivalent entity, of the rail fixed guideway public transportation system.

(b) At the request of the Governor of a State, the Administrator may waive the requirements for financial and legal independence and the prohibitions on employee conflict of interest under paragraphs (a)(1) and (3) of this section, if the rail fixed guideway public transportation systems in design, construction, or revenue operations in the State have fewer than one million combined actual and projected rail fixed guideway revenue miles per year or provide fewer than ten million combined actual and projected unlinked passenger trips per year. However:

(1) If a State shares jurisdiction over one or more rail fixed guideway public transportation systems with another State, and has one or more rail fixed guideway public transportation systems that are not shared with another State, the revenue miles and unlinked passenger trips of the rail fixed guideway public transportation system under shared jurisdiction will not be counted in the Administrator's decision whether to issue a waiver.

(2) The Administrator will rescind a waiver issued under this subsection if the number of revenue miles per year or unlinked passenger trips per year increases beyond the thresholds specified in this subsection.

### § 674.15 Designation of oversight agency for multi-state system.

In an instance of a rail fixed guideway public transportation system that operates in more than one State, all States in which that rail fixed guideway public transportation system operates must either:

(a) Ensure that uniform safety standards and procedures in compliance with 49 U.S.C. 5329 are applied to that rail fixed guideway public transportation system, through an SSO program that has been approved by the Administrator; or

(b) Designate a single entity that meets the requirements for an SSOA to serve as the SSOA for that rail fixed guideway public transportation system, through an SSO program that has been approved by the Administrator.

### § 674.17 Use of Federal financial assistance.

(a) In accordance with 49 U.S.C. 5329(e)(6), FTA will make grants of Federal financial assistance to eligible States to help the States develop and carry out their SSO programs. This Federal financial assistance may be used for reimbursement of both the operational and administrative expenses of SSO programs, consistent with the uniform administrative requirements for grants to States under 2 CFR parts 200 and 1201. The expenses eligible for reimbursement include, specifically, the expense of employee training and the expense of establishing and maintaining a SSOA in compliance with 49 U.S.C. 5329(e)(4).

(b) The apportionments of available Federal financial assistance to eligible States will be made in accordance with a formula, established by the Administrator, following opportunity for public notice and comment. The formula will take into account fixed guideway vehicle revenue miles, fixed guideway route miles, and fixed guideway vehicle passenger miles attributable to all rail fixed guideway systems within each eligible State not subject to the jurisdiction of the FRA.

(c) The grants of Federal financial assistance for State safety oversight shall be subject to terms and conditions as the Administrator deems appropriate.

(d) The Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities shall be eighty percent of the reasonable costs incurred under that grant.

(e) The non-Federal share of the expenses eligible for reimbursement under a grant for State safety oversight activities may not be comprised of Federal funds, any funds received from a public transportation agency, or any

revenues earned by a public transportation agency.

**§ 674.19 Certification of a State Safety Oversight Program.**

(a) The Administrator must determine whether a State's SSO program meets the requirements of 49 U.S.C. 5329(e). Also, the Administrator must determine whether a SSO program is adequate to promote the purposes of 49 U.S.C. 5329, including, but not limited to, the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, and the Public Transportation Agency Safety Plans.

(b) The Administrator must issue a certification to a State whose SSO program meets the requirements of 49 U.S.C. 5329(e). The Administrator must issue a denial of certification to a State whose SSO program does not meet the requirements of 49 U.S.C. 5329(e).

(c) In an instance in which the Administrator issues a denial of certification to a State whose SSO program does not meet the requirements of 49 U.S.C. 5329(e), the Administrator must provide a written explanation, and allow the State an opportunity to modify and resubmit its SSO program for the Administrator's approval. In the event the State is unable to modify its SSO program to merit the Administrator's issuance of a certification, the Administrator must notify the Governor of that fact, and must ask the Governor to take all possible actions to correct the deficiencies that are precluding the issuance of a certification for the SSO program. In his or her discretion, the Administrator may also impose financial penalties as authorized by 49 U.S.C. 5329(e), which may include:

(1) Withholding SSO grant funds from the State;

(2) Withholding up to five percent of the 49 U.S.C. 5307 Urbanized Area formula funds appropriated for use in the State or urbanized area in the State, until such time as the SSO program can be certified; or

(3) Requiring all rail fixed guideway public transportation systems governed by the SSO program to spend up to 100 percent of their Federal funding under 49 U.S.C. chapter 53 only for safety-related improvements on their systems, until such time as the SSO program can be certified.

(d) In making a determination whether to issue a certification or a denial of certification for a SSO program, the Administrator must evaluate whether the cognizant SSOA has sufficient authority, resources, and expertise to oversee the number, size, and complexity of the rail fixed guideway public transportation systems that operate within the State, or will attain the necessary authority, resources, and expertise in accordance with a developmental plan and schedule set forth to a sufficient level of detail in the SSO program.

**§ 674.21 Withholding of Federal financial assistance for noncompliance.**

(a) In making a decision to impose financial penalties as authorized by 49 U.S.C. 5329(e), and determining the nature and amount of the financial penalties, the Administrator shall consider the extent and circumstances of the noncompliance; the operating budgets of the SSOA and the rail fixed guideway public transportation systems that will be affected by the financial penalties; and such other matters as justice may require.

(b) If a State fails to establish a SSO program that has been approved by the Administrator within three years of the effective date of this part, FTA will be prohibited from obligating Federal financial assistance apportioned under 49 U.S.C. 5338 to any entity in the State that is otherwise eligible to receive that Federal financial assistance, in accordance with 49 U.S.C. 5329(e)(3).

**§ 674.23 Confidentiality of information.**

(a) A State, an SSOA, or an RTA may withhold an investigation report prepared or adopted in accordance with these regulations from being admitted as evidence or used in a civil action for damages resulting from a matter mentioned in the report.

(b) This part does not require public availability of any data, information, or procedures pertaining to the security of a rail fixed guideway public transportation system or its passenger operations.

## Subpart C—State Safety Oversight Agencies

**§ 674.25 Role of the State safety oversight agency.**

(a) An SSOA must establish minimum standards for the safety of all rail fixed guideway public transportation systems within its oversight. These minimum standards must be consistent with the National Public Transportation Safety Plan, the Public Transportation Safety Certification Training Program, the rules for Public Transportation Agency Safety Plans and all applicable Federal and State law.

(b) An SSOA must review and approve the Public Transportation Agency Safety Plan for every rail fixed guideway public transportation system within its oversight. An SSOA must oversee an RTA's execution of its Public Transportation Agency Safety Plan. An SSOA must enforce the execution of a Public Transportation Agency Safety Plan, through an order of a corrective action plan or any other means, as necessary or appropriate. An SSOA must ensure that a Public Transportation Agency Safety Plan meets the requirements at 49 U.S.C. 5329(d).

(c) An SSOA has primary responsibility for the investigation of any allegation of noncompliance with a Public Transportation Agency Safety Plan. These responsibilities do not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.

(d) An SSOA has primary responsibility for the investigation of an accident on a rail fixed guideway public transportation system. This responsibility does not preclude the Administrator from exercising his or her authority under 49 U.S.C. 5329(f) or 49 U.S.C. 5330.

(e) An SSOA may enter into an agreement with a contractor for assistance in overseeing accident investigations; performing independent accident investigations; and reviewing incidents and occurrences; and for expertise the SSOA does not have within its own organization.

(f) All personnel and contractors employed by an SSOA must comply with the requirements of the Public Transportation Safety Certification Training Program as applicable.

**§ 674.27 State safety oversight program standards.**

(a) An SSOA must adopt and distribute a written SSO program standard, consistent with the National Public Transportation Safety Plan and the rules for Public Transportation Agency Safety Plans. This SSO program standard must identify the processes and procedures that govern the activities of the SSOA. Also, the SSO program standard must identify the processes and procedures an RTA must have in place to comply with the standard. At minimum, the program standard must meet the following requirements:

(1) *Program management.* The SSO program standard must explain the authority of the SSOA to oversee the safety of rail fixed guideway public transportation systems; the policies that govern the activities of the SSOA; the reporting requirements that govern both the SSOA and the rail fixed guideway public transportation systems; and the steps the SSOA will take to ensure open, on-going communication between

the SSOA and every rail fixed guideway public transportation system within its oversight.

(2) *Program standard development.* The SSO program standard must explain the SSOA's process for developing, reviewing, adopting, and revising its minimum standards for safety, and distributing those standards to the rail fixed guideway public transportation systems.

(3) *Program policy and objectives.* The SSO program standard must set an explicit policy and objectives for safety in rail fixed guideway public transportation throughout the State.

(4) *Oversight of Rail Public Transportation Agency Safety Plans and Transit Agencies' internal safety reviews.* The SSO program standard must explain the role of the SSOA in overseeing an RTA's execution of its Public Transportation Agency Safety Plan and any related safety reviews of the RTA's fixed guideway public transportation system. The program standard must describe the process whereby the SSOA will receive and evaluate all material submitted under the signature of an RTA's accountable executive. Also, the program standard must establish a procedure whereby an RTA will notify the SSOA before the RTA conducts an internal review of any aspect of the safety of its rail fixed guideway public transportation system.

(5) *Triennial SSOA audits of Rail Public Transportation Agency Safety Plans.* The SSO program standard must explain the process the SSOA will follow and the criteria the SSOA will apply in conducting a complete audit of the RTA's compliance with its Public Transportation Agency Safety Plan at least once every three years, in accordance with 49 U.S.C. 5329. Alternatively, the SSOA and RTA may agree that the SSOA will conduct its audit on an on-going basis over the three-year timeframe. The program standard must establish a procedure the SSOA and RTA will follow to manage findings and recommendations arising from the triennial audit.

(6) *Accident notification.* The SSO program standard must establish requirements for an RTA to notify the SSOA of accidents on the RTA's rail fixed guideway public transportation system. These requirements must address, specifically, the time limits for notification, methods of notification, and the nature of the information the RTA must submit to the SSOA.

(7) *Investigations.* The SSO program standard must identify thresholds for accidents that require the RTA to conduct an investigation. Also, the program standard must address how the SSOA will oversee an RTA's internal investigation; the role of the SSOA in supporting any investigation conducted or findings and recommendations made by the NTSB or FTA; and procedures for protecting the confidentiality of the investigation reports.

(8) *Corrective actions.* The program standard must explain the process and criteria by which the SSOA may order an RTA to develop and carry out a Corrective Action Plan (CAP), and a procedure for the SSOA to review and approve a CAP. Also, the program standard must explain the SSOA's policy and practice for tracking and verifying an RTA's compliance with the CAP, and managing any conflicts between the SSOA and RTA relating either to the development or execution of the CAP or the findings of an investigation.

(b) At least once a year an SSOA must submit its SSO program standard and any referenced program procedures to FTA, with an indication of any revisions made to the program standard since the last annual submittal. FTA will evaluate the SSOA's program standard as part of its continuous evaluation of the State Safety Oversight Program, and in preparing FTA's report to Congress on the certification status of that State Safety Oversight Program, in accordance with 49 U.S.C. 5329.

### § 674.29 Public Transportation Agency Safety Plans: general requirements.

(a) In determining whether to approve a Public Transportation Agency Safety Plan for a rail fixed guideway public transportation system, an SSOA must evaluate whether the Public Transportation Agency Safety Plan is consistent with the regulations implementing such Plans; is consistent with the National Public Transportation Safety Plan; and is in compliance with the program standard set by the SSOA.

(b) In determining whether a Public Transportation Agency Safety Plan is compliant with 49 CFR part 673, an SSOA must determine, specifically, whether the Public Transportation Agency Safety Plan is approved by the RTA's board of directors or equivalent entity; sets forth a sufficiently explicit process for safety risk management, with adequate means of risk mitigation for the rail fixed guideway public transportation system; includes a process and timeline for annually reviewing and updating the safety plan; includes a comprehensive staff training program for the operations personnel directly responsible for the safety of the RTA; identifies an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the RTA; includes adequate methods to support the execution of the Public Transportation Agency Safety Plan by all employees, agents, and contractors for the rail fixed guideway public transportation system; and sufficiently addresses other requirements under the regulations at 49 CFR part 673.

(c) In an instance in which an SSOA does not approve a Public Transportation Agency Safety Plan, the SSOA must provide a written explanation, and allow the RTA an opportunity to modify and resubmit its Public Transportation Agency Safety Plan for the SSOA's approval.

### § 674.31 Triennial audits: general requirements.

At least once every three years, an SSOA must conduct a complete audit of an RTA's compliance with its Public Transportation Agency Safety Plan. Alternatively, an SSOA may conduct the audit on an on-going basis over the three-year timeframe. At the conclusion of the three-year audit cycle, the SSOA shall issue a report with findings and recommendations arising from the audit, which must include, at minimum, an analysis of the effectiveness of the Public Transportation Agency Safety Plan, recommendations for improvements, and a corrective action plan, if necessary or appropriate. The RTA must be given an opportunity to comment on the findings and recommendations.

### § 674.33 Notifications of accidents.

(a) *Two-hour notification.* In addition to the requirements for accident notification set forth in an SSO program standard, an RTA must notify both the SSOA and the FTA within two hours of any accident occurring on a rail fixed guideway public transportation system. The criteria and thresholds for accident notification and reporting are defined in a reporting manual developed for the electronic reporting system specified by FTA as required in § 674.39(b), and in appendix A.

(b) *FRA notification.* In any instance in which an RTA must notify the FRA of an accident as defined by 49 CFR 225.5 (*i.e.,* shared use of the general railroad system trackage or corridors), the RTA must also notify the SSOA and FTA of the accident within the same time frame as required by the FRA.

### § 674.35 Investigations.

(a) An SSOA must investigate or require an investigation of any accident and is ultimately responsible for the sufficiency and thoroughness of all investigations, whether conducted by

the SSOA or RTA. If an SSOA requires an RTA to investigate an accident, the SSOA must conduct an independent review of the RTA's findings of causation. In any instance in which an RTA is conducting its own internal investigation of the accident or incident, the SSOA and the RTA must coordinate their investigations in accordance with the SSO program standard and any agreements in effect.

(b) Within a reasonable time, an SSOA must issue a written report on its investigation of an accident or review of an RTA's accident investigation in accordance with the reporting requirements established by the SSOA. The report must describe the investigation activities; identify the factors that caused or contributed to the accident; and set forth a corrective action plan, as necessary or appropriate. The SSOA must formally adopt the report of an accident and transmit that report to the RTA for review and concurrence. If the RTA does not concur with an SSOA's report, the SSOA may allow the RTA to submit a written dissent from the report, which may be included in the report, at the discretion of the SSOA.

(c) All personnel and contractors that conduct investigations on behalf of an SSOA must be trained to perform their functions in accordance with the Public Transportation Safety Certification Training Program.

(d) The Administrator may conduct an independent investigation of any accident or an independent review of an SSOA's or an RTA's findings of causation of an accident.

**§ 674.37 Corrective action plans.**

(a) In any instance in which an RTA must develop and carry out a CAP, the SSOA must review and approve the CAP before the RTA carries out the plan; however, an exception may be made for immediate or emergency corrective actions that must be taken to ensure immediate safety, provided that the SSOA has been given timely notification, and the SSOA provides subsequent review and approval. A CAP must describe, specifically, the actions the RTA will take to minimize, control, correct, or eliminate the risks and hazards identified by the CAP, the schedule for taking those actions, and the individuals responsible for taking those actions. The RTA must periodically report to the SSOA on its progress in carrying out the CAP. The SSOA may monitor the RTA's progress in carrying out the CAP through unannounced, on-site inspections, or any other means the SSOA deems necessary or appropriate.

(b) In any instance in which a safety event on the RTA's rail fixed guideway public transportation system is the subject of an investigation by the NTSB, the SSOA must evaluate whether the findings or recommendations by the NTSB require a CAP by the RTA, and if so, the SSOA must order the RTA to develop and carry out a CAP.

**§ 674.39 State Safety Oversight Agency annual reporting to FTA.**

(a) On or before March 15 of each year, an SSOA must submit the following material to FTA:

(1) The SSO program standard adopted in accordance with § 674.27, with an indication of any changes to the SSO program standard during the preceding twelve months;

(2) Evidence that each of its employees and contractors has completed the requirements of the Public Transportation Safety Certification Training Program, or, if in progress, the anticipated completion date of the training;

(3) A publicly available report that summarizes its oversight activities for the preceding twelve months, describes the causal factors of accidents identified through investigation, and identifies the status of corrective actions, changes to Public Transportation Agency Safety Plans, and the level of effort by the SSOA in carrying out its oversight activities;

(4) A summary of the triennial audits completed during the preceding twelve months, and the RTAs' progress in carrying out CAPs arising from triennial audits conducted in accordance with § 674.31;

(5) Evidence that the SSOA has reviewed and approved any changes to the Public Transportation Agency Safety Plans during the preceding twelve months; and

(6) A certification that the SSOA is in compliance with the requirements of this part.

(b) These materials must be submitted electronically through a reporting system specified by FTA.

**§ 674.41 Conflicts of interest.**

(a) An SSOA must be financially and legally independent from any rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).

(b) An SSOA may not employ any individual who provides services to a rail fixed guideway public transportation system under the oversight of the SSOA, unless the Administrator has issued a waiver of this requirement in accordance with § 674.13(b).

(c) A contractor may not provide services to both an SSOA and a rail fixed guideway public transportation system under the oversight of that SSOA, unless the Administrator has issued a waiver of this prohibition.

**Appendix to Part 674—Notification and Reporting of Accidents, Incidents, and Occurrences**

| Event/threshold | Human factors | Property damage | Types of events (examples) | Actions |
|---|---|---|---|---|
| Accident: Rail Transit Agency (RTA) to Notify State Safety Oversight Agency (SSOA) SSO and Federal Transit Administration (FTA) within two hours. | —Fatality (occurring at the scene or within 30 days following the accident).<br>—One or more persons suffering serious injury (*Serious injury* means any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) results in a fracture of any bone (except simple fractures of fingers, toes, or nose); (3) causes severe hemorrhages, nerve, muscle, or tendon damage; (4) involves any internal organ; or (5) involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.). | —Property damage resulting from a collision involving a rail transit vehicle; or any derailment of a rail transit vehicle. | —A collision between a rail transit vehicle and another rail transit vehicle.<br>—A collision at a grade crossing resulting in serious injury or fatality.<br>—A collision with a person resulting in serious injury or fatality.<br>—A collision with an object resulting in serious injury or fatality.<br>—A runaway train.<br>—Evacuation due to life safety reasons.<br>—A derailment (mainline or yard).<br>—Fires resulting in a serious injury or fatality. | —RTA to notify SSOA and FTA within 2 hours; Investigation required.<br>—RTA to report to FTA within 30 days via the National Transit Database (NTD).<br>—RTA to record for SMS Analysis. |
| Incident: RTA to Report to FTA (NTD) within 30 days. | —A personal injury that is not a serious injury.<br>—One or more injuries requiring medical transportation away from the event. | —Non-collision-related damage to equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency. | —Evacuation of a train into the right-of-way or onto adjacent track; or customer self-evacuation.<br>—Certain low-speed collisions involving a rail transit vehicle that result in a non-serious injury or property damage.<br>—Damage to catenary or third-rail equipment that disrupts transit operations.<br>—Fires that result in a non-serious injury or property damage.<br>—A train stopping due to an obstruction in the tracks/‘‘hard stops’’.<br>—Most hazardous material spills. | —RTA to report to FTA within 30 days via the National Transit Database (NTD).<br>—RTA to record for SMS Analysis. |
| Occurrence: RTA to record data and make available for SSO and/or FTA review. | —No personal injury ..... | —Non-collision-related damage to equipment, rolling stock, or infrastructure that does not disrupt the operations of a transit agency. | —Close Calls/Near Misses .....<br>—Safety rule violations.<br>—Violations of safety policies.<br>—Damage to catenary or third-rail equipment that do not disrupt operations.<br>—Vandalism or theft. | —RTA will collect, track and analyze data on Occurrences to reduce the likelihood of recurrence and inform the practice of SMS. |

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Part III

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R2–ES–2013–0014;4500030114]**

**RIN 1018–AZ32**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the New Mexico Meadow Jumping Mouse

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the New Mexico meadow jumping mouse (*Zapus hudsonius luteus*) under the Endangered Species Act of 1973, as amended (Act). In total, we designate an area of approximately 5,657 hectares (13,973 acres) along 272.4 kilometers (169.3 miles) of flowing streams, ditches, and canals as critical habitat in eight units within Colfax, Mora, Otero, Sandoval, and Socorro Counties in New Mexico; Las Animas, Archuleta, and La Plata Counties in Colorado; and Greenlee and Apache Counties in Arizona. The effect of this rule is to designate critical habitat for the New Mexico meadow jumping mouse under the Act.

**DATES:** This rule is effective on April 15, 2016.

**ADDRESSES:** This final rule is available on the Internet at *http://www.fws.gov/southwest/es/NewMexico/index.cfm* and at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0014. Comments and materials we received, as well as some supporting documentation used in preparing this final rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; telephone 505–346–2525; or facsimile 505–346–2542.

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/southwest/es/NewMexico/,* at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0014, and at the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wally ''J'' Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule.* This document is a final rule to designate critical habitat for the endangered New Mexico meadow jumping mouse. Under the Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

*The basis for our action.* On June 20, 2013 (78 FR 37363), we proposed to list the New Mexico meadow jumping mouse (jumping mouse) under the Act as an endangered species; that same day, we also proposed to designate critical habitat for the jumping mouse (78 FR 37328). Subsequently, we listed the jumping mouse as an endangered species (79 FR 33119; June 10, 2014). This is a final rule to designate critical habitat for the jumping mouse. 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, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

*This final rule will designate critical habitat for the endangered New Mexico meadow jumping mouse.* The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the jumping mouse. We are designating as critical habitat for the subspecies approximately 5,657 hectares (13,973 acres) along 272.4 kilometers (169.3 miles) of flowing streams, ditches, and canals as critical habitat in eight units within Colfax, Mora, Otero, Sandoval, and Socorro Counties in New Mexico; Las Animas, Archuleta, and La Plata Counties in Colorado; and Greenlee and Apache Counties in Arizona.

*We have prepared economic and environmental analyses of the designation of critical habitat.* In order to consider economic impacts, we prepared an analysis of the economic impacts of the critical habitat designation and related factors. We also prepared an environmental analysis of the designation of critical habitat in order to evaluate whether there would be any significant environmental impacts as a result of the critical habitat designation. We announced the availability of the draft economic analysis and the draft environmental assessment in the **Federal Register** on April 8, 2014 (79 FR 19307), allowing the public to provide comments on our analyses. We have incorporated the comments and have completed the final economic analysis and final environmental analysis for this final designation.

*Peer review and public comment.* We sought comments from four independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from three individuals with scientific expertise to review our technical assumptions and analysis, and to determine whether or not we had used the best available scientific information. Two of these peer reviewers supported the redundancy of habitat proposed for designation, but were concerned about the viability of existing jumping mouse populations, the short length of some units proposed for designation, and potential for the subspecies' recovery. These peer reviewers provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated into this final designation. We also considered all comments and information we received from the public during our two open comment periods, which were open for a total of 90 days. We also held four public information meetings with interested stakeholders.

### Previous Federal Actions

Previous Federal actions for the jumping mouse are described in the Previous Federal Actions section of the final listing rule published on June 10, 2014 (79 FR 33119). We published a notice of availability of the draft economic analysis and the draft environmental assessment in the **Federal Register** on April 8, 2014 (79 FR 19307), allowing the public to provide

comments on our analyses. Details regarding the comment periods on the proposed rulemaking are provided below.

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the jumping mouse. For a thorough assessment of the subspecies' biology and natural history, including limiting factors and subspecies resource needs, please refer to the Final New Mexico Meadow Jumping Mouse Species Status Assessment Report (SSA Report; Service 2014, entire), available online at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0023 and the final listing rule published on June 10, 2014 (79 FR 33119).

**Summary of Comments and Recommendations**

We requested written comments from the public on the proposed designation of critical habitat for the jumping mouse during two comment periods. The first comment period associated with the publication of the proposed rule (78 FR 37328) opened on June 20, 2013, and closed on August 19, 2013. A legal notice inviting general public comment was published in the Albuquerque Journal on June 27, 2013. We did not receive any requests for a public hearing within 45 days after the date of the proposed rule being published in the **Federal Register**.

We also requested comments on the proposed critical habitat designation and associated draft economic analysis and draft environmental assessment during a comment period that opened April 8, 2014, and closed on May 8, 2014 (79 FR 19307). We contacted appropriate Federal and State agencies, tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposed rule and associated draft economic analysis and draft environmental assessment. On August 15, 2013, we also held an informational meeting in Durango, Colorado, after receiving requests from interested parties. Similarly, we held informational meetings in Cañon, New Mexico, on April 24, 2014; Durango, Colorado on April 28, 2014; and Alamogordo, New Mexico, on May 28, 2014.

During the two open comment periods, we received 63 comment letters addressing the proposed critical habitat designation, the draft economic analysis, or the draft environmental assessment. Comments we received are grouped into general issues specifically relating to the proposed critical habitat designation for the jumping mouse. All substantive information provided during both comment periods has either been incorporated directly into this final designation or the SSA Report, or is addressed below.

*Peer Review Comments*

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from four knowledgeable individuals with scientific expertise and familiarity with the subspecies, the geographic region in which the subspecies occurs, and conservation biology principles. We received responses from three of the four peer reviewers on the proposed designation of critical habitat. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding critical habitat for the jumping mouse. These peer reviewers provided additional information, clarifications, and suggestions to improve this final rule.

(1) *Comment:* The Service should consider expanding the proposed critical habitat to provide reaches of critical habitat that are at least 25 kilometers (km) (15.5 miles (mi)) in length. A minimum length of 9 km (6 mi) of critical habitat may not be adequate to support a resilient population because many threats (*e.g.,* wildfire, drought, and recreation) are likely to impact entire sections of stream. The average length of proposed critical habitat units was 12.2 km (7.6 mi) (range of 3.7 to 23.3 km; 2.3 to 14.5 mi). Small reaches (*i.e.,* <25 km (15.5 mi)) may not provide resiliency. Notably, the failure of surveys in 2013 to verify persistence of the jumping mouse at Bosque del Apache National Wildlife Refuge (NWR), one of the largest areas proposed as critical habitat (21.1 km (13.1 mi)), suggests that critical habitat units at the upper end of the length designation used by the Service are not large enough to prevent extinction. Consequently, it is likely that all units should be greater than 25 km (15.5 mi) to provide for resiliency. Other public commenters suggested we shorten or exclude areas of the proposed critical habitat units.

*Our Response:* In considering the best available data regarding the area needed for maintaining resilient populations of adequate size with the ability to endure adverse events (such as floods or wildfire), we estimate that resilient populations of jumping mice need connected areas of suitable habitat in the range of at least 27.5 to 73.2 hectares (ha) (68 to 181 acres (ac)), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals. The minimum area needed is given as a range due to the uncertainty of an absolute minimum and because local conditions within drainages will vary.

In our proposed critical habitat designation and this final designation, we selected upstream and downstream boundaries that would avoid including highly degraded areas that are not likely restorable, areas that were permanently dewatered or permanently developed (*i.e.,* natural vegetation removed), or areas in which suitable habitat no longer existed and was not likely to be restored. Consequently, many areas upstream or downstream of designated critical habitat are currently unoccupied and unusable by the jumping mouse because they lack continuous areas of suitable habitat. Although these degraded or dewatered areas may include historic jumping mouse capture locations, they do not meet the definition of critical habitat under the Act (16 U.S.C. 1531 *et seq.*) because they were neither occupied at the time of listing nor are they considered essential to the conservation of the subspecies.

Consequently, we continue to conclude that current jumping mouse populations need connected areas of suitable habitat along at least 9 to 24 km (5.6 to 15 mi) of continuous suitable habitat to support viable populations of jumping mice with a high likelihood of long-term persistence. This distribution and amount of suitable habitat would allow for multiple subpopulations of jumping mice to exist along drainages and would provide for sources of recolonization if some areas where extirpated due to disturbances.

We incorporated the best scientific and commercial information available into this final rule, including information regarding all locations where the jumping mouse has been trapped since 2005, and other areas outside of the geographic area occupied by the subspecies. For example, the jumping mouse is not extirpated from the Bosque del Apache NWR; they were detected during surveys in 2014 (Frey 2013, entire; Service 2013, entire; 2013a, entire; 2013b, entire; Service 2014a, entire). In the SSA Report, we found that conservation of the jumping mouse should preferentially focus on restoration of habitats adjacent to occupied areas to expand all remaining populations (Malaney *et al.* 2012, p. 10). If, in the future, we find that restoration of primary constituent elements, particularly seasonally perennial water, is successful, further revision of critical habitat may be appropriate.

In addition, 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 subspecies. The designation of critical habitat is only one component of recovery for a 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 subspecies; to meet the requirements of the Act, the Service determined areas that were occupied by the subspecies at the time of listing that contained the physical and biological features essential to the conservation of the jumping mouse and unoccupied areas that are essential for its conservation.

(2) *Comment:* Unit 1 (Sugarite Canyon) should be expanded to include the entire watershed of Chicorica Creek.

*Our Response:* The entire watershed of Chicorica Creek does not meet the definition of critical habitat for this subspecies because the entire watershed was neither occupied at the time of listing nor is it essential to the conservation of the subspecies. Under the first part of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. We are designating as critical habitat all areas where the jumping mouse is known to occur. Under the second part of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

We are designating 13.0 km (8.1 mi) in the unit, which is within the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above). This provides the needed size and connectivity of suitable habitat of the jumping mouse in Sugarite Canyon for population redundancy and resiliency. The areas upstream and downstream of the 13.0 km (8.1 mi) in the unit do not contain suitable habitat, nor are these areas restorable. They are highly degraded areas that lack dense herbaceous vegetation, and are not likely to be restored to suitable habitat (see our response to Comment 1, above).

(3) *Comment:* Unit 2 (Coyote Creek) should include the Mora River because there are two historic locations.

*Our Response:* The Mora River does not meet the definition of critical habitat for this subspecies because it was neither occupied at the time of listing nor is it essential to the conservation of the subspecies (see our response to Comment 2, above). No recent surveys (*i.e.,* post 2005) have been conducted in the Mora River area (Frey 2008c, p. 37); therefore, the best available scientific and commercial data, the survey data from post 2005, indicate the Mora River is unoccupied.

We are designating 11.8 km (7.4 mi) in Unit 2 to provide the needed size and connectivity of suitable habitat of the jumping mouse within Coyote Creek for population redundancy and resiliency. This size is within the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals, needed for resilient populations of jumping mice (see our response to Comment 1, above). We did not propose or include the Mora River as critical habitat because it is not perennial and does not contain suitable habitat between Guadalupita (a site along Coyote Creek within Unit 2) and the historic collection site on the Mora River (*i.e.,* sewage pond) (Frey 2008c, p. 37). The area is not essential to the conservation of the subspecies because it no longer contains perennial water and is therefore unsuitable and not restorable.

(4) *Comment:* Subunit 3A (San Antonio Creek, in Unit 3—Jemez Mountains) should be expanded to include Redondo Creek and San Antonio Creek on the Valles Caldera National Preserve because there is a historical location on the preserve and potentially suitable habitat in the vicinity of the junction of these two creeks.

*Our Response:* Redondo Creek and San Antonio Creek on the Valles Caldera National Preserve do not meet the definition of critical habitat for this subspecies because the areas were neither occupied at the time of listing nor are the areas essential to the conservation of the subspecies. They are highly degraded areas that lack dense herbaceous vegetation, and are not likely to be restored to suitable habitat (see our response to Comment 1, above). Although Frey (2005a, p. 6) reported a jumping mouse historical record from the base of Redondo Peak in a beaver pond, possibly in the vicinity of Redondo Creek, the record was based on a personal communication of W. Whitford in the 1970s, and there is no verifiable specimen with a specific capture location. The presence of beavers creates diverse wetland communities that support the dense riparian herbaceous vegetation utilized by jumping mice (see section 5.1.6 of the SSA Report (Service 2014)). There are no longer any established beaver populations within the Valles Caldera National Preserve to maintain suitable habitat. In recent surveys, no jumping mice have been captured on the Valles Caldera National Preserve (VCNP 2012, pp. 20–21), such that the best available scientific and commercial information indicates the area is unoccupied.

We are designating critical habitat within Subunit 3A starting from the northern part of San Antonio Creek where it exits the boundary of the Valles Caldera National Preserve and follows the creek 11.5 km (7.1 mi) where it meets private land immediately downstream of the San Antonio Campground, which would provide the needed size and connectivity of suitable habitat of the jumping mouse in the Jemez Mountains and provide population redundancy and resiliency. This size is within the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above).

(5) *Comment:* Subunit 3B (Rio Cebolla, in Unit 3—Jemez Mountains) should be expanded to include additional U.S. Forest Service (Forest Service) lands within Lake Fork Canyon, a major tributary to the Rio Cebolla and the area upstream of Hay Canyon to Forest Road 257.

*Our Response:* We did not expand the designation to include the tributary in Lake Fork Canyon or the area upstream of Hay Canyon because these areas were neither occupied at the time of listing nor are the areas essential to the conservation of the subspecies. In 2005, two jumping mice were captured at the confluence of Lake Fork Canyon and the Rio Cebolla within the livestock and vehicle exclosure that contained well-developed riparian habitat dominated by sedges, diverse forbs, grasses, and a small patch of alder (Frey 2005a, p. 27). However, no jumping mice were captured further upstream along the tributary of Lake Fork Canyon and the area did not contain perennial water or suitable habitat. Without suitable habitat and a capture record post 2005, the area is not considered occupied at the time of listing. Water is intermittent through the Lake Fork Canyon, and riparian areas are isolated (Frey 2007b, p. 12). They are highly degraded areas that lack dense herbaceous vegetation, and are not likely to be restored to

suitable habitat (see our response to Comment 1, above). Without perennial water in this stretch, suitable habitat is unlikely to be restored because the dense vegetation needed by the subspecies will not be supported without sufficient water. Therefore, the area is not considered essential to the conservation of the subspecies.

The area upstream of Hay Canyon, including McKinney Pond, contains poorly developed riparian habitat that is currently unsuitable for the jumping mouse (Frey 2007b, pp. 9–10). Additionally, deer mice (*Peromyscus maniculatus*) dominated the small mammal community, suggesting a disturbed or degraded riparian system (Frey 2007b, pp. 9–10). Further, there are no historic capture locations in the area upstream of Hay Canyon. These additional areas are outside the historical range of the subspecies. The areas we have identified as critical habitat, if restored and occupied, are sufficient to support conservation; therefore, designating areas outside of the historical range is not necessary.

We are designating critical habitat within Subunit 3B starting from an old beaver dam about 0.6 km (0.4 mi) north of Hay Canyon, and following the creek about 20.7 km (12.9 mi) downstream where it meets the Rio de las Vacas, which would provide the needed size and connectivity of suitable habitat of the jumping mouse in the Jemez Mountains and provide population redundancy and resiliency. This subunit contains all of the current and historic locations for the jumping mouse along the Rio Cebolla (Frey 2005a, entire; 2007b, entire). Without suitable habitat and without post-2005 survey records we consider the areas above Hay Canyon and along Lake Fork Canyon to be unoccupied. Further, these areas are not considered essential to the conservation of the subspecies for the reasons stated above. The size of the subunit is within the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above).

(6) *Comment:* Subunit 3C (Rio de las Vacas, in Unit 3—Jemez Mountains) should be expanded to include the Rito Peñas Negras, a major tributary to the Rio de las Vacas, because there are at least three historical jumping mouse locations in the area.

*Our Response:* We did not expand the designation to include the Rito Peñas Negras because the area was neither occupied at the time of listing nor is it essential to the conservation of the species. This area contains poorly developed riparian habitat that is unsuitable for the jumping mouse and is not likely restorable (Frey 2005a, pp. 29–30). Without suitable habitat and without post-2005 survey records we consider this area unoccupied. Further, without restorable habitat the area is not considered essential to the conservation of the subspecies. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above). In this subunit, we are designating 454 ha (1,122 ac) along 23.3 km (14.5 mi) of restorable habitat that would provide the needed size and connectivity of suitable habitat for the jumping mouse in the Jemez Mountains and support population redundancy and resiliency. This size is within the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above).

(7) *Comment:* Unit 3 (Jemez Mountains) should be expanded to include a new subunit in Virgin Canyon, a major tributary to the Rio Guadalupe, because there is a historic (1989) jumping mouse location in the area.

*Our Response:* We did not expand the designation to include the Virgin Canyon because the area was neither occupied at the time of listing nor is it essential to the conservation of the subspecies. Although Frey (2005a, pp. 6, 25–26) reported a jumping mouse historical record from the Virgin Canyon, the specific capture location is unknown and could have been anywhere from the drainage. The area was surveyed in 2005, and no jumping mice were captured, and there are no current records indicating the subspecies is present (Frey 2005a, pp. 13, 24–25). Consequently, the area is not considered occupied at the time of listing. In 2005, there was little to no suitable riparian habitat or wet meadows along the creek (Frey 2005a, p. 25), and the area is not likely restorable. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above). Consequently, the area is not considered essential to the conservation of the subspecies.

(8) *Comment:* A new unit should be added for the 1932 capture records from Tularosa Creek near Mescalero, Otero County, New Mexico.

*Our Response:* We did not expand the designation to include Tularosa Creek because the area was neither occupied at the time of listing nor is it essential to the conservation of the subspecies. Frey (2008c, p. 35) reported a historic record from 1932 along Tularosa Creek. In 2006, Frey (2008c, p. 35) indicated that the general area of the 1932 capture locations of the jumping mouse along Tularosa Creek may have potentially suitable habitat. However, since then, the stream, marshes, and wet meadows have dried (Sivinski 2012, pp. 18–21) and the area is dominated by invasive plants (Sivinski 1996, p. 3; 2009a, p. 2). Without suitable habitat and a capture record post 2005, the area is not considered occupied at the time of listing. Suitable habitat is unlikely to be restored because without perennial water in this stretch the area will not support the dense vegetation needed by the subspecies. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above). Therefore, the area is not essential to the conservation of the subspecies.

(9) *Comment:* In 2013, water flowed downstream of the Lincoln National Forest Boundary of Subunit 4A (Silver Springs, in Unit 4—Sacramento Mountains); therefore, the subunit should be expanded downstream at least 1.9 km (1.2 mi) to include this potential and recoverable habitat on the Mescalero Apache Reservation.

*Our Response:* We did not expand the designation to include any lands on the Mescalero Apache Reservation because the area was neither occupied at the time of listing nor is it essential to the conservation of the subspecies. There are no records of jumping mouse from post 2005. The flow downstream of the Lincoln National Forest boundary is variable, with water flowing onto the Mescalero Apache Reservation some years and remaining dry other years (Frey 2005a, p. 31). Moreover, the stream channel downstream of the boundary is incised, and suitable jumping mouse habitat no longer exists. Without perennial water flow, the area frequently dries and will not support the dense vegetation needed by the subspecies, and it is not likely to be restored. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above).

(10) *Comment:* Subunit 4B (Upper Peñasco, in Unit 4—Sacramento Mountains) should be expanded to include about 4.0 km (2.5 mi) of Water Canyon upstream from the confluence with the Rio Peñasco. This stretch of stream had water present during 2013. There is also restorable habitat above Forest Road 164 that should be included as critical habitat.

*Our Response:* We are designating 136 ha (335 ac) along 6.4 km (4.0 mi) of

restorable habitat. Subunit 4B begins at the junction of Forest Service Road 164 and New Mexico Highway 6563 and follows the Rio Peñasco drainage downstream (or above Forest Service Road 164) to about 2.4 km (1.5 mi) below Bluff Spring at the boundary of private and Forest Service lands. Therefore, the subunit already includes the restorable habitat above Forest Road 164.

We did not expand the designation to include Water Canyon, however, because it was neither occupied at the time of listing nor is it considered essential to the conservation of the subspecies. The water in these additional areas is variable, flowing some years and dry other years (Frey 2005a, p. 33). Moreover, suitable jumping mouse habitat no longer exists and is not likely to be restored because the area frequently dries and will not support the dense vegetation needed by the subspecies. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above).

(11) *Comment:* Subunit 4D (Wills Canyon, in Unit 4—Sacramento Mountains) should be expanded to include the tributary in Hubbell Canyon. Extending the subunit to the Rio Peñasco could provide important connectivity with Subunit 4C (Middle Peñasco, in Unit 4—Sacramento Mountains).

*Our Response:* We did not expand the designation to include Hubble Canyon or the additional areas downstream of Subunit 4D because they were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. Although it is possible that the jumping mouse historically existed in Hubble Canyon, there are no historic records and recent surveys did not detect the subspecies (Forest Service 2012h, p. 2). The area downstream of Subunit 4D to the confluence of the Rio Peñasco was not included because the stream channel is eroded, riparian habitat is poorly developed, and water is intermittent (Frey 2005a, p. 34). Since the area frequently dries, it is not likely to be restored because it will not support the dense vegetation needed by the subspecies. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above).

(12) *Comment:* Subunit 4E (Agua Chiquita Canyon, in Unit 4—Sacramento Mountains) should be expanded to include additional areas downstream to the Town of Weed, including the tributaries in Hay and Spring Canyons.

*Our Response:* We did not expand the designation to include Hay or Spring Canyons or the additional area downstream of Subunit 4E to Weed because they were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. The area downstream of Subunit 4E to Weed was not included because riparian habitat is nearly absent and the water is intermittent (Frey 2005a, pp. 35–36). In Hay Canyon, there is little to no riparian habitat. In Spring Canyon the streambed is dry and eroded with no riparian vegetation in one historic capture location. In another historic location within Spring Canyon, water only flowed for about 0.16 km (0.1 mi) before ceasing, and riparian habitat was only a narrow strip 2.5 to 3 meters (m) (8.2 to 9.8 feet (ft)) wide (Frey 2005a, p. 35). Since these areas frequently go dry, they will not support the dense vegetation needed by the subspecies and are therefore not likely to be restored. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above). Further, recent surveys in Hay and Spring Canyons did not detect the subspecies (Frey 2005a, pp. 35–36).

(13) *Comment:* Unit 5 (White Mountains) should be expanded to include a new subunit for the North Fork of the White River on Fort Apache Reservation based on historical records from at least two locations.

*Our Response:* We did not include a new subunit for the North Fork of the White River because the area was neither occupied at the time of listing nor is it essential to the conservation of the subspecies. The most recent records are from 1933 and 1967 (Frey 2011; Appendix 1). We do not have recent survey information indicating the area is occupied, nor do we have recent habitat information to demonstrate that the area could support suitable habitat for the jumping mouse. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above). In Unit 5, we are designating 478 ha (1,181 ac) along 22.6 km (14.0 mi) of stream, which exceeds the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above).

(14) *Comment:* Subunit 5A (Little Colorado, in Unit 5—White Mountains) should be expanded to include Lee Valley Creek above the Lee Valley Reservoir and the wilderness area in the headwaters of both forks of the Little Colorado River.

*Our Response:* We did not expand the designation to include Lee Valley Reservoir or the additional areas in the headwaters of both forks of the Little Colorado River because these areas were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. The areas are not essential to the conservation of the subspecies because Lee Valley Reservoir does not contain suitable habitat and the reservoir would be an impediment to movements between Lee Valley Creek and the Little Colorado River. In 1981, when the subspecies was last detected, the habitat along Lee Valley Creek contained tall grass meadow with willows growing along a small stream, but the current habitat is composed of shrubs that are very sparse and mostly decadent or dead, with no live willows recorded (Frey 2011, p. 88). The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above). Recent surveys in these areas did not detect the subspecies (Frey 2011, pp. 25, 88; Underwood 2007, entire). We are designating 22.6 km (14.0 mi) of restorable habitat, which would provide the needed size and connectivity of suitable habitat of the jumping mouse along the Little Colorado River and provide population redundancy and resiliency. This size is within the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above).

(15) *Comment:* Subunit 5B (Nutrioso, in Unit 5—White Mountains) should be expanded to include additional areas downstream into New Mexico to the Luna Valley, including the tributaries within Stone Creek and Trout Creek watersheds.

*Our Response:* We did not expand the designation to include additional areas downstream into New Mexico, including the tributaries within Stone and Trout Creek watersheds because they were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. Although it is possible that the subspecies could occur in the watershed, there are no confirmed reports of the jumping mouse in the Luna Valley; consequently, the area is considered unoccupied. These additional areas are outside the historical range of the subspecies. The areas we are identifying as critical habitat, if restored and occupied, are sufficient to support conservation.

(16) *Comment:* Subunits 5D, 5E, and 5F (East Fork Black, West Fork Black, and Boggy and Centerfire, in Unit 5–White Mountains) should be expanded to include additional areas downstream of each subunit until they join together. In the headwaters of Subunit 5E, additional habitat should include the West Fork of the Black River, Thompson Creek, and Burro Creek.

*Our Response:* We did not expand the designation to include additional areas downstream in Subunits 5D, 5E, and 5F, nor into the headwaters of Subunit 5E, because they were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. Recent surveys in two small tributaries to Burro Creek did not detect the subspecies, and it is not historically known from this area (Frey 2011, p. 104). Moreover, Burro Creek is not essential to the conservation of the subspecies because the creek has a relatively high gradient with rocky substrate, which is not suitable habitat for the jumping mouse (Frey 2011, p. 104). All of the historical locations on the West Fork of the Black River are within the designated critical habitat (Morrison 1991, pp. 5, 10; Frey 2011, p. 104); there are no recent or historic surveys indicating the subspecies' presence downstream of the area designated as critical habitat. Therefore, the area is considered unoccupied and outside the historical range of the subspecies. The areas we have identified as critical habitat, if restored and occupied, would be sufficient to support conservation.

The subspecies is not known historically from Thompson Creek or the headwaters of Subunit 5E. The areas we have identified as critical habitat, if restored and occupied, would likely be sufficient to support conservation; therefore, we do not consider areas outside the historical range as essential to the conservation of the subspecies. Finally, the precise capture locations of two historic records on the East Fork Black River and on the lower Black River could not be determined (Frey 2011, p. 23). Consequently, these areas are not considered occupied or essential for jumping mouse conservation.

(17) *Comment:* Subunit 5G (Corduroy, in Unit 5—White Mountains) should be expanded to include the entire Fish Creek drainage to the Black River.

*Our Response:* We did not expand the designation in Subunit 5G to include the additional areas in the Fish Creek drainage because the areas were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. Recent surveys did not detect the subspecies, and the subspecies is not known historically from Fish Creek (Morrison 1991, p. 12; Frey 2011, pp. 87, 89). The additional areas are neither occupied at the time of listing nor are they considered essential to the conservation of the subspecies because they are outside the historical range of the subspecies. The areas we have identified as critical habitat, if restored and occupied, would be sufficient to support conservation.

(18) *Comment:* Subunit 5H (Campbell Blue, in Unit 5—White Mountains) should be expanded to include additional areas upstream to the junction of Castle Creek, which is a tributary to Campbell Blue, and downstream into New Mexico, including the Blue River drainage.

*Our Response:* We did not expand the designation in Subunit 5H to include additional areas upstream of Castle Creek or downstream into New Mexico including the Blue River drainage because these areas were neither occupied at the time of listing nor are these areas essential to the conservation of the subspecies. Recent surveys did not detect the subspecies (Morrison 1991, p. 12; Frey 2011, pp. 87, 89) from these areas. The precise capture location of a historical record on lowermost Campbell Blue Creek could not be determined (Frey 2011, p. 101). The subspecies is not known historically from Castle Creek. There are no confirmed reports of the jumping mouse near the Blue River drainage in New Mexico (Frey 2007, p. 2). Consequently, these areas are not considered occupied. Potentially suitable habitat on lower Campbell Blue Creek was restricted to very small, isolated areas away from the creek. The main channel of Campbell Blue Creek is rocky and devoid of riparian vegetation (Frey 2011, p. 101), and likely not restorable. Finally, no suitable habitat was found downstream of the Turkey Creek confluence along either Campbell Blue or the Blue River (Frey 2011, p. 101). These areas are not essential to the conservation of the subspecies and are outside the historical range of the subspecies. The areas we have identified as critical habitat, if restored and occupied, would be sufficient to support conservation.

(19) *Comment:* Unit 5 (White Mountains) should be expanded to include a new subunit for Beaver Creek, including its tributary Hannagan Creek.

*Our Response:* We did not expand the designation in Unit 5 to include a new subunit for Beaver Creek, including Hannagan Creek, because it was neither occupied at the time of listing nor is it essential to the conservation of the subspecies. The historical location is from 1932 and 1933, there is no suitable habitat further downstream along upper Beaver Creek, and water in the higher reaches of Hannagan Creek is intermittent (Frey 2011, p. 105). Since Hannagan Creek is intermittent in areas and frequently dries, and because the stream has a relatively high gradient, it is not likely to be restored because it will not support the dense vegetation needed by the subspecies.

(20) *Comment:* Unit 6 (proposed as Middle Rio Grande, but renamed Bosque del Apache NWR in this final rule) should be expanded to include a new subunit for Bernardo and La Joya Wildlife Areas along the Rio Grande in New Mexico.

*Our Response:* We did not expand the designation in Unit 6 to include a new subunit for Bernardo and La Joya Wildlife Areas because they were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. Although it is possible that the jumping mouse historically existed in these areas along the Rio Grande, there are no historical records for these areas. Further, recent surveys at Casa Colorado Waterfowl Area, the one historical location in the general vicinity of the Bernardo and La Joya Wildlife Areas along the Rio Grande, did not detect the subspecies (Morrison 1988, pp. 16–21; Frey 2012e, p. 1). These additional areas are not essential to the conservation of the subspecies because they are outside the historical range of the subspecies. The areas within the historical range of the jumping mouse that we have identified as critical habitat, if restored and occupied, would be sufficient to support conservation.

(21) *Comment:* Subunit 6C (proposed as Bosque del Apache NWR in Unit 6—Middle Rio Grande, but renamed Unit 6—Bosque del Apache NWR in this final rule) should be expanded to include all of the refuge management units known to have been used by the jumping mouse.

*Our Response:* We did not expand the designation in Bosque del Apache NWR to include all of the refuge management units known to have been used by the jumping mouse because they were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. While these refuge management units outside of Bosque del Apache NWR are within the historical range of the subspecies, the best available scientific and commercial data do not indicate that they were occupied at the time of listing. The refuge management units outside of the designation do not have suitable habitat (Frey and Wright 2012, p. 23, Figure 6), and the habitat is not

restorable because seasonally perennial flowing water is lacking. The area lacks dense herbaceous vegetation, and is not likely to be restored to suitable habitat (see our response to Comment 1, above). We acknowledge that the area we are designating as Unit 6 in this final rule does not currently contain continuous suitable habitat, but that area generally has seasonally perennial flowing water with saturated soils (Frey and Wright 2012, entire) and, therefore, has a high potential of being restored to suitable habitat. We proposed and are designating 21.1 km (13.1 mi) in Bosque del Apache NWR as critical habitat in Unit 6, which would provide the needed size and connectivity of suitable habitat of the jumping mouse within Bosque del Apache NWR to support population redundancy and resiliency. This size is within the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above).

(22) *Comment:* Unit 8 (Sambrito Creek) should be expanded to include additional areas on the San Juan and Piedra Rivers between the Navajo Reservoir upstream to 2,316 m (7,600 ft) elevation, which is the upper elevation limit for the jumping mouse in the area.

*Our Response:* We did not expand the designation in Unit 8 to include additional areas on the San Juan and Piedra Rivers because they were neither occupied at the time of listing nor are they considered essential to the conservation of the subspecies. Seven of the eight historical locations (from 1960) are within the general area designated as critical habitat along Sambrito Creek (Frey 2008c, pp. 36, 42; 2011a, p. 4). The eighth location is about 4.0 km (1.25 mi) north of Unit 8, and there is no suitable or restorable habitat near this historical location. The area lacks dense herbaceous vegetation and is not likely to be restored to suitable habitat (see our response to Comment 1, above). There are no other historical collections of the jumping mouse within this geographic management area. We are designating 75 ha (184 ac) along 4.6 km (2.9 mi) of stream within Unit 8. This size is above the minimum of the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals needed for resilient populations of jumping mice (see our response to Comment 1, above).

(23) *Comment:* A new unit should be added for the upper Rio Grande based on the 1858 record from Fort Burgwyn, Taos County, and an 1894 record from Santa Fe, Santa Fe County, both in New Mexico.

*Our Response:* We did not include a new unit because these areas were neither occupied at the time of listing nor are they essential to the conservation of the subspecies. Both records are over 100 years old, and neither includes a specific capture location. The specific location of the Santa Fe record is completely unknown and could have been anywhere near the City of Santa Fe (Frey 2006d, pp. 12–15; 2008c, p. 40). The Fort Burgwyn location may have been in the vicinity of the confluence of the Rio de la Olla and Rio Grande del Rancho, 14.6 km (9.0 mi) south of Taos, but this is not confirmed. Consequently, these areas were not considered occupied at the time of listing. When Frey (2006d, pp. 28–29, 73) surveyed in the vicinity of Fort Burgwyn, only western jumping mice (*Zapus princeps*) were captured, likely because there was little current suitable habitat for the jumping mouse. Additionally, deer mice dominated the small mammal community, suggesting a disturbed or degraded riparian system (where suitable habitat no longer exists and is not likely restorable) (Frey 2006, p. 29). Consequently, these areas are not essential for the conservation of the subspecies.

(24) *Comment:* There is concern about the exclusion under section 4(b)(2) of the Act of two Pueblos from the final designation because the jumping mouse has a history of occupancy on these lands. The sites proposed on the two Pueblos would be valuable within the context of the overall distribution-wide planning for the conservation of the jumping mouse. Therefore, the Service should work closely with these Pueblos on management plans that would benefit the jumping mouse and its habitat.

*Our Response:* 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; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we coordinate with federally recognized tribes on a government-to-government basis. The Pueblo of Isleta has developed and maintained a Riverine Management Plan that includes the jumping mouse and its habitat (Service 2005; 70 FR 60955, October 19, 2005; Pueblo of Isleta 2005, entire; 2014, entire). The Service has established conservation partnerships with Ohkay Owingeh and Pueblo of Isleta, and both pueblos have implemented conservation and recovery actions for the improvement of riparian habitat and the jumping mouse. As analyzed in the *Tribal Lands—Exclusions Under Section 4(b)(2) of the Act* section, below, we have excluded both tribal areas from critical habitat based on our ongoing conservation partnerships where the benefits of exclusion from critical habitat outweigh the benefits of including an area within critical habitat.

(25) *Comment:* One of the peer reviewers indicated that the description of the primary constituent elements (PCEs) contains a small amount of outdated information. While the jumping mouse is often, but not always, associated with beaked sedge, willows, or alders, an association with reed canarygrass is unusual.

*Our Response:* Based on this updated information, we have revised the PCEs to remove reference to reed canarygrass (see *Primary Constituent Elements* section, below).

(26) *Comment:* The manner in which Frey (2011, p. 29) is cited in the proposed rule seems to indicate that the author recommended that stream lengths between 4.5 and 6.0 km (2.8 to 3.7 mi) would support a resilient population. The information on stream length was taken out of context.

*Our Response:* Frey (2011, p. 29) summarized characteristics of sites where the subspecies had been captured in the White Mountains, Arizona. We revised the SSA Report and this final rule to clarify that Frey (2011, p. 29) reported stream lengths containing at least 4.5 to 6 km (2.8 to 3.7 mi) of continuous, dense, riparian herbaceous vegetation (suitable habitat) would likely support populations of jumping mice with a high likelihood of long-term persistence.

(27) *Comment:* The determination that stream lengths should be at least twice as large as those reported by Frey (2011, p. 29) introduces a non-scientific basis for the designation of critical habitat.

*Our Response:* Stream length was not determined by doubling the lengths reported by Frey (2011, p. 29). In the SSA Report, we clarified our use of the best scientific and commercial information available for the jumping mouse (Frey 2011, p. 29) and for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Service 2003, pp. 24–25) to explain that the appropriate configuration of critical habitat is provided by protecting multiple local populations (also called subpopulations) throughout a minimum length of stream, ditch, or canal of 9 to 24 km (5.6 to 15 mi) including about 27.5 to 73.2 ha (68 to 181 ac) of suitable habitat. The minimum area needed is given as a range due to the uncertainty

of an absolute minimum and because local conditions within drainages vary (see our response to Comment 1, above). The Recovery Team for the Preble's meadow jumping mouse recommended that at least several medium-sized populations (at least 500 mice) should be protected with each population distributed along a 14- to 26-km (9- to 16-mi) network of connected streams whose hydrology supports riparian vegetation (Service 2003, p. 25). Frey (2011, p. 29) reported that stream lengths containing at least 4.5 to 6 km (2.8 to 3.7 mi) of continuous, dense, riparian herbaceous vegetation (suitable habitat) would likely support populations of jumping mice with a high likelihood of long-term persistence. Following severe wildfires, we found that, depending on fire intensity and the subsequent ash and debris flow within stream reaches, jumping mouse populations can be significantly affected and likely extirpated, even when 15 km (9 mi) of continuous suitable habitat existed prior to the wildfire (Sugarite Canyon; Frey 2006d, pp. 18–21; 2012b, p. 16; Frey and Kopp 2013, entire). After reviewing this information, we conclude that current jumping mouse populations need connected areas of suitable habitat along at least 9 to 24 km (5.6 to 15 mi) of nearly continuous suitable habitat to support populations of jumping mice with a high likelihood of long-term persistence from these types of stochastic and catastrophic events.

(28) *Comment:* The jumping mouse may have been extirpated from Bosque del Apache NWR since 2010, despite the fact that the refuge represents one of the largest protected patches of recently occupied habitat. From 2009–2010, the jumping mouse occupied a 2.7-km (1.7-mi) reach of the Riverside Canal, but the total length of potential habitat was about 10.5 km (6.5 mi). The failure to verify persistence of the subspecies in 2013 suggests that critical habitat units are not large enough.

*Our Response:* The jumping mouse is not extirpated from Bosque del Apache NWR. They were detected during surveys in 2014 (Frey 2013, entire; Service 2013, entire; 2013a, entire; 2013b, entire; Service 2014a, entire), which confirmed the persistence of the subspecies on Bosque del Apache NWR within the remaining habitat. We are designating 21.1 km (13.1 mi) within Bosque del Apache NWR, which would provide the needed size and connectivity of suitable habitat to increase the potential distribution of the jumping mouse and provide population redundancy and resiliency. We are designating this area because this area generally has perennial flowing water with saturated soils (Frey and Wright 2012, entire) and a high potential of being restored to suitable habitat.

(29) *Comment:* We received comments pertaining to dispersal distances and the size of critical habitat units. One recommendation was that the Service should consider dispersal distances from studies on the Preble's meadow jumping mouse of up to 4.3 km (2.7 mi), whereas another suggestion found our characterization of dispersal distances and home range sizes of the jumping mouse appropriate. Several of the proposed critical habitat units are roughly the same size or smaller than 4.3 km (2.7 mi), suggesting that these units could consist of only a single subpopulation that would be exceptionally vulnerable to extinction.

*Our Response:* We did consider information on the natural history of Preble's meadow jumping mouse; however, as stated in the SSA Report, studies indicate that the jumping mouse does not appear to travel as great a distance as Preble's meadow jumping mouse. The maximum distance travelled between two successive points by all radio-collared jumping mice on Bosque del Apache NWR was 744 m (2,441 ft), but most regular daily and seasonal movements were less than 100 m (328 ft) (Frey and Wright 2012, pp. 16, 109; Figure 9). See section 2.6 ''Movements and Home Range'' in the SSA Report (Service, 2014) for additional information.

We reviewed the available natural history information and determined that there is not enough justification to modify our original critical habitat units, especially since our units were generally limited to presence of the primary constituent element of seasonally perennial water. Without water, the other PCEs would not be restored. After considering the variable quality of habitat in many areas outside of the proposed critical habitat, we determined that larger critical habitat units with more reaches of unsuitable or low-quality habitat would not provide additional benefit to the jumping mouse. Consequently, we continue to conclude that current jumping mouse populations need connected areas of suitable habitat along at least 9 to 24 km (5.6 to 15 mi) of continuous suitable habitat to support viable populations of jumping mice with a high likelihood of long-term persistence. Also, see our response to Comment 1, above.

(30) *Comment:* Habitat used by jumping mice is usually linear and very narrow, and must have appropriate vegetation structure, which makes the jumping mice especially vulnerable to habitat fragmentation. Moreover, the jumping mouse has a large geographic range and exhibits natural history features that render jumping mice particularly vulnerable to extinction, including habitat specialization, low densities, and low fecundity. Despite these natural vulnerabilities, the total length of proposed critical habitat was only 310.5 km (192.9 mi). In comparison, spikedace (*Meda fulgida*) (1,013 km (630 mi)) and loach minnow (*Tiaroga cobitis*) (983 km (610 mi)) have two to three times more critical habitat than what is proposed for the jumping mouse, yet these fish have a much smaller natural distribution limited to the Gila River watershed. An approach for the jumping mouse based on a rationale similar to spikedace and loach minnow, which emphasized connectivity, would better provide for the conservation of the jumping mouse.

*Our Response:* The conservation needs of different species, including critical habitat designations, are developed independent of one another. The Act requires that we designate only specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. In addition, the Act requires that we determine whether specific areas outside the geographical area occupied by the species at the time it is listed are essential for the conservation of the species. We have identified those areas occupied at the time of listing that contain the PCEs essential for jumping mouse conservation. In addition, we have identified unoccupied areas, adjacent to these occupied areas, which are essential to the conservation of the subspecies. See our response to Comment 1, above, for additional information.

As stated in the SSA Report, habitat connectivity and patch sizes influence the suitability of habitat (Service 2014). However, in designating critical habitat, we selected upstream and downstream boundaries that would avoid including highly degraded areas that are not likely restorable, areas that were permanently dewatered or permanently developed (*i.e.,* natural vegetation removed), or areas in which there was some other indication that suitable habitat no longer existed and was not likely to be restored. Larger critical habitat units with more stream reaches of unsuitable or low-quality habitat that is not likely restorable would not provide additional benefit to the jumping mouse and do not meet the definition of critical habitat. In the *Criteria Used To Identify Critical*

*Habitat* section, below, we used the best scientific and commercial data available to set out the criteria for identifying the areas that meet the requirements of the Act.

*Comments From Federal Agencies*

(31) *Comment:* There is no clear definition of what constitutes occupied versus unoccupied habitat.

*Our Response:* Occupied areas include the 29 locations where jumping mice were captured since 2005, plus a 0.8-km (0.5-mi) segment upstream and downstream of the capture localities. The 0.8-km (0.5-mi) segments have the potential to be occupied during the active season of the subspecies if a jumping mouse moves the maximum known distance beyond the protective herbaceous cover found within the 29 locations. We also include areas that are considered unoccupied, but are immediately adjacent to these occupied areas. These unoccupied areas are beyond 0.8 km (0.5 mi) of the capture location and generally do not contain currently suitable habitat. These occupied and unoccupied areas immediately adjacent to each other comprise 19 of the 21 critical habitat units/subunits. These critical habitat units are labeled ''partially occupied'' because they include both occupied and unoccupied areas. Finally, we included another two subunits that are completely unoccupied but are essential for the conservation of the jumping mouse. Inclusion of these unoccupied areas provides for expansion of the overall geographic distribution of the subspecies and increases the redundancy.

(32) *Comment:* There is no clear distinction between suitable habitat and critical habitat. Consequently, if an area is not deemed to be essential for the conservation of the subspecies, is consultation still necessary?

*Our Response:* Suitable habitat is a biological term used to describe the necessary habitat characteristics that support a species. For the jumping mouse, suitable habitat is composed of dense, herbaceous riparian vegetation with sufficient seasonally available or perennial flowing waters to support this vegetation as described in the ''Specific Microhabitat Requirements'' section 2.4.1 of our SSA Report (Service 2014). Critical habitat is a regulatory term under the Act and means those areas occupied by the species at the time of listing on which are found those physical or biological features essential for the conservation of the species and may require special management, and those unoccupied areas that are essential for the conservation of the jumping mouse. Critical habitat is defined through rulemaking and may include areas that are and are not considered suitable habitat for the jumping mouse. Conversely, not all areas considered to be suitable jumping mouse habitat are included within a critical habitat designation.

Section 7 of the Act requires any Federal agency to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. If a Federal action may affect a listed species or its critical habitat, regardless of whether that habitat is currently suitable or not, the responsible Federal agency (action agency) must enter into consultation with us (50 CFR 402.14). 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.

(33) *Comment:* Fire, flood, drought, and wild ungulates have always been forces influencing the dynamics of jumping mouse habitat.

*Our Response:* The Service recognizes that these factors have likely always influenced jumping mouse habitat to some degree. However, because of historical, current, and future habitat loss, all of the 29 populations found since 2005 occur within extremely small patches of suitable habitat and most likely contain very few jumping mice, resulting in low population resiliency. In addition, these multiple sources of habitat loss are not acting independently, but may produce cumulative impacts that magnify the effects of habitat loss on jumping mouse populations. Historically larger connected populations of jumping mice would have been able to withstand or recover from local stressors, such as habitat loss from drought, wildfire, or floods. However, the current condition of the remaining small populations means the likelihood of local extirpations is higher. See the discussion of these in section 5.0 ''Stressors and Sources'' in the SSA Report (Service 2014).

*Comments From States*

(34) *Comment:* Please define the phrase appropriately sized patches of suitable habitat, which is first mentioned under the *Physical and Biological Features* section.

*Our Response:* Appropriately sized patches of suitable habitat surrounding each jumping mouse population should be 27.5 to 73.2 ha (68 to 181 ac) along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals. The minimum area needed is given as a range due to the uncertainty of an absolute minimum and because local conditions within drainages vary.

(35) *Comment:* In Arizona, many areas where the jumping mouse occurs are also visited by anglers, and the critical habitat designation could impact the public's fishing opportunities.

*Our Response:* We do not expect impacts to anglers from the designation of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. 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. 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. If there is not a Federal nexus for activities taking place on private or State lands, then critical habitat designation does not restrict any actions that destroy or adversely modify critical habitat. Although expected to be rare, where recreational fishing may have a Federal nexus within the critical habitat designation for jumping mouse, the agency will be required to consult with Service to ensure its actions will not destroy or adversely modify critical habitat.

Where the habitat in question is occupied by the listed species, if there is a Federal nexus, the action agency already consults with the Service to ensure its actions will not jeopardize the continued existence of the species. If critical habitat may be adversely modified or destroyed, then this would also be included in the consultation. If the action was found likely to jeopardize the species or destroy or adversely modify critical habitat, the Service is required, to the extent feasible, to provide reasonable and prudent alternatives (RPAs) that would allow the action to proceed and comply with section 7(a)(2) of the Act. Any RPA must be technologically and economically feasible, must allow for the intended purpose of the action to be met, must avoid jeopardy or adverse modification, and must be within the authority of the action agency to implement. In our experience, in the vast majority of cases, the Service is able

to work with the action agency to successfully provide RPAs.

(36) *Comment:* The Service provides no specific information in the proposed rule regarding the need to designate critical habitat in New Mexico, including the middle Rio Grande, Pecos, and Canadian River basins.

*Our Response:* Section 4 of the Act, and its implementing regulations, 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 or threatened species, using the best scientific and commercial data available at the time. In our proposed rule (78 FR 37328; June 20, 2013), we found critical habitat to be both prudent and determinable and are therefore required to designate critical habitat under the Act.

(37) *Comment:* There is no scientific basis for extending the upstream and downstream boundaries by 0.8 km (0.5 mi) of capture locations to include areas that could be potentially used by the jumping mouse.

*Our Response:* We have used the best available scientific and commercial data regarding movement and dispersal of the jumping mouse. The 0.8-km (0.5-mi) segments are considered occupied because the maximum distance travelled between two successive points by all radio-collared jumping mice on Bosque del Apache NWR was approximately 0.74 km (0.46 mi) (Frey and Wright 2012, pp. 16, 109, Figure 9). See section 2.6 ''Movements and Home Range'' in the SSA Report (Service 2014) for additional information.

(38) *Comment:* The Service should exclude proposed jumping mouse critical habitat from the Rio Grande, New Mexico (Unit 6–Middle Rio Grande) because of the Middle Rio Grande Endangered Species Collaborative Program that provides benefits to endangered species and their habitats, including the jumping mouse.

*Our Response:* 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 he 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. When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat. When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for more information.

In our proposed rule, we did not consider excluding critical habitat within Unit 6 based on the Middle Rio Grande Endangered Species Collaborative Program because this entity does not own or manage lands within critical habitat. While the Service recognizes the contributions to species conservation made by the Middle Rio Grande Endangered Species Collaborative Program, without lands under their authority which they could manage for listed species, we did not consider exclusion based on this program.

(39) *Comment:* The Service claims that all unoccupied areas contain flowing water. This is an error. Surveys conducted by the Arizona Game and Fish Department in 2011 found Centerfire Creek (Subunit 5F) had little water and was underground in some areas with only standing pools.

*Our Response:* In the *Unit Descriptions* section of the proposed rule, we do state that all of the completely or partially unoccupied units and subunits currently have flowing water to allow for future restoration of the essential PCEs 1 and 2. However, in the *Physical or Biological Features* section of the proposed rule, we clarify that suitable habitat is found only when wetland vegetation achieves full growth potential associated with seasonally perennial (persistent water during the vegetation growing season) flowing water and saturated soils. In the *Primary Constituent Elements* section of the proposed rule, we provide further clarification of seasonally perennial flowing water as that which provides saturated soils throughout the jumping mouse's active season that supports tall (average stubble height of herbaceous vegetation of at least 69 centimeters (cm) (27 inches); in this final rule, we have changed that to average stubble height of herbaceous vegetation of at least 61 cm (24 inches)) and dense herbaceous riparian vegetation composed primarily of sedges (*Carex* spp.) and forbs. In the proposed rule (78 FR 37328; June 20, 2013) and the SSA Report (Service 2014), we explain that jumping mouse habitat is subject to dynamic changes that result from flooding and drying of these waterways and the ensuing fluctuations (loss and regrowth) in the quantity and location of dense riparian herbaceous vegetation over time, particularly in response to the ongoing drought. Southwestern riparian and aquatic systems fluctuate due to seasonal and longer-term drought and wet periods, floods, and wildfire. We have updated this final rule and the SSA Report to clarify that flowing water includes seasonally perennial (persistent water during the vegetation growing season) flowing water.

(40) *Comment:* There is too much emphasis placed on the benefits of the American beaver, while ignoring other species such as elk, native fish, mountain lions, bears, and owls.

*Our Response:* More than any other species, the management and restoration of beaver is an important component of jumping mouse conservation. The jumping mouse is often associated with beaver activity because the shallow, slow-moving water from dams and ponds behind beaver dams creates diverse wetland communities that support the required dense riparian herbaceous vegetation for jumping mice (Frey 2006d, p. 52; Frey and Malaney 2009, p. 37). The diverse wetland plant species found in beaver-modified habitat patches may contribute as much as 25 percent of the total herbaceous plant species richness of riparian zones (Wright *et al.* 2002, p. 99). Beavers can also have a substantial impact on the structure and productivity of riparian areas through the cutting of trees and shrubs, which assist a stream in its ability to resist and recover from disturbance (Naiman *et al.* 1988, entire). This may contribute to the maintenance of riparian communities in an early seral (phase of ecological succession advancing towards climax) stage with sparse tree and shrub canopy cover where the sunlight can penetrate, thereby providing a dense herbaceous

understory that is suitable habitat for the jumping mouse.

Beaver activities help to expand areas of shallow ground water and hydrophytic (growing wholly or partially in water) vegetation, and generally create a more heterogeneous floodplain by frequently converting streams from intermittent flow to perennial flow (Baker and Hill 2003, p. 299). This can create natural fire breaks and provide refugia from fire effects, especially where beaver activity results in extensive areas of marsh, wetland, and open water habitats, such as those conditions found within or adjacent to jumping mouse habitat. Because beaver populations have been reduced in many areas throughout the range of the jumping mouse, the corresponding loss of wetland habitats and perennial stream flow has contributed to drying and increased flammability of riparian vegetation.

(41) *Comment:* Colorado Parks and Wildlife encourages the Service to invest additional resources in public outreach for Unit 7 along the Florida River.

*Our Response:* We invested additional resources in public outreach along Unit 7. Although we received no requests for public hearings on the proposed designation, we held informational meetings to address public concerns regarding Unit 7 on August 15, 2013, and on April 24, 2014, in Durango, Colorado.

(42) *Comment:* The conclusions drawn in the critical habitat proposal lack robust experimental study designs and are best characterized as conjecture. How is it possible to develop habitat preferences for a species that is difficult to survey?

*Our Response:* We agree that it would be useful to have more information on the jumping mouse, but it is often the case that robust biological information is lacking for rare species. Section 4 of the Act, and its implementing regulations, 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 or threatened species, using the best scientific and commercial data available at the time. We reviewed the best available scientific information pertaining to the biological needs of the jumping mouse and habitat characteristics where this subspecies is located. We sought comments from independent peer reviewers to ensure that our designation is based on scientifically sound data, assumptions, and analysis. We also solicited information from the general public, nongovernmental conservation organizations, State and Federal agencies that are familiar with the subspecies and its habitat, academic institutions, and groups and individuals that might have information that would contribute to an update of our knowledge of the subspecies, as well as information on the activities and natural processes that might be contributing to the decline of the subspecies. The best available scientific and commercial data, as stated in the ''Specific Microhabitat Requirements'' section of the SSA Report (Service 2014), indicates the jumping mouse has exceptionally specialized habitat requirements that include dense herbaceous riparian habitat with sufficient seasonally available or perennial flowing waters to support this vegetation.

(43) *Comment:* What impact will this critical habitat designation have on the ability of Federal agencies to conduct meaningful forest restoration projects?

*Our Response:* 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 obligation of the Federal action agency under section 7(a)(2) of the Act is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat. It is unlikely that designating critical habitat for the jumping mouse will reduce proactive treatments necessary for forest restoration projects (*i.e.,* to alleviate the risk of catastrophic wildfire) because the majority of treatments are likely to be confined to forested uplands and not within riparian and adjacent upland habitat used by the jumping mouse. As an example, in 2015, when the Service completed a consultation on 110,000 acres for the Southwest Jemez Mountains Restoration Project on the Santa Fe National Forest in New Mexico, no forest restoration treatments were curtailed from the proposed jumping mouse critical habitat (Service 2015). However, the Forest Service or other Federal agencies will need to determine whether their Federal action (*i.e.,* fuels treatments) may affect a listed species or designated critical habitat in accordance with section 7 of the Act. During consultation, the Service works with the Federal agencies on their project description to avoid impacts to the species or critical habitat. If the action is likely to adversely modify critical habitat, reasonable and prudent alternatives to the project description would be established, which could be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that is economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of the listed species or resulting in the destruction or adverse modification of critical habitat. Each consultation is evaluated on a case-by-case basis following our regulations (50 CFR part 402).

(44) *Comment:* Why are locations where the jumping mouse has likely been extirpated from impacts due to wildland fire considered as occupied?

*Our Response:* We are required to use the best available scientific and commercial data for the designation of critical habitat. In our designation, occupancy was determined based on any detections during surveys conducted since 2005. Recent surveys (surveys conducted since 2005) have relied on detection or non-detection (presence or absence) data to determine whether jumping mice persist in areas that contained historical populations or areas that currently contain suitable habitat. As stated in the SSA Report (Service 2014), of the 29 populations where the New Mexico meadow jumping mice have been found extant since 2005, at least 11 populations have been substantially compromised in the past 2 years and seven others may have been affected by recent wildfires. We recognize that it is possible that the jumping mouse could be extirpated from these areas, but the most recent survey data available indicate that these 29 areas are occupied. Further, at the time of listing, these areas contained the physical or biological features essential to the conservation of the subspecies.

(45) *Comment:* PCE 3 includes sufficient areas that contain suitable or restorable habitat. Habitat that is in need of restoration should not be designated as critical habitat.

*Our Response:* Jumping mouse populations are currently small and isolated from one another, and the survival and recovery of the subspecies will require expanding the size of currently occupied areas containing suitable habitat into currently unoccupied areas that may need to reestablish suitable conditions. Currently occupied areas were not deemed sufficient to provide for resiliency and representation for viability. In the SSA Report (Service 2014), we estimate that resilient

populations of jumping mice need connected areas of suitable habitat in the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals (Service 2014a, p. 32). Under the second part of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the subspecies at the time it is listed (*i.e.,* unoccupied), upon a determination that such areas are essential for the conservation of the subspecies.

(46) *Comment:* The premise that any and all livestock grazing is incompatible with jumping mouse habitat is not scientifically defensible. Properly managed livestock grazing can provide ecological benefits to riparian and upland areas.

*Our Response:* Whether livestock grazing results in loss of suitable habitat and adverse effects to a jumping mouse population is likely dependent upon a number of factors including, but not limited to: The number of livestock present; the proportion of suitable habitat patch subjected to grazing; whether grazing occurs during the growing season; precipitation patterns; and the amount of isolation from other patches of suitable habitat. Morrison (1990, p. 142) found that moderate levels of livestock grazing may be compatible with the jumping mouse; however, Morrison (1990a, p. 1; 1990, p. 142; 1991, pp. 16–18) also concluded that, compared to other forms of habitat loss, grazing has the greatest potential for negative impacts on the jumping mouse and riparian habitat. Frey (2006b, p. 57) found that when livestock grazing is present for short periods of time (such as a few hours or days because of unauthorized use when cattle enter livestock exclosures), population abundance of jumping mice may be reduced, but is not extirpated.

However, most livestock grazing is likely to be incompatible with the persistence of jumping mouse populations because of the subspecies' sensitivity to habitat disturbance (Frey 2006b, p. 57). Although livestock grazing can be managed in many different ways, the best available scientific and commercial data indicate that the jumping mouse does not persist in areas when its habitat is subjected to heavy grazing pressure (Morrison 1985, p. 31; Frey 2005a, entire; 2005b, p. 2; 2011, entire). Livestock grazing can cause a rapid loss of herbaceous cover and eliminate dense riparian herbaceous vegetation that is suitable jumping mouse habitat in less than 60 days (Frey 2005a, p. 60; 2007b, pp. 16–17; 2011, p. 43, Figure 16), and possibly even as short as 7 days (Morrison 1989, p. 20). Widespread and intensive livestock grazing, leading to a reduction of tall dense riparian herbaceous vegetation, has been detrimental for the jumping mouse because the quality and quantity of occupied habitats containing suitable habitat have been reduced or eliminated (Frey 2003, pp. 10–14; 2005a, pp. 15–40; 2006d, pp. 10–33; 2011, entire; 2012a, pp. 42, 46, 52; Service 2012c, pp. 1, 6–8, Figure 13). In addition, livestock and elk grazing within jumping mouse habitat affects individual mice by reducing the availability of food resources (Morrison 1987, p. 25; Morrison 1990, p. 141; Frey 2005a, p. 59; 2011, p. 70). Current grazing practices in many areas have resulted in the removal of dense riparian herbaceous vegetation that historically provided jumping mouse habitat and caused the loss of historical populations. There is a strong tendency for livestock to congregate in riparian habitat (Forest Service 2006, pp. 76–77). Frey and Malaney (2009, p. 38) suggests that maintenance of suitable riparian habitat and long-term viability of jumping mouse populations might only be possible through creation of refugial areas by complete exclusion of livestock from the riparian zone. Please see the SSA Report (Service 2014) for further information.

(47) *Comment:* What areas proposed for critical habitat designation have privately owned water rights associated with grazing allotments, water diversions, or irrigation? If private landowners are going to be excluded from using these waters, the Service must complete a takings implications assessment.

*Our Response:* We did not conduct an analysis of privately owned water rights because it is beyond the scope of the environmental assessment and economic analysis. Nevertheless, the economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the jumping mouse. As the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the jumping mouse in a takings implications assessment. The designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding or assistance or 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.

(48) *Comment:* What specific recreational uses cause degradation or destruction of riparian habitat?

*Our Response:* Unregulated dispersed recreational activities, such as camping, fishing, and off-road vehicle use, pose a concern to the jumping mouse because the development of trails, the development of barren areas, and trampling can render habitat unsuitable by reducing or removing dense riparian herbaceous vegetation containing required microhabitat (see section 2.4.1 ''Specific Microhabitat Requirements'' in the SSA Report (Service 2014)). The development of streamside trails and large, bare, compacted areas used for camping and fishing has been and continues to be reported throughout jumping mouse habitat in areas of the Jemez Mountains, New Mexico, and the White Mountains, Arizona (Frey 2005a, pp. 27–28; 2011, pp. 70–71, 76, 88, Figure 30). See section 5.1.10 ''Recreation'' in the SSA Report (Service 2014) for additional details.

(49) *Comment:* The proposed rule states that critical habitat does not include manmade structures (such as buildings, fire lookout stations, runways, roads, and other paved areas) and the land on which they are located; however, some proposed stream reaches, such as the East Fork of the Black River, include developed campgrounds. These areas should be removed from the final critical habitat designation.

*Our Response:* We determined that developed campgrounds or other manmade structures (such as buildings, fire lookout stations, runways, roads, and other paved areas) within the boundaries of critical habitat do not contain physical or biological features essential for the conservation of the subspecies. We have made every effort to remove these developed areas where possible; however, due to the scale of the maps, some areas may inadvertently be included. Developed areas are not reasonably believed to contain, or are capable of supporting, the physical or biological features essential for jumping mouse conservation. Therefore, a Federal action involving these developed lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action would directly or

indirectly affect the physical or biological features in the adjacent critical habitat.

(50) *Comment:* What information does the Service have that indicates specific ecological characteristics are currently present or capable of being restored within the proposed critical habitat? The Service should analyze the Forest Service's Terrestrial Ecological Unit data prior to designating critical habitat.

*Our Response:* Each unit and subunit was evaluated on a site-by-site basis to determine the best configuration of critical habitat to support jumping mouse populations in that unit or subunit. The information we relied upon is presented in the SSA Report (see section 4.6 ''Subspecies Conditions Compared to Needs by Geographic Management Area'' in the SSA Report (Service 2014)). The critical habitat units were first delineated by creating rough areas by screen-digitizing polygons (map units) using Google Earth. We then digitized and refined the units using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a computer Geographic Information System (GIS) program. The polygons were finalized by using current (2005 to 2014) and historical (1985 to 1996) subspecies location points, which were then used in conjunction with hydrology, vegetation, and expert opinion to propose and then finalize the designation. The Forest Service's Terrestrial Ecological Unit data are a GIS coverage of mapped units of land that provide an inventory of various ecotypes on the National Forest. Current vegetative conditions are often used to delineate these ecological map units; however, existing vegetation does not always reflect historical or potential vegetation. Consequently, we did not use this information.

(51) *Comment:* How many riparian areas associated with the critical habitat proposal are classified as being in proper functioning condition by the Forest Service?

*Our Response:* Proper functioning condition is a qualitative assessment method developed by the Bureau of Land Management (BLM) and Forest Service to assess the condition of riparian wetland areas based on hydrology, vegetation, and erosion or deposition (soils) attributes. Although this analysis may be used to inform management prescriptions, develop environmental assessments, or inform resource management plans, the frequency of most proper functioning condition analyses are sporadic in time and space. As a result, we found the best available information for designation of critical habitat for the jumping mouse was based on site-specific data and our knowledge of the corresponding units as described in the SSA Report (Service 2014) and this final rule.

*Comments From Tribes*

(52) *Comment:* The land proposed as critical habitat in Unit 7 (Florida River) is within the boundary of the Southern Ute Indian Reservation and should be indicated accordingly on the map.

*Our Response:* We verified, using the most current land ownership information in GIS, that Unit 7 does not include any lands within the Southern Ute Indian Reservation.

(53) *Comment:* During the public comment period, we received comments from Isleta Pueblo and Ohkay Owingeh expressing their view that they were opposed to the designation of critical habitat and that exclusion of their lands is warranted due to tribal self-governance and continuing our cooperative working relationships.

*Our Response:* Subunits 6A and 6B are excluded from this final designation under section 4(b)(2) of the Act. We have determined that the benefits of exclusion outweigh the benefits of inclusion and have, therefore, excluded these areas from this final critical habitat designation. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for further discussion.

(54) *Comment:* The San Carlos Apache Tribe does not support designation of critical habitat on their reservation.

*Our Response:* We did not propose, nor do we designate, any lands as critical habitat on the San Carlos Apache Reservation.

*Comments From the Public*

(55) *Comment:* It is premature to designate critical habitat for the jumping mouse when it is not even listed as an endangered species.

*Our Response:* Section 4(a)(3) 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 endangered or threatened. The jumping mouse was listed as endangered on June 10, 2014 (79 FR 33119).

(56) *Comment:* The SSA Report was not published in the **Federal Register**, even though it was the primary document on the biology and habitat of the subspecies.

*Our Response:* We made the SSA Report publically available throughout our consideration of critical habitat for the subspecies via the Federal eRulemaking Portal: *http://www.regulations.gov.* We are not required to publish the SSA Report and other supporting documents in the **Federal Register**, but must make all comments, materials, and documentation that we considered in developing this rulemaking publicly available. The June 20, 2013, proposed listing and critical habitat rules (78 FR 37363 and 78 FR 37328, respectively) provided notification that the SSA Report was available on *http://www.regulations.gov* and that we were requesting comments on the proposed rule and associated documents, including the SSA Report. The final listing rule (79 FR 33119; June 10, 2014) also provided notification that the SSA Report was available on *http://www.regulations.gov.*

(57) *Comment:* The fencing of riparian areas to allow only wildlife to access the water is illegal and represents an unconstitutional taking of private property water rights in violation of the Fifth Amendment of the U.S. Constitution.

*Our Response:* The Service has not fenced any areas for the protection of the jumping mouse or its habitat, nor are we proposing any fencing, on private lands. We conducted an economic analysis, an environmental assessment to comply with National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), and a takings implications assessment. Full details can be found in the Required Determinations section, below.

(58) *Comment:* The Service failed to hold any meetings with grazing permittees.

*Our Response:* We did not hold any formal public hearings because we did not receive any requests to do so. However, we did receive requests for informational meetings. Consequently, to address concerns related to the proposed critical habitat, we held informational meetings on August 15, 2013, in Durango, Colorado. Similarly, we held informational meetings in Cañon, New Mexico, on April 24, 2014; in Durango, Colorado, on April 24, 2014; and in Alamogordo, New Mexico, on May 28, 2014.

(59) *Comment:* The Service did not coordinate with the respective counties in each State regarding the proposed designation.

*Our Response:* We mailed notices to all County Commissioners within the proposed designation regarding the proposed rule. We also notified all County Commissioners within the proposed critical habitat designation of the draft environmental assessment and draft economic analysis. Further, we

published a legal notice inviting the general public to comment on the proposed rule in the Albuquerque Journal on June 27, 2013. We also held several informational meetings, as noted in our response to Comment 58, above.

(60) *Comment:* Designation of critical habitat has yielded very poor results in terms of recovery for the majority of listed species.

*Our Response:* Section 4(a)(3) of the Act, 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 endangered or threatened. The jumping mouse was listed as endangered on June 10, 2014 (79 FR 33119). We found the designation of critical habitat to be prudent and determinable in our proposed critical habitat rule (78 FR 37328; June 20, 2013), and we are therefore required to designate critical habitat under the Act.

(61) *Comment:* Will New Mexico Department of Game and Fish be mandated to remove elk to minimize grazing impacts on the critical habitat?

*Our Response:* No. The designation of critical habitat does not impose grazing requirements or restrictions. 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. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a State 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. See our response to Comment 35, above.

(62) *Comment:* Does the Endangered Species Act abrogate the Treaty of Guadalupe Hildalgo?

*Our Response:* No. The Treaty of Guadalupe Hidalgo resulted in grants of land made by the Mexican government in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States. These grants of land were respected as valid, to the same extent that the same grants would have been valid within the territories if the grants of land had remained within the limits of Mexico.

The designation of critical habitat has no impact on non-Federal actions taken on private land (*e.g.,* land grants), unless those activities involve Federal lands, Federal funding, a Federal permit (*e.g.,* grazing permits), or other Federal action. If such a Federal nexus exists and the action affects the designated critical habitat, we will review the action under section 7 of the Act with the appropriate Federal agency. In these cases, a Federal agency action that may affect the listed species or its designated critical habitat would be required to consult with the Service to ensure that their action does not jeopardize the continued existence of the species, and if critical habitat is designated, to ensure that their action is not likely to destroy or adversely modify critical habitat. Therefore, we do not believe that designation of critical habitat for the jumping mouse abrogates any treaty of the United States, including the Treaty of Guadalupe Hidalgo.

(63) *Comment:* There is no evaluation of conservation easements or whether private lands are subject to county land use restrictions that would prevent the threat of development. This indicates that the Service has not made the required findings under the Act of designating only ''determinable'' critical habitat. The Service should forgo designating private lands and work with landowners on a voluntary basis.

*Our Response:* The Service recognizes the vital importance of voluntary, nonregulatory conservation measures in achieving the recovery of endangered species. However, we found no conservation easements or State, Federal, or local regulations that might provide some protection to the jumping mouse or its habitat (see section 5.3 ''Protective Regulations'' in the SSA Report (Service 2014)). Therefore, we are unaware of any protective regulations to prevent ongoing losses of jumping mouse habitat or are unlikely to prevent further future declines of the subspecies, which is why the species is currently listed as endangered.

In regards to county land use restrictions, 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 require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. If there is not a Federal nexus for activities taking place on private or State lands, then critical habitat designation does not restrict any actions that destroy or adversely modify critical habitat.

Section 4(a)(3)(A) of the Act, and implementing regulations (50 CFR 424.12), require us to designate critical habitat to the maximum extent prudent and determinable. Regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following exist: (1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the subspecies are not sufficiently well known to permit identification of an area as critical habitat. We found in our June 20, 2013 (78 FR 37328), proposed rule to designate critical habitat that the biological needs of the subspecies and habitat characteristics where this subspecies is located are sufficiently well known. Further, we conducted an economic analysis, an environmental assessment to comply with NEPA, and a takings implications assessment to assess the impacts of the designation. This and other information represent the best scientific and commercial data available and led us to conclude that the designation of critical habitat is prudent and determinable for the jumping mouse. Therefore, we are required to designate critical habitat for this subspecies to fulfill our legal and statutory obligations.

(64) *Comment:* Given the misperceptions of the impact of the Act, and possible intentional damage to jumping mouse habitat on public land by livestock grazing interests, we suggest the Service consider the economic impacts and benefits of a voluntary grazing permit retirement program as a viable solution to land-use conflicts impacting this and other imperiled species.

*Our Response:* We did not conduct an analysis of a voluntary grazing permit retirement program. Because we do not anticipate that this designation will result in a voluntary grazing permit retirement program, it is beyond the scope of the environmental assessment and economic analysis.

(65) *Comment:* The Service should exclude the area proposed as critical habitat in Unit 7 because it would have significant economic impacts. The Service should also exclude lands owned by the Arizona Game and Fish Department in Unit 5.

*Our Response:* We have not excluded Unit 7 or Unit 5 from designated critical habitat. The Service is not aware of any conservation plans for Unit 7 or Unit 5.

Further, our economic analysis did not find any incremental costs for grazing in Unit 7 and estimated only $5,000 for additional administrative costs for consultation on the operations of the Lemon Dam in Unit 7, the only other possible incremental cost. The economic analysis estimated $9,940,000 of incremental costs for grazing and all other consultation activities in Unit 5 that would only be associated with Forest Service lands and no lands owned by the Arizona Game and Fish Department. Our environmental assessment did not find significant impacts to the human environment. In addition, we are not aware of any national security impacts or any other relevant impacts of the designation of critical habitat. Consequently, neither Unit 7 nor Unit 5 were excluded from this designation under section 4(b)(2) of the Act. The commenters did not provide any additional information for the Service to consider. See Consideration of Impacts under Section 4(b)(2) of the Act, below, for additional information.

(66) *Comment:* One commenter requested that the upstream extent of critical habitat in Unit 7 should be moved farther downstream, as the Florida Ditch's main headgate is regularly maintained and does not currently, nor will it in the future, contain PCEs.

*Our Response:* We reviewed photographs provided by the commenter, as well as imagery from Google Earth, and we agree that this segment at the proposed upstream boundary of Unit 7 does not contain the physical and biological features essential to the conservation of the jumping mouse. It is unoccupied, and is not likely to provide habitat in the future. Therefore, we removed this area from this final critical habitat designation by moving the upstream extent of designated critical habitat along the Florida River 68.6 m (225 ft) downstream of the Florida Ditch's main headgate (see the Summary of Changes from the Proposed Rule section, below). We determined that the area around Florida Ditch's main headgate is unsuitable for the jumping mouse because it is frequently devoid of vegetation and contains irrigation diversion structure, creating unsuitable conditions.

(67) *Comment:* Populations of the jumping mouse along the Florida River have been supported by existing land uses without regulatory intervention. Consequently, the Service cannot demonstrate any benefits from the proposed designation of Unit 7 that is predominately composed of private lands, indicating that the designation would be ''prudent.''

*Our Response:* 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 found in our June 20, 2013, proposed rule (78 FR 37328) that designation of critical habitat was prudent. There is no indication that the jumping mouse is threatened by collection, and there are no likely increases in the degree of threats to the subspecies if critical habitat is designated. This subspecies is not the target of collection, and the majority of the area we are designating in Unit 7 is privately owned with restricted public access. For these reasons, the designation of critical habitat is unlikely to increase the degree of threats to the jumping mouse.

In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits of critical habitat to the jumping mouse include: (1) Protection under section 7(a)(2) 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 in unoccupied areas (for example, Federal agencies were not aware of the potential impacts of an action on the subspecies or, in this case, the majority of habitat along the Florida River that is unoccupied by the subspecies); (2) implementation of section 7(a)(1) of the Act by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the Act; (3) identification of areas where other conservation partners, such as State and local governments, nongovernmental organizations, and individuals, can focus their conservation efforts; (4) provision of educational benefits to State or county governments, or private entities; (5) provision of early conservation planning guidance, to bridge the gap until the Service can complete more thorough recovery planning, because designation of critical habitat occurs near the time of listing; and (6) improvement of awareness to prevent people from causing inadvertent harm to the subspecies. Therefore, we found designation of critical habitat to be prudent (78 FR 37328; June 20, 2013).

(68) *Comment:* The Service did not explain how the general rationale provided justifies designating critical habitat in Units 7 and 8. There is no unit-specific analysis demonstrating that the enormous portion of unoccupied lands in Units 7 and 8 is ''essential to the conservation of the species'' and that limiting the designation to occupied areas ''would be inadequate to ensure the conservation of the species.'' Therefore, the broad area proposed for these units is arbitrary and capricious.

*Our Response:* As we presented in the SSA Report (Service 2014), the jumping mouse occurs within eight geographic management areas, which are defined by the external boundaries of the geographic distribution of historical populations. Each critical habitat unit is within one of the eight geographic management areas. Rangewide, we determined that the jumping mouse needs at least two resilient populations (where at least two existed historically) within each of eight identified geographic management areas (*i.e.,* critical habitat units). This number and distribution of resilient populations is expected to provide the subspecies with the necessary redundancy and representation to provide for viability.

Units 7 and 8 are considered partially occupied. Currently the jumping mouse is known only from one location within each of these geographic management areas (Units 7 and 8). Further, the current population in the occupied critical habitat units is represented by habitat patches that are undersized, isolated, and too small to be resilient. Consequently, unoccupied critical habitat is needed to allow for the expansion of the current population and for the establishment of new populations. These unoccupied areas are essential to the conservation of the jumping mouse because they contain current and restorable PCEs that will allow for the expansion of the existing populations and allow for the establishment of new populations. Therefore, unoccupied areas are included in the designation under section 3(5)(A)(ii) of the Act. Further description is provided in the SSA Report in sections 3.3 ''Rangewide Subspecies Needs'' and 4.2 ''Habitat Connectivity and Patch Sizes'' (Service 2014).

(69) *Comment:* Examination of satellite imagery shows that the 100-m (330-ft) lateral extent of proposed critical habitat units contains a great deal of land in some areas that is under

cultivation, or otherwise does not contain riparian dense herbaceous vegetation, and does not have flowing water. Therefore, this larger area does not include any of the PCEs and should not be part of the designation. Alternatively, other commenters believed that the proposed 100-m (330-ft) lateral extent of proposed critical habitat did not accurately reflect limits of the jumping mouse habitat and is likely to leave individual jumping mice or the entire subpopulation outside of critical habitat areas (*e.g.,* Unit 6), seasonally or even permanently.

*Our Response:* The Act defines critical habitat as (1) specific areas within the geographical area occupied by the [sub]species, at the time it is listed, on which are found those physical or biological features essential to the conservation of the [sub]species and which may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the [sub]species at the time it is listed, upon a determination that such areas are essential for the conservation of the [sub]species. The areas that are unoccupied at the time of listing are not required to contain the PCEs essential to conservation of the subspecies. However, all unoccupied areas we are designating as critical habitat have seasonally perennial flowing water with saturated soils and have the potential to be restored to suitable habitat, including the 100-m (330-ft) lateral extent that captures upland areas necessary for hibernation that are outside the regularly inundated floodplain.

Areas used for hibernation likely do not include lands under cultivation, yet little research has been done on hibernacula (hibernation burrows) of the jumping mouse. It is assumed that they are similar to other subspecies of meadow jumping mouse. Preble's meadow jumping mice dig their own hibernation burrows and are solitary hibernators (Service 2003, p. 8). Only one hibernation nest has ever been observed for the New Mexico meadow jumping mouse (Wright and Frey 2011, p. 3). The hibernaculum was below ground and beneath woody debris under a seep willow (*Baccharis* spp.) (Wright and Frey 2011, p. 8). The site was dry, with an absence of herbaceous vegetation, which was similar to maternal nest sites selected by females (Wright and Frey 2011, pp. 8, 11; Frey and Wright 2012, p. 28).

We acknowledge that some jumping mice may use areas outside of the mapped boundary of designated critical habitat. However, the best available scientific and commercial information indicates that a 100-m (330-ft) lateral extent of critical habitat in occupied areas contains the physical or biological features essential to the jumping mouse and in unoccupied areas is essential for the conservation of the subspecies (see our response to Comment 68, above). As stated in the SSA Report (Service 2014), individual jumping mice also need intact upland areas that are up-gradient and beyond the floodplain of rivers and streams and adjacent to riparian areas and wetlands because this is where they build nests or use burrows to give birth to young in the summer and to hibernate over the winter. Trainor *et al.* (2012, p. 433) found that 97 percent of the normal daily movements and resource requirements of Preble's meadow jumping mice occurred within 110 m (361 ft) from the edge of streams; this includes areas outside of the immediate riparian zones. Extensive movements beyond this distance were limited to less than 3 percent of the home range sizes in Preble's meadow jumping mouse (Trainor *et al.* 2012, p. 433). We assume that regular use of these adjacent uplands areas would be similar with the jumping mouse. Therefore, we are designating the adjacent floodplain and upland areas extending approximately 100 m (330 ft) outward from the boundary between the active water channel and the floodplain (as defined by the bankfull stage of streams) or from the top edge of the ditch or canal.

(70) *Comment:* The Service should investigate alternatives within proposed Subunit 6C (Unit 6 in this final rule) that would reduce or eliminate any additional water flow requirements at any of the points where the Middle Rio Grande Conservancy District delivers water to Bosque del Apache NWR. What are the specific flow requirements for critical habitat?

*Our Response:* The designation of critical habitat does not impose water flow requirements or restrictions. 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. Our environmental assessment found that it is unlikely that section 7 consultations will result in flow requirements solely for avoiding adverse modification of critical habitat because the flows would already be necessary for avoiding jeopardy to the jumping mouse in the occupied segments along each stream (Harris Environmental 2014, p. 63). In our economic analysis, we also found it is unlikely that critical habitat on Bosque del Apache NWR would generate additional requests for conservation efforts beyond what would be required due to the listing of the species because the subunit is partially occupied by the jumping mouse (IEc 2014, entire). Nevertheless, future section 7 consultations will evaluate whether proposed actions jeopardize the continued existence of the jumping mouse or adversely modify or destroy critical habitat.

(71) *Comment:* The Service should exclude the subunits proposed as critical habitat in Unit 6 (Middle Rio Grande, New Mexico).

*Our Response:* Section 4(b)(2) of the Act states that the Secretary may exclude areas from the final critical habitat after considering the economic impact, impact on national security, or any other relevant impact of the designation. In our June 20, 2013, proposed rule (78 FR 37328), Unit 6 consisted of three subunits: 6A (Isleta Marsh), 6B (Ohkay Owingeh), and 6C (Bosque del Apache NWR). Proposed Subunits 6A and 6B are excluded from this final designation under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of including these areas as critical habitat. For more information, see Consideration of Impacts under Section 4(b)(2) of the Act, below. Proposed Subunit 6C, Bosque del Apache NWR, is occupied by the subspecies and is under Federal ownership. The Service's draft 4(b)(2) guidance states that we will generally not exclude Federal lands from critical habitat designation. Consequently, proposed Subunit 6C was not considered for exclusion in our proposed rule (78 FR 37328; June 20, 2013), and is not excluded in this final rule. As a result, proposed Subunit 6C is renamed Unit 6 in this rule. The commenter did not provide any additional information for the Service to consider.

(72) *Comment:* The Service should exclude proposed Subunit 3C (Rio de las Vacas, New Mexico) because it is unoccupied and there is no scientific basis for the designation.

*Our Response:* We conclude that this area is essential to the conservation of the jumping mouse because: (1) The areas occupied by the jumping mouse since 2005 do not contain enough suitable, connected habitat to support resilient populations of jumping mouse; (2) the currently unoccupied segments within individual stream reaches or waterways need to be of sufficient size to allow for the expansion of populations and provide connectivity (active season movements and

dispersal) between multiple populations as they become established; (3) additional areas need habitat protection to allow restoration of the necessary herbaceous vegetation for possible future reintroductions; and (4) multiple local populations along streams are important to maintaining genetic diversity within the populations and for providing sources for recolonization if local populations are extirpated. Therefore, all of the partially occupied or completely unoccupied areas are included in the designation under section 3(5)(A)(ii) of the Act.

The Service is not aware of any conservation plans for Subunit 3C. The economic analysis estimated $3,400,000 of incremental costs for grazing and all other consultation activities in Subunit 3C associated with Forest Service lands. Our environmental assessment did not find significant impacts to the human environment. In addition, we are not aware of any national security impacts or any other relevant impacts of the designation of critical habitat. Consequently, we did not exclude Subunit 3C from this designation. See Consideration of Impacts under Section 4(b)(2) of the Act, below. The commenter did not provide any additional information for the Service to consider.

(73) *Comment:* Morrison (1990, entire) reported that grazing may be compatible with maintenance of jumping mouse populations. Moreover, in the environmental impact statement for the San Diego Range Allotment, the Forest Service found that maintaining 10 cm (4 in) of stubble height in grazed areas would not cause a trend toward Federal listing of the jumping mouse.

*Our Response:* Morrison (1990, p. 142) found that moderate livestock grazing that is carefully monitored could be compatible. Unfortunately, little monitoring has occurred over the last few decades within jumping mouse habitat on National Forest lands. Morrison (1990, p. 142) also reported that livestock grazing had the highest potential for impacting streamside riparian vegetation and wet meadow habitat. See our response to Comment 46, above, about livestock grazing and the jumping mouse.

We found that current forage utilization guidelines of the Forest Service have limited the availability of adequate vertical cover of herbaceous vegetation and significantly affected jumping mouse habitat in areas that are not protected from livestock (Forest Service 2013, entire; Frey 2005a, entire; 2007b, pp. 16–17; 2011, p. 43; Service 2007, entire).

We have no information that indicates that livestock grazing is likely to be reduced in the future or that areas adjacent to recently documented populations would be managed to provide suitable habitat for expansion of jumping mouse populations. Morrison (2014, p. 2) indicates that grazing is one of the most problematic factors affecting jumping mouse habitat and this issue must be addressed in conjunction with critical habitat and recovery of the subspecies. Consequently, the designation of critical habitat will ensure that livestock management practices authorized by Federal agencies are not conducted without required consultation.

(74) *Comment:* The Service must identify specific areas or sections as critical habitat rather than long stretches of San Antonio Creek (Subunit 3A), Rio Cebolla (Subunit 3B), and Rio de las Vacas (Subunit 3C).

*Our Response:* When we conduct a critical habitat analysis, we use the best available scientific and commercial data to determine the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential for the conservation of the species which may require special management considerations or protection. We also analyze whether specific areas outside the geographical area occupied by a species at the time it is listed are essential for the conservation of the species. As stated in the proposed rule (78 FR 37328; June 20, 2013) and the SSA Report (Service 2014), in considering the area needed for maintaining resilient populations of adequate size with the ability to endure adverse events (such as floods or wildfire), we estimate that resilient populations of jumping mice need connected areas of suitable habitat in the range of at least 27.5 to 73.2 ha (68 to 181 ac), along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals. We selected upstream and downstream boundaries that would avoid including highly degraded areas that are not likely restorable, areas that were permanently dewatered or permanently developed (*i.e.,* natural vegetation removed), or areas in which there was some other indication that suitable habitat no longer existed and was not likely to be restored. These unoccupied areas are essential to the conservation of the jumping mouse because they will allow for the expansion of the existing populations and allow for the establishment of new populations. See our responses to Comments 1, 68, and 69, above, for additional information.

(75) *Comment:* There is not enough information known on the biological needs of the jumping mouse to designate critical habitat, especially because almost nothing is known about the populations along the Florida River (Unit 7) and Sambrito Creek (Unit 8).

*Our Response:* The Act requires us, to the maximum extent prudent and determinable, to designate critical habitat at the time the species is determined to be an endangered or threatened species based on the best scientific and commercial data available. It is often the case that biological information may be limited for rare species; however, we reviewed all available information and incorporated it into this final rule.

(76) *Comment:* There are ongoing efforts by Colorado Parks and Wildlife to revitalize and enhance the wetlands of Sambrito Creek. Accordingly, section 7 consultation requirements for proposed Unit 8 would impact the ability to complete the project in a timely matter and result in increased administrative and substantive costs.

*Our Response:* Our understanding from Colorado Parks and Wildlife is that the project is complete and there were no increased administrative and substantive costs.

(77) *Comment:* What dams, diversions, wells, and management activities involve a Federal nexus? What areas proposed as critical habitat have privately owned water rights associated with them?

*Our Response:* Section 7(a)(2) of the Act requires 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 in unoccupied areas. The Service conducted outreach efforts to other Federal agencies and limited interviews with relevant stakeholders concerning the likely effects of critical habitat. The U.S. Army Corps of Engineers anticipated section 7 consultation for the rehabilitation of Lake Dorothey and Lake Alice in Unit 1 (partially occupied by the subspecies). In addition, the Service anticipates consulting on the operations of the Lemon Dam in Unit 7 (partially occupied by the subspecies), which is owned by the Bureau of Reclamation. Lastly, the Service anticipates the re-initiation of a programmatic consultation for water use and management activities on the Middle Rio Grande in Unit 6 (partially occupied by the subspecies) (Harris Environmental Inc., 2014, pp. 59–61;

IEc 2014, pp. 14–16). The Service did not receive any further information on water management structures. Per section 7 of the Act, it is the responsibility of the respective Federal agencies to determine whether any of their ongoing or proposed actions may affect jumping mouse critical habitat and to consult with the Service. We did not conduct an analysis of privately owned water rights because it is beyond the scope of the environmental assessment and economic analysis. Nevertheless, the economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the jumping mouse. As the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation.

(78) *Comment:* Many private land inholdings are unfenced and managed as part of a grazing unit with Forest Service lands.

*Our Response:* In these instances, the Forest Service will determine whether actions on private lands are interrelated or interdependent with the Federal permit authorizing grazing on public lands. If the action is interrelated or interdependent and may affect the listed species or its designated critical habitat, then section 7 consultation under the Act will be necessary.

(79) *Comment:* The proposed critical habitat designation would conflict with Executive Order 13563 (Improving Regulation and Regulatory Review), which says that our regulatory system must protect public health, welfare, safety, and the environment, while promoting economic growth, innovation, competitiveness, and job creation.

*Our Response:* We have developed this rule in a manner consistent with these requirements. See the *Regulatory Planning and Review (Executive Orders 12866 and 13563)* statement in this final rule, below.

(80) *Comment:* It is impossible to maintain an average stubble height of greater than 61 cm (24 in) throughout the growing season because plants die back each year and because site potential or year-to-year variability in growing conditions will preclude plants reaching this height every year.

*Our Response:* The designation of critical habitat does not require management or maintenance of the PCEs, such as vegetation height. This suitable habitat, of average stubble height of greater than 61 cm (24 in), is found only when wetland vegetation achieves full growth potential associated with seasonally perennial flowing water and moist soils.

(81) *Comment:* At three locations along the East Fork of the Little Colorado River, Arizona, herbaceous riparian vegetation that was ungrazed did not average 61 cm (24 in) in height. Site potential and yearly variability in growing conditions will preclude plants achieving maximum expression of height on every site and in every year.

*Our Response:* We acknowledge and agree that site potential and yearly growing conditions will influence the height of dense herbaceous riparian vegetation. The designation of critical habitat does not require the management or maintenance of the PCEs, such as vegetation height. 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. See our response to Comment 61, above, for additional information on section 7 consultation.

(82) *Comment:* There is significant uncertainty and lack of scientific evidence demonstrating that the jumping mouse exists or existed in the Florida River, Colorado (Unit 7); therefore, critical habitat should not be designated there.

*Our Response:* The best available scientific evidence confirms the existence of New Mexico meadow jumping mice from the Florida River, Colorado. Frey (2008c, pp. 36, 42, 44) verified three museum specimens (one from 1945 and two from 2007) from Florida River, La Plata County. Two of these jumping mice were captured from private property along the Florida River (Museum of Southwestern Biology 2007, entire; 2007a, entire; Frey 2008c, pp. 42–45, 56; 2011a, pp. 19, 33). Another peer reviewer and subspecies expert, Dr. Jason Malaney (Malaney *et al.* 2012, p. 695; Appendix S1), genetically verified specimens collected in 2007 along the Florida River as New Mexico meadow jumping mice (museum numbers 1154917 and 155117). Recent genetic and morphological studies also conclusively found that the New Mexico meadow jumping mouse is a distinct subspecies and is genetically discrete from other *Zapus hudsonius* subspecies (King *et al.* 2006, pp. 4336–4348; Vignieri *et al.* 2006, p. 242; Frey 2008c, p. 34; Malaney *et al.* 2012, p. 695; Figure 1).

(83) *Comment:* The proposed Unit 7 (Florida Unit) extends over 9.7 km (6 mi) upriver from where the two jumping mice were captured; this distance is not supported by scientific information regarding habitat requirements or reported movements by the subspecies.

*Our Response:* We used the best available scientific and commercial information in designating critical habitat based on the physical and biological features and PCEs of occupied areas; and unoccupied areas that were essential to the conservation of the subspecies, as specified in section 4 of the Act. See our response to Comment 1, above, which describes our method of designating critical habitat. As stated in the SSA Report (Service 2014, entire) and this final rule, additional populations are needed to provide connectivity and expand jumping mouse populations throughout the drainage. Since there is currently limited suitable habitat of only 0.15 ha (0.37 ac), we included 13.6 km (8.4 mi) in the unit, which would provide the needed size and connectivity of suitable habitat of the jumping mouse in the Florida River and provide population redundancy and resiliency essential to the conservation of the subspecies.

(84) *Comment:* There is no evidence that, even if the specimens from the Florida River (Unit 7) are New Mexico meadow jumping mice, this northern, outlier area is critical to the survival of the subspecies.

*Our Response:* See our response to Comment 82, above, about the existence of the subspecies in the Florida River. As stated in the SSA Report (Service 2014), the subspecies' overall level of extinction risk is high, given the ongoing and likely future losses of habitat in conjunction with the disjunct and isolated nature of populations. Rangewide, we concluded that the jumping mouse needs at least two resilient populations (where at least two existed historically) within each of eight identified geographic management areas. This number and distribution of resilient populations is expected to provide the subspecies with the necessary redundancy and representation to provide for viability. Conservation of each of the currently remaining 29 populations is vital for maintaining the overall redundancy and representation for the subspecies. Because jumping mouse populations are currently small and isolated from one another, the survival and recovery of the subspecies will require expanding the size of currently occupied areas containing suitable habitat into currently unoccupied areas that need to reestablish suitable conditions. The ability of jumping mouse populations to be resilient to adverse stochastic events depends on the robustness of a population and the ability to recolonize

if populations are extirpated. In this designation, each of the eight critical habitat units is essential for critical habitat to serve its intended purpose; loss of functionality of even one unit would severely impair the conservation functionality of the entire designation. This is further explained in section 3.3 ''Rangewide Subspecies Needs'' of the SSA Report (Service 2014).

(85) *Comment:* The prohibition against adversely modifying critical habitat under section 9 of the Act, irrespective of a Federal nexus, will affect private landowners.

*Our Response:* Section 9 of the Act does not pertain to critical habitat. The prohibition against ''take'' of a listed species under section 9 of the Act applies to individuals of an endangered or threatened species.

*Comments on Environmental Assessment*

(86) *Comment:* The environmental assessment should address the type and extent of monitoring that will be needed for jumping mouse populations and habitat.

*Our Response:* The environmental assessment analyzes the environmental consequences that may result from the designation of critical habitat for the jumping mouse. The designation of critical habitat does not require monitoring of populations or habitat of the jumping mouse. This is beyond the scope of the environmental assessment, but will likely be part of the forthcoming recovery plan.

(87) *Comment:* Multiple factors, including significance of impacts, controversy, regulatory takings implications, and environmental justice, indicate that an environmental impact statement is required under NEPA.

*Our Response:* An environmental impact statement is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an environmental assessment of the effects of the proposed designation. On April 8, 2014, we announced the availability of the draft environmental assessment in the **Federal Register** (79 FR 19307) and asked for public comment. Following consideration of public comments, we prepared a final environmental assessment that determined that the critical habitat designation for the jumping mouse does not constitute a major Federal action having a significant impact on the human environment. That determination is the basis for our finding of no significant impact (FONSI). Both the final environmental assessment and FONSI are available for public on *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0014.

(88) *Comment:* There has been no consideration of excluding areas of critical habitat based on other relevant impacts to the cultural and historic traditions of the people within northern New Mexico.

*Our Response:* In the draft environmental assessment, we evaluated impacts to cultural and historical resources from the designation of critical habitat for the jumping mouse. We found that negative impacts on human health or the natural environment are not anticipated.

In the draft economic analysis, we evaluated impacts to cultural and historical resources from the designation of critical habitat for the mouse. Project modifications to avoid adverse modification of unoccupied critical habitat (Service 2013c), which may affect cultural resources, include: (1) Relocate the project to an area outside of jumping mouse critical habitat; (2) reduce the size and configuration of the proposed project to avoid, reduce, or eliminate the effects to unoccupied critical habitat; and (3) avoid ground-disturbing activities or reduce project elements that would preclude the development of habitat patches containing dense herbaceous riparian vegetation.

These project modifications are unlikely to affect cultural resource projects. Similar project modifications also would apply to many other types of projects (*e.g.,* highway reconstruction, development, water management) and would serve to protect cultural resources from impacts caused by these other projects. Any ground-disturbing actions to protect critical habitat (*e.g.,* exclosure fencing) would require cultural and archaeological surveys and be subject to separate cultural resource and NEPA analysis. In our draft environmental assessment, we analyzed potential impacts on unique cultural and historic resources in the area and found no impacts (Harris Environmental 2014, p. 118).

In the draft environmental assessment, we found that costs associated with designation of critical habitat for the jumping mouse are not likely to have a significant impact on low-income or minority populations because: (1) Total costs are estimated to be less than $100 million in any one year (and were estimated to be $23 million per year in 2014), and (2) costs would be distributed among multiple agencies and private parties. Therefore, significant disproportionately high and adverse impacts to minority or low-income populations, or to cultural and historic traditions, are unlikely to occur.

(89) *Comment:* Several commenters stated that the Service cannot propose a critical habitat designation prior to the analysis of alternatives under NEPA and a draft economic analysis. On August 28, 2013 (78 FR 53058), the Service revised regulations implementing the Act to provide that a draft economic analysis be completed and made available for public comment at the time of publication of a proposed rule to designate critical habitat. The Service did not complete an economic analysis and make it available for public comment at the time of publication of a proposed rule to designate critical habitat for jumping mouse.

*Our Response:* The Service published our proposed rule to designate critical habitat for the jumping mouse on June 20, 2013 (78 FR 37328), more than 2 months prior to the publication of the final rule revising the regulations for impact analyses of critical habitat (78 FR 53058; August 28, 2013), and more than 4 months prior to that final rule's effective date (October 30, 2013). On June 20, 2013, our regulations at 50 CFR 424.19 stated: ''The Secretary shall identify any significant activities that would either affect an area considered for designation as critical habitat or be likely to be affected by the designation, and shall, after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities.'' The Service interpreted ''after proposing'' to mean after publication of the proposed critical habitat rule. Consequently, when we published the jumping mouse proposed critical habitat rule, we followed the regulations that were current at that time.

The draft environmental assessment is used to decide whether critical habitat will be designated as proposed or if further refinements or analyses are needed. The Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (40 CFR 1501.3) state that ''Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.'' This same statement is reiterated in the Department of the Interior's regulations for implementing NEPA (43 CFR 46.300(b)). Therefore, we are not required to prepare an environmental assessment prior to the publication of a proposed critical habitat designation. In addition, the Departmental regulations state that

''bureaus may seek comments on an environmental assessment if they determine it to be appropriate'' (43 CFR 46.305(b)). As such, on April 8, 2014, we announced the availability of, and solicited public comment on, the draft environmental assessment of the proposed critical habitat designation in the **Federal Register** (79 FR 19307).

(90) *Comment:* The Service must perform a more thorough analysis of the oil and gas potential in proposed Unit 7 because new geological information and technologies may reveal deposits that currently have no or low potential.

*Our Response:* We have used the best scientific and commercial data available at the time in developing this critical habitat designation and associated documents such as the environmental assessment and economic analysis. In our draft environmental assessment, we found that conventional oil and gas extraction does not currently occur within the proposed critical habitat, and we are aware of no proposed oil or gas extraction beyond coalbed methane. As stated in the environmental assessment, coalbed methane exploration and production has the potential to fragment or eliminate habitat of the jumping mouse within Sugarite Canyon, New Mexico, and the Florida River and Sambrito Creek, Colorado (Harris Environmental 2014, pp. 76–81). Within Unit 7, there are only 2.5 ha (6 ac) of critical habitat in areas with potential for coalbed methane development on BLM lands. The BLM does not anticipate consultation for coalbed methane development on any of the critical habitat units (BLM 2013, entire). There is no critical habitat on Forest Service lands within Unit 7. This indicates consultation concerning coalbed methane development is not likely.

Consequently, an analysis of potential impacts to conventional oil and gas extraction is not warranted. The ''Energy Resources'' section of the draft environmental assessment provides further discussion regarding this topic.

(91) *Comment:* The designation of critical habitat will have a greater impact than the mere listing of the subspecies because it contains large areas not occupied by the jumping mouse and will result in additional consultations with Federal agencies that might not have otherwise occurred.

*Our Response:* The designation of unoccupied critical habitat may result in additional consultations. However, only those projects that may affect critical habitat and have a Federal nexus would require section 7 consultations with the Service. During these consultations, it is the responsibility of the Federal action agency to consult with the Service, not the private individual or company. If there is not a Federal nexus for a given action or if critical habitat is not affected, then critical habitat designation does not restrict any actions that destroy or adversely modify critical habitat including on private lands. Our environmental assessment found that the effects of proposed critical habitat designation for the jumping mouse would likely only result in minor increases in administrative effort for section 7 consultations (Harris Environmental 2014, pp. 115–116). See our response to Comment 35, above, for further information on section 7 consultation for critical habitat. See also Consideration of Impacts under Section 4(b)(2) of the Act, below.

(92) *Comment:* Several commenters asked that we not designate critical habitat if it would compromise water rights or otherwise adversely impact farmers or other agricultural interests such as livestock grazing, irrigation ditches, acequias, or Rio Grande Compact delivery obligations within critical habitat units.

*Our Response:* Pursuant to the Act, we are statutorily required to designate critical habitat for a federally listed species if it is determined to be both prudent and determinable. We made a determination that critical habitat was both prudent and determinable in our proposed rule (78 FR 37328; June 20, 2013). 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 State, tribal, local, or private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. If there is not a Federal nexus for activities taking place on private or State lands, then critical habitat designation does not restrict those actions. 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. The mere promulgation of a regulation, like designating critical habitat, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land, which is not the case with critical habitat. The Act does not restrict all uses of critical habitat, but only imposes requirements under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. These requirements do not apply to private actions that do not need Federal approvals, permits, or funding. Furthermore, as mentioned above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives. See our response to Comment 35, above.

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 Service has considered these factors; see Consideration of Impacts under Section 4(b)(2) of the Act, below. We are unaware of any instances where water rights or other agricultural interests would be significantly impacted by this designation. Our environmental assessment found that the designation of critical habitat would not have a significant impact on the human environment and that potential impacts on environmental resources, both beneficial and adverse, would be minor. Impacts of critical habitat designation on natural resources within the areas proposed as jumping mouse critical habitat were analyzed and discussed in chapter 3 of the environmental assessment. Applying the analysis of impacts to the significance criteria identified in chapter 3, the Service concluded that the adverse impacts of critical habitat designation would not be significant (Harris Environmental 2014, pp. 115–116).

*Further, our final economic analysis did not indicate any disproportionate economic impacts resulting from the designation, and no impacts to national security or other relevant impacts were identified with the exception of Isleta Pueblo and Ohkay Owingeh (see Tribal Lands—Exclusions Under Section 4(b)(2) of the Act, below). The economic analysis also addresses impacts to livestock grazing in section 4 and impacts on water management in section 3.*

*Comments on Economic Analysis*

(93) *Comment:* The designation of critical habitat for the jumping mouse in the Middle Rio Grande, New Mexico (Unit 6), would result in an increase in time and cost for consultations and impact water diversions, the use of water, and agriculture.

*Our Response:* In our economic analysis, we anticipate the re-initiation of a programmatic consultation for water use and management activities on the Middle Rio Grande, which would include critical habitat on Bosque del Apache NWR. This re-initiation is expected to occur regardless of critical habitat designation because Unit 6 is partially occupied by the subspecies. It is unlikely that additional project modification would be required to avoid adversely modifying or destroying critical habitat, because the subspecies is tied so closely to its habitat. Our incremental effects memo provides a detailed description of the information used for the analysis (Service 2014, entire). Therefore, incremental costs are likely limited to the additional administrative costs associated with addressing adverse modification in the consultation. This incremental administrative effort due to the designation of critical habitat should not impact the timeliness of consultation.

(94) *Comment:* Any increase in water demand to maintain flow requirements for critical habitat on Bosque del Apache NWR will result in less water for consumptive use within the middle Rio Grande in New Mexico.

*Our Response:* In our economic analysis, we found it is unlikely that critical habitat on Bosque del Apache NWR would generate additional requests for conservation efforts beyond what would be required due to the listing of the subspecies because the subspecies is tied so closely to its habitat. It is unlikely that additional project modification would be required to avoid adversely modifying or destroying critical habitat. See our response to Comment 93, above.

(95) *Comment:* The Service is bound by law to provide a more complete economic analysis of the impacts and not just the draft economic screening memorandum.

*Our Response:* The economic screening memorandum is our economic analysis of the proposed critical habitat designation (IEc 2014, entire). This analysis provides us with information on the potential for the proposed critical habitat rule to result in costs exceeding $100 million in a single year. The draft economic analysis addressed potential economic impacts of critical habitat designation for the jumping mouse. To that end, the analysis estimates impacts to activities, including grazing, water use, and recreation, that may experience the greatest impacts in compliance with section 4(b)(2) of the Act. The draft screening memo is provided to the public for review and comment. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable economic impacts of this critical habitat designation. We conclude that critical habitat designation for the jumping mouse is unlikely to generate costs exceeding $100 million in a single year. Information relevant to the probable economic impacts of critical habitat designation for the jumping mouse is available in the screening analysis (IEc 2014), available at *http://www.regulations.gov*.

(96) *Comment:* The economic analysis fails to consider consultation with Federal Emergency Management Agency and Natural Resources Conservation Service in proposed Unit 7 that would affect farmers on private land that get loans, grants, subsidies, and technical assistance.

*Our Response:* We contacted these agencies via letter and requested information to serve as a basis for conducting an economic analysis of the proposed critical habitat designation for the jumping mouse. We received no information on anticipated consultations relating to this critical habitat designation from these two Federal agencies. Consequently, based on the best available scientific and commercial data, the economic analysis did not forecast any consultations occurring with Federal Emergency Management Agency or Natural Resources Conservation Service in Unit 7.

(97) *Comment:* The Southern Ute Tribe receives water from the Florida Project in proposed Unit 7 (Florida River) to irrigate land within the reservation. The Southern Ute Tribe is concerned that the Service did not evaluate the economic impacts related to consultation with the Bureau of Reclamation and whether the designation of critical habitat may impair their abilities to divert and manage water.

*Our Response:* Our economic analysis found that it is unlikely that critical habitat would generate additional requests for conservation efforts beyond what would be required due to the listing of the subspecies because the needs of the subspecies are tied so closely to its habitat. It is unlikely that additional project modification would be required to avoid adversely modifying or destroying critical habitat. See our response to Comment 93, above. Therefore, incremental costs to this project are likely limited to the additional administrative costs associated with addressing adverse modification in the consultation.

(98) *Comment:* Lemon Dam upstream of Unit 7 (Florida River) is principally managed by the Bureau of Reclamation. Consequently, there is a concern that routine maintenance and operations may trigger section 7 consultation, which may impact timely dam repairs and water releases.

*Our Response:* Our economic analysis anticipated that we will undergo a formal consultation on the operations of the Lemon Dam in Unit 7, which is owned by the Bureau of Reclamation (IEc 2014, p. 15). As described in the economic screening memorandum, it is unlikely that critical habitat would generate additional requests for conservation efforts beyond what would be required due to the listing of the subspecies because the subspecies is so closely tied to its habitat. Unit 7 is partially occupied by the jumping mouse (IEc 2014, p. 15). It is unlikely that additional project modification would be required to avoid adversely modifying or destroying critical habitat. See our response to Comment 93, above. Therefore, incremental costs to this project are likely limited to about $5,000, the additional administrative costs associated with addressing adverse modification in the consultation (IEc 2014, pp. 15, 17). This incremental administrative effort due to the designation of critical habitat should not impact the timeliness of repairs and water releases.

(99) *Comment:* Private landowners within the proposed critical habitat units are opposed to the designation due to the economic impacts that will result.

*Our Response:* We completed an economic analysis of the likely impacts of designating critical habitat for the jumping mouse on water use and management, transportation, recreation, development, and subspecies and habitat management. The economic analysis provides us with the information on the potential for the proposed critical habitat rule to result in costs exceeding $100 million in a single year. This analysis estimated direct (section 7) and indirect costs likely to result from the proposed critical habitat designation for the jumping mouse undertaken by or permitted by Federal agencies within proposed critical habitat. The total quantifiable

incremental section 7 costs associated with the proposed designation was estimated to be $23,000,000 per year in 2014. 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. In addition, the analysis concluded that the designation of critical habitat is unlikely to trigger additional indirect requirements under State or local regulations. Further, this analysis is supplemented by a separate memorandum assessing the potential perceptional effects on grazing. This analysis concludes that the aggregate value of all activities on these lands is less than $100 million. Therefore, we conclude that critical habitat designation for the jumping mouse is unlikely to generate costs exceeding $100 million in a single year. Based on this information, we did not find any areas warranted exclusion from designation of critical habitat based on economic impacts (see our response to Comment 88, above).

(100) *Comment:* The incremental effects memorandum and economic screening memorandum were available for public comment for only 30 days, rather than the required 60 days under 50 CFR 424.16(c)(2).

*Our Response:* Under 50 CFR 424.16(c)(2), we are required to allow at least 60 days for public comment following publication of a rule proposing the designation of critical habitat. This regulation applies to the proposed rulemaking, not the economic analysis or environmental assessment. We requested written comments from the public on the proposed designation of critical habitat during two comment periods. The first comment period rule associated with the publication of the proposed rule (78 FR 37328) opened on June 20, 2013, and closed on August 19, 2013. We also requested comments on the proposed critical habitat designation and associated draft economic analysis and draft environmental assessment during a comment period that opened April 8, 2014, and closed on May 8, 2014 (79 FR 19307).

We provided the normal 30-day comment period for the announcement of the availability of these associated documents. We contacted appropriate Federal and State agencies, State congressional representatives, local governments, tribes, scientific experts and organizations, and other interested parties and invited them to comment on the proposed rule and associated draft economic analysis and draft environmental assessment. On August 15, 2013, we also held an informational meeting in Durango, Colorado, after receiving requests from interested parties. Similarly, we held informational meetings in Cañon, New Mexico, on April 24, 2014; Durango, Colorado, on April 28, 2014; and Alamogordo, New Mexico, on May 28, 2014.

(101) *Comment:* No attempt was made by the Service to notify any stakeholders or prior commenters on the proposed rule when the Service made available the draft environmental assessment and draft economic analysis for public comment.

*Our Response:* We sent letters to Federal and State agencies, State congressional representatives, local governments, and interested parties, including all individuals that commented on the June 20, 2013, proposed rule and those that signed in and provided their full addresses to us during the informational meetings (see our response to Comment 58, above), and we issued a news release on our Web site. Similarly, we held informational meetings in Cañon, New Mexico, on April 24, 2014; Durango, Colorado, on April 28, 2014; and Alamogordo, New Mexico, on May 28, 2014.

(102) *Comment:* A full analysis of economic impacts has not been completed and disseminated for public comment.

*Our Response:* In order to consider economic impacts, we prepared an incremental effects memorandum and screening analysis, which together with our narrative and interpretation of effects, was our draft economic analysis of the proposed critical habitat designation (IEc 2014, entire). The draft analysis, dated February 18, 2014, along with the draft environmental assessment, was made available for public review from April 8, 2014, through May 8, 2014 (79 FR 19307). See our responses to Comments 100 and 101, above, that address our outreach efforts. The draft environmental assessment addressed potential economic impacts of critical habitat designation for the jumping mouse. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable economic impacts of this critical habitat designation. The economic analysis provides us with information on the potential for the proposed critical habitat rule to result in costs exceeding $100 million in a single year. We conclude that critical habitat designation for the jumping mouse is unlikely to generate costs exceeding $100 million in a single year. Information relevant to the probable economic impacts of critical habitat designation for the jumping mouse is available in the screening analysis (IEc 2014), available at *http://www.regulations.gov.*

(103) *Comment:* The cost estimates presented in the economic analysis should be adjusted to account for errors in the land ownership information presented in the proposed rule within Subunit 4B.

*Our Response:* Federal and private land ownership acreages for Subunit 4B were presented incorrectly in Exhibit 1 of the economic screening memorandum as a result of a reporting error. However, the economic analysis was conducted using the correct ownership acreages, namely 118 ha (291 ac) of Federal land and 18 ha (44 ac) of private land.

(104) *Comment:* The economic analysis does not follow the binding legal precedent in the Tenth Circuit by evaluating only the incremental effects of critical habitat designation.

*Our Response:* As stated in the Service's 2013 revisions to the regulations for impact analyses conducted for designations of critical habitat under the Act (78 FR 53058, August 28, 2013, see p. 53062), ''because the primary purpose of an economic analysis is to facilitate the mandatory consideration of the economic impact of a designation of critical habitat, to inform the discretionary 4(b)(2) exclusion analysis, and to determine compliance with relevant statutes and Executive Orders, the economic analysis should focus on the incremental impact of the designation.'' Therefore, our analysis focuses on incremental impacts.

(105) *Comment:* The economic screening memorandum does not include an analysis of impacts on small businesses.

*Our Response:* Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Federal agencies are only required to evaluate the potential incremental impacts of a rulemaking on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to

the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is the Service's position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities. Because certification is possible, no regulatory flexibility analysis is required.

(106) *Comment:* The economic analysis is limited to ''a point in time'' and does not allow for future changes in pricing for cattle, costs for fencing and fence maintenance, inflation, jumping mouse population growth, and expansion of suitable habitat.

*Our Response:* The economic analysis provides information to the Service on the potential for the proposed critical habitat rule to result in costs exceeding $100 million in a single year. Many of the anticipated impacts, such as animal unit month (AUM) reductions, are expected to occur in 2016, following the designation of critical habitat for the jumping mouse. In addition, the economic analysis conservatively assigns all other impacts, such as fencing, to one year, even though some of these costs may occur at a later date, which would reduce the actual impact occurring in a single year. Therefore, it is appropriate to use current prices.

(107) *Comment:* The economic analysis fails to fully consider the impact of the designation on State agencies, which may be required to consult with the Service on activities that receive Federal funding. These activities may include operation and maintenance activities at Seven Springs Fish Hatchery, habitat modification or water diversion projects on State lands, and removal of nuisance beaver on private or public lands.

*Our Response:* It is the responsibility of the respective Federal agencies, not the State agency, private individual, or company, to determine whether any of their ongoing or proposed actions may affect jumping mouse critical habitat and to consult with the Service. As stated in the economic screening memorandum, critical habitat could result in incremental section 7 impacts to State agencies if a Federal nexus is present (*e.g.,* if a State agency receives Federal funding). However, based on information provided to the Service from Federal agency stakeholders and outreach to other stakeholders, we did not identify any situations where State agencies receiving Federal funding would be affected by the proposed critical habitat designation. Incremental costs associated with consultation on operations and maintenance activities at the Seven Springs Fish Hatchery in Subunit 3B would be limited to administrative costs of consultation because, as noted in the proposed rule, this area is partially occupied by the subspecies and consultation would occur regardless of the designation of critical habitat. Should consultation be required for habitat projects or removal of nuisance beaver, the costs of these consultations are likely to be minimal because all of the critical habitat units are partially occupied. Therefore, the incremental costs associated with consultation on these State-led activities are likely limited to the additional administrative costs of considering critical habitat as part of the informal consultations and would not result in a substantial increase in the total costs estimated in the economic analysis.

(108) *Comment:* The incremental effects memorandum cannot be considered an economic analysis as required under section 4(b)(2) of the Act as it does not address the potential land use sectors that may be affected by the designation and does not estimate costs to directly and indirectly impacted entities.

*Our Response:* The purpose of the Service's incremental effects memorandum is to provide information to serve as a basis for conducting the economic analysis of the proposed critical habitat designation. The economic screening memorandum (complete title is ''Consideration of Economic Impacts: Screening Analysis of the Likely Economic Impacts of Critical Habitat Designation for the New Mexico Meadow Jumping Mouse'') provides information on the potential for the proposed critical habitat rule to result in costs exceeding $100 million in a single year. To that end, the analysis in the economic screening memorandum estimates impacts to activities (*i.e.,* potential land use sectors) that may experience the greatest impacts in compliance with section 4(b)(2) of the Act, including grazing, water use, and recreation. We did not find that these or any other activities (*i.e.,* potential land use sectors) would result in significant economic impacts. See our response to Comment 107, above, regarding cost to directly and indirectly impacted entities.

(109) *Comment:* The designation of critical habitat for the jumping mouse will place restrictions on future land uses, causing a reduction in property values.

*Our Response:* Section 4 of the economic screening memorandum includes a discussion of the possible impacts of public perception on private property values. The analysis considered the impact that the designation of critical habitat may have on grazing, which is considered the highest value use of these lands. To evaluate the possible magnitude of such costs, the analysis estimates the total perpetuity value of the cattle that could be supported by all privately owned land and associated Federal leases in the proposed critical habitat designation and concludes that it is unlikely to exceed $100 million. Thus, should property values be affected by the designation, the diminution in value could not exceed the total value of the properties. Data limitations prevent the estimation of the degree to which values might decrease; however, given current property values, such costs would not exceed $100 million when combined with the other costs estimated in the screening analysis.

(110) *Comment:* A more localized analysis of the economic impacts of the designation is necessary as the affected communities are quite different from one another.

*Our Response:* The economic analysis provides us with the information on the potential for the proposed critical habitat rule to result in costs exceeding $100 million in a single year. To that end, the analysis in the economic screening memorandum estimates impacts to activities, including grazing, water use, and recreation, that may experience the greatest impacts in compliance with section 4(b)(2) of the Act. The economic analysis focuses on activities with a Federal nexus because an action with no Federal nexus, including actions on private lands, is not affected by a designation of critical habitat. A key focus of this economic analysis is whether the designation of critical habitat would trigger project modifications to avoid adverse modification that would be above and beyond any modifications triggered by adverse effects to the species itself.

(111) *Comment:* The economic analysis fails to consider the economic impacts of the proposed critical habitat designation on the holders of grazing leases whose allotments are within the proposed critical habitat area and must be revised to consider these impacts. One commenter suggests that these impacts should be quantified as a reduction in the market value of allotments and provides a reference to the approach of Hawkes and Libbin (2014) to estimate the market value.

*Our Response:* The economic analysis includes an assessment of impacts to grazing (see section 3 of the economic screening memorandum). Specifically, the analysis estimates costs associated with AUM reductions and fencing where allotments overlap proposed critical habitat. AUM reductions represent a high-cost conservation alternative; lower cost alternatives may be available, including shifting cattle rotation patterns and developing alternative water sources. In line with this threshold analysis approach, we focus our analysis on the highest possible cost impact. Total costs associated with grazing activities are estimated to be $23 million. (The draft screening memorandum estimate is $15 million. However, based on public comments, additional analysis regarding water developments, cattle guards, and NEPA processes was conducted.)

Despite the fact that a section 7 nexus is unlikely for grazing activities conducted on private lands, the ranching community may perceive that the designation of certain parcels as critical habitat will limit future grazing activities in those areas. In addition, private landowners hold renewable leases that are both inheritable and transferrable with the sale of the land, or in the case of Forest Service permits, the transfer of livestock (pending the approval of the Forest Service). In the ''Supplemental Information on Perceptional Effects on Grazing—Critical Habitat Designation for the New Mexico Meadow Jumping Mouse'' (supplemental memorandum) we evaluated the possible magnitude of such costs. Based on the analysis presented in this memorandum, the value of grazing activities is unlikely to exceed $100 million.

To quantify these impacts, the economic analysis: (1) Identifies reductions in the number of cattle that will be allowed to graze in the form of reductions in AUMs; and (2) estimates costs associated with these reductions using the permit value per AUM in perpetuity. Permit value can be used as a measure of rancher wealth tied up in grazing permits, and forced reductions in AUMs can be represented by a loss in permit value. We rely on estimates of permit value, in perpetuity, of grazing on Forest Service lands from nine published studies to determine an average permit value per AUM. This approach has been applied in previous economic analyses of proposed critical habitat designations promulgated by the Service and has been the subject of technical review by academic experts.

(112) *Comment:* Multiple commenters state that the designation of critical habitat will have a significant economic impact on ranchers who own allotments on National Forest lands. This impact will result from the Forest Service reducing stocking rates and limiting livestock access to water. The commenters assert that without access to water, ranchers may be put out of business, which would have a larger effect on the economies of the region.

*Our Response:* See our response to Comment 111, above, regarding economic impact on ranchers. We acknowledge that if fencing limits access to water, costs could be higher than what was estimated in the screening analysis. Therefore, we incorporate costs associated with the development of alternative water sources for cattle based on information provided by the Forest Service (see our response to Comment 114, below).

(113) *Comment:* The commenters state that the assumption applied in the economic analysis that AUM reductions due to jumping mouse conservation are proportional to the percentage of allotment area proposed for critical habitat designation is incorrect. One commenter notes that this assumption does not take into account the fact that fencing riparian areas also fences off water and other areas that are not proposed as critical habitat.

*Our Response:* The assumption that AUM reductions are proportional to the percentage of allotment area proposed for critical habitat designation could understate or overstate costs. However, absent specific information on forecast AUM reductions, we believe that this is a reasonable assumption. This assumption has been applied in previous economic analyses that were peer-reviewed by subject experts. In addition, the estimated total value of the AUMs of all allotments intersecting the proposed designation is approximately $2.0 million, and, therefore, even in the unlikely scenario that fencing of riparian areas results in the full loss of AUMs from allotments intersecting proposed critical habitat, the total impacts would not approach the $100 million threshold. Lastly, in response to information provided by the Forest Service, we incorporate costs associated with the development of alternative water sources for cattle that may be required if fencing limits access to water (see our response to Comment 114, below).

(114) *Comment:* One commenter suggests that costs must be added to the economic analysis associated with management for the jumping mouse and its habitat within the National Forests. In particular, water developments will be necessary if fencing around streams occurs, at a cost of up to $500,000 within the Apache-Sitgreaves National Forest and $400,000 within the Lincoln National Forest. In addition, within the Lincoln National Forest, cattleguards would be needed where fencing intersects roads and trails, at a cost of $310,000. Also within the Lincoln National Forest, costs associated with employing an on-site fire crew and law enforcement during fence installation are estimated to cost $3,500 per day. Similar water development, cattleguard, and fire protection costs are anticipated within the Santa Fe National Forest. Finally, the high-end cost for completing the NEPA process to address critical habitat for the mouse is estimated to be $200,000 for each National Forest.

*Our Response:* Based on information provided by the Southwestern Region of the Forest Service, we conservatively assumed that water developments, cattle guards, and NEPA processes would be required as a result of the proposed critical habitat designation for the jumping mouse, and this cost has been included in the economic analysis. At this time, it is unknown whether on-site fire crews and law enforcement will be needed during future fence installation, and therefore this was not included in the economic analysis. We estimated a cost of $200,000 per forest for NEPA processes, totaling $600,000. In addition, we estimated costs of $100,000 per pasture for water developments within five pastures in the Apache-Sitgreaves National Forest, four pastures in the Lincoln National Forest, and six pastures in Santa Fe National Forest, for a total of $1.5 million. The Apache-Sitgreaves National Forest and Lincoln National Forest provided the estimates of the number of pastures requiring water developments, and we conservatively assumed that all pastures intersecting the proposed designation in Santa Fe National Forest will require water developments. We applied the high-end cost estimate of $100,000 per-development provided by the Forest Service for each anticipated water development. In addition, we estimated costs of $310,000 per forest for cattleguards. Santa Fe and Apache-Sitgreaves National Forests were not able to provide cost estimates for cattleguards, so we assumed that their needs will be similar to those in the Lincoln National Forest, which estimated that 20 road and 5 trail cattleguards will be needed. In total, the estimated cost of the conservation measures described above is $2.7 million. This estimate is likely to overstate incremental costs, as some of

these conservation measures may be implemented in occupied habitat; the costs in occupied areas would not be incremental costs due to the designation of critical habitat. The addition of these conservation costs, as well as updates to the number of permitted AUMs in Apache-Sitgreaves National Forest (described below in Comment 118), yields a revised incremental impacts estimate of $23 million, which does not approach the $100 million threshold, even when combined with information about the total value of grazing rights in the proposed critical habitat designation (see our response to Comment 111, above, regarding potential perception effects).

(115) *Comment:* It is incorrect to assume that allotments with less than 5 percent of their total area overlapping proposed critical habitat will be able to shift grazing activities away from the critical habitat areas at minimal cost and without affecting the overall grazing within the allotment. Because grazing does not occur equally across the allotment and habitat conditions vary considerably within each allotment, grazing pressure can vary.

*Our Response:* This assumption has been applied in previous economic analyses that were peer-reviewed by subject experts. To test the effect of this assumption on our overall cost estimate, we updated our analysis to include those allotments with less than 5 percent of their total area overlapping proposed critical habitat and find that the total cost of AUM reductions in these additional areas would be less than $40,000.

(116) *Comment:* The commenter states that exhibit 3 of the economic analysis is incorrect in stating that AUM reductions are not anticipated for allotments for which the number of permitted AUMs is unknown.

*Our Response:* Exhibit 3 indicates that AUM reductions are not anticipated for these allotments because the percentage of overlap of these allotments with the proposed critical habitat does not exceed the 5 percent threshold.

(117) *Comment:* The costs of replacing fencing lost due to the Wallow Fire in areas where the species is present should be included in the economic analysis.

*Our Response:* Guidelines issued by the U.S. Office of Management and Budget (OMB) for the economic analysis of regulations direct Federal agencies to measure the costs and benefits of a regulatory action against a baseline. Costs incurred in areas where the species is present are baseline costs, meaning that these actions would occur without critical habitat designation. Impacts that are incremental to the baseline are those that are solely attributable to the designation of critical habitat. This screening analysis focuses on the likely incremental effects of the critical habitat designation for the jumping mouse.

(118) *Comment:* Several commenters assert that the AUMs reported in the economic analysis do not accurately reflect the permitted AUMs for each allotment. One commenter states that given the multiple-year drought impacting these areas, using the current AUMs significantly underestimates AUMs associated with each allotment and the analysis should use the full permitted AUMs. A second commenter provides a more accurate reflection of the permitted AUMs for allotments within the Apache-Sitgreaves National Forest.

*Our Response:* The grazing analysis described in the economic screening memorandum is based on the best available information at the time of writing. For the Apache-Sitgreaves National Forest, specific permitted AUMs were not available, so the analysis used estimated AUMs based on the Apache-Sitgreaves National Forest's annual operating instructions. We have updated our analysis to include the more accurate permitted AUM data provided by the Apache-Sitgreaves National Forest during the public comment period. Using this information, we find that the overall results of the economic analysis were not significantly affected and the costs we estimated in 2014 do not approach the $100 million threshold.

(119) *Comment:* The designation of critical habitat will result in increased operating costs associated with altering the current grazing system within allotments. The commenter believes that changes to the grazing system will result in increased labor and travel costs, and excessive handling of cattle may result in lower weaning weights, increased calf losses, and lower reproductive rates.

*Our Response:* The economic analysis estimates costs associated with AUM reductions and fencing of riparian areas (including alternative water sources for cattle). As described in section 3 of the economic screening memorandum, these costs represent a high-cost estimate. Lower cost options may be available, including shifting cattle rotation patterns and developing alternative water sources. The estimated total value of the AUMs of all allotments intersecting the proposed designation is approximately $2.0 million, and, therefore, even in the unlikely scenario that lower weaning weights, increased calf losses, and lower reproductive rates result in the full loss of AUMs from allotments intersecting proposed critical habitat, the total impacts would not approach the $100 million threshold.

(120) *Comment:* Under section 9 of the Act, notwithstanding Federal nexus, a farmer or rancher may be prohibited from grazing cattle or conducting other agricultural activities. The commenter asserts that costs stemming from this requirement should be included in the economic analysis.

*Our Response:* Section 9 of the Act prohibits take of any species listed as an endangered species and makes it illegal for any person subject to the jurisdiction of the United States to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt any of these, such species. Section 9 is not applicable to critical habitat. 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. Therefore, costs related to the requirements of section 9 of the Act are not incremental impacts of the proposed critical habitat designation and are not included in the economic analysis.

(121) *Comment:* Several commenters note that project modifications to water development and use activities may disrupt the availability of water for agriculture, reducing agricultural productivity. The commenters state that the economic analysis should include an assessment of impacts to agricultural productivity on all lands irrigated by water management infrastructure included in the proposed critical habitat designation.

*Our Response:* In section 3 of the economic screening memorandum, we address potential impacts to water management projects, including the Bernalillo to Belen Levees project in excluded Subunit 6A, the Lake Dorothey and Lake Alice projects in Unit 1, the Lemon Dam in Unit 7, and water use and management activities on the Middle Rio Grande. Overall, we find that the designation of critical habitat for the jumping mouse will not result in incremental changes to water management activities, and, therefore, the designation is not expected to result in impacts to agricultural productivity.

(122) *Comment:* The commenters state that the economic analysis underestimates the impacts associated with water management in proposed Unit 7 (Florida River) and should include costs associated with

consultation on the Florida Project and any operating restrictions that may result in decreased water availability to end-users. Additionally, the economic analysis must consider costs associated with managing the Lemon Reservoir on the Florida River.

*Our Response:* The economic analysis includes an assessment of potential incremental effects on the Lemon Dam, which is the principal feature of the Florida Project (see section 3 of the economic screening memorandum). Specifically, the analysis forecasts costs associated with a consultation between the Service and the Bureau of Reclamation to consider the effects of the operations of the Lemon Dam in Unit 7. As described in the economic screening memorandum, as Unit 7 is partially occupied by the species, it is unlikely that critical habitat would generate additional requests for conservation efforts beyond what would be required due to the listing of the species, and, therefore, the incremental costs to this project are likely limited to administrative consultation costs associated with addressing adverse modification in the consultation.

(123) *Comment:* Ongoing efforts by the Bureau of Reclamation to enhance wetlands within Unit 8 (Sambrito Creek) will be affected by section 7 consultation requirements. The commenters assert that these costs should be included in the economic analysis.

*Our Response:* While the Bureau of Reclamation's wetland restoration efforts in Unit 8 may require section 7 consultation with the Service, the administrative costs associated with addressing adverse modification in a consultation would be minor (approximately $5,000 for a formal consultation). As the unit is partially occupied it is unlikely that critical habitat would generate additional requests for conservation efforts beyond what would be required due to the listing of the species. In addition, because the purpose of these activities is to benefit the habitat, the Service does not expect to recommend conservation measures above and beyond those already required by the Bureau of Reclamation as part of the project.

(124) *Comment:* The economic analysis should evaluate the impact of fencing areas on elk populations and the associated impact on hunting. Through limiting the availability of water, there is a potential for a decrease in elk herd sizes leading to decreases in hunting revenue.

*Our Response:* The Forest Service does not expect pipe fencing to affect elk populations because elk will be able to jump over the fencing. In addition, elk and other game will be able to access water developments, provided by the Forest Service, installed in pastures with fencing around streams. Costs related to these water developments are discussed in our response to Comment 114, above.

(125) *Comment:* The conclusion of the economic analysis that impacts to recreation will likely be minor to moderate is inaccurate because recreationists on Forest Service lands are drawn to areas with water. Restricting off-trail uses, including angling, may cause recreationists to travel to other areas and reduce income to communities that depend on the recreation industry.

*Our Response:* See our response to Comment 35, above.

(126) *Comment:* Several commenters state that the economic analysis is incorrect in saying that the proposed critical habitat designation is located in areas where development pressure is low and that in fact development pressure is significant along the Florida River (Unit 7) and is likely to grow. The commenters state that the analysis does not consider the impacts of critical habitat designation on highly valuable private property in Unit 7 and Unit 8, and does not consider that many private landowners hold inheritable and transferable grazing leases for the land that may affect the value of connected private holdings or property rights.

*Our Response:* One comment references La Plata County Planning Department maps that show potential land use opportunities for subdivisions or commercial development projects. However, the commenter did not provide the maps, and we were unable to locate these maps. We consulted available La Plata County Planning Department land use plans and noted that the land use plan for Florida Mesa District, which includes Unit 7, specifically includes an objective to discourage future building in the 100-year flood plains, noting benefits to recreation and wildlife. See our response to Comment 47, above, for a response to private holdings and property rights.

In section 4 of the economic screening memorandum, we analyze potential perceptional effects of the proposed designation on private grazing lands and associated grazing permits on public lands. We conclude that the total value of grazing supported by privately owned land and Federal leases within the proposed designation is unlikely to exceed $100 million. Thus, should property values be affected by the designation, the diminution in value could not exceed the total value of the properties. Data limitations prevent the estimation of the degree to which values might decrease; however, given current property values, such costs would not exceed $100 million when combined with the other costs estimated in the screening analysis. See our response to Comment 111, above, for information regarding grazing and grazing leases.

(127) *Comment:* The economic analysis should consider how potential future energy development could be impacted by the designation, including impacts on leases held in proposed Units 7 and 8, job impacts, and revenue impacts. New geological information and advances in exploration and production technologies may reveal that areas proposed for critical habitat designation currently regarded as having no or low potential for oil and gas development could actually have much higher potential in the future.

*Our Response:* Our economic analysis includes ''reasonably foreseeable'' impacts of the proposed designation. The Service conducted outreach efforts to other Federal agencies concerning the likely effects of critical habitat and limited interviews with relevant stakeholders. We received no response on anticipated consultations relating to oil and gas development within critical habitat designation for the jumping mouse. Consequently, based on the best available scientific and commercial data, the economic analysis did not forecast any consultations related to oil and gas.

(128) *Comment:* The economic analysis should consider impacts to the U.S. Army Corps of Engineers (Corps) associated with future consultations.

*Our Response:* The Corps' Albuquerque District provided the Service with feedback on ongoing and planned activities within the proposed critical habitat units, which include species and habitat management activities and water management projects. Exhibit 6 in the economic analysis presents the total incremental costs by subunit associated with the forecast consultations with the Forest Service and the Corps (IEc 2014, pp. 16–17). These costs include the administrative costs associated with the consultations, as well as the costs of potential conservation measures, where applicable. Total costs are estimated to be $4.1 million over the next 20 years, or $360,000 on an annualized basis (7 percent discount rate).

(129) *Comment:* Due to the designation of critical habitat, county and State governments may develop regulations regarding private lands that

restrict future land uses, such as development.

*Our Response:* Section 4 of the economic screening memorandum discusses the potential for indirect incremental costs to occur outside of the section 7 consultation process. These types of costs include triggering additional requirements or project modifications under State laws or regulations, and perceptional effects on markets. The jumping mouse is provided some level of protection in each of the States containing proposed critical habitat designation (see exhibit 8 in the economic screening memorandum). Although protective status for the subspecies may not require implementation of conservation efforts sufficient to protect the subspecies' habitat, these designations suggest that State agencies are likely to be aware of the presence of the subspecies. We therefore assume that the designation of critical habitat is unlikely to trigger State- or county-level impacts as a result of increased awareness of the subspecies and its habitat in States where the jumping mouse is currently afforded some protective status. We are not aware of any effects of this type associated with prior designations of critical habitat for other species in the region. Therefore, absent specific additional information related to the probability of local governments developing such regulations, and the specific restrictions that could be imposed, we are unable to quantify impacts.

(130) *Comment:* The benefits listed in the economic screening memorandum are lacking specificity and are incapable of being evaluated.

*Our Response:* As stated in section 5 of the economic screening memorandum, benefits resulting from incremental conservation efforts include direct benefits associated with the primary goal of species conservation and ancillary benefits that derive from conservation efforts but are not the purpose of the Act. In order to quantify and monetize these benefits, information is needed to determine the incremental change in the probability of jumping mouse conservation expected to result from the designation and the public's willingness to pay for such beneficial changes. We were not able to identify any published studies that estimate the value the public places on preserving the jumping mouse. In addition, we do not have information on the expected change in the subspecies' population levels that may result from critical habitat designation for the jumping mouse. We therefore provide a qualitative summary of the expected benefits.

**Summary of Changes from the Proposed Rule**

In this rule, we are designating a total of approximately 5,657 ha (13,973 ac) along 272.4 km (169.3 mi) of flowing streams, ditches, and canals as critical habitat for the jumping mouse. This amounts to a reduction of 235 ha (587 ac) from what we proposed to designate on June 20, 2013 (78 FR 37328). We reviewed a number of site-specific comments related to critical habitat for the jumping mouse during the comment periods. In addition, we completed our analysis of areas considered for exclusion under section 4(b)(2) of the Act, completed the final environmental assessment and the finding of no significant impact, and completed the economic analysis of the designation. We fully considered all comments we received from the public, peer reviewers, States, and Federal agencies on the proposed rule and the associated environmental assessment and economic analysis to develop this final designation of critical habitat for the jumping mouse. We received requests to both reduce and expand the designation within many units. Except for minor boundary modifications and two exclusions, we did not receive any information that resulted in modification of our original proposal to designate critical habitat. Our final designation of critical habitat reflects the following changes from the proposed rule:

(1) We updated the primary constituent elements (PCEs) for the jumping mouse by removing reed canarygrass from the list of plants and by revising the description of ''tall'' vegetation to mean an average stubble height of herbaceous vegetation of at least 61 cm (24 inches). The removal of reed canarygrass from the PCEs is a minor technical correction based on a comment from one peer reviewer that indicated that inclusion of reed canarygrass was unusual and based on outdated information. In the proposed rule, we defined average stubble height as measured with a ruler to be 69 cm (27 inches), and vertical cover as measured with a Robel pole to be 61 cm (24 inches). As stubble height and vertical cover are highly correlated, we have revised ''tall'' vegetation to reflect the measurements made with a Robel pole, which is a more rapid technique and would thus allow for both height and vertical density of vegetation to be assessed. Because of these changes, the PCEs for the jumping mouse in this rule state that the jumping mouse uses areas that support tall (average stubble height of herbaceous vegetation of at least 61 cm (24 inches)) and dense herbaceous riparian vegetation composed primarily of sedges (*Carex* spp. or *Schoenoplectus pungens*) and forbs.

(2) Based on recently finalized map data that were still in draft form during our initial analysis, we revised mapping errors at the terminus of Subunit 4A and Unit 7. These minor corrections did not reduce the size of Subunit 4A, but reduced Unit 7 by 3 ha (8 ac).

(3) Based on a review of land ownership acres, we reversed the land ownership values in Subunit 4B (Upper Peñasco), which was incorrectly presented in the proposed rule as 18 ha (44 ac) Forest Service, 118 ha (291 ac) Private. The correct land ownership values are 118 ha (291 ac), 18 ha (44 ac) Private.

(4) Based on a comment and new information we received, we changed the upstream boundary of Unit 7 (Florida River, in the State of Colorado) because the area in our proposal included manmade structures and lands that do not contain suitable habitat or restorable habitat for the subspecies. Our subsequent analysis of Unit 7 determined that approximately 3 ha (8 ac) of unoccupied critical habitat that we proposed is not essential for the conservation of the jumping mouse. This area contains a manmade water diversion structure and associated lands that are not likely restorable habitat and therefore unlikely to ever support the jumping mouse. Accordingly, we made minor changes to the critical habitat boundary and revised the Unit 7 map to remove this area because this area does not meet our definition of critical habitat. The final revised critical habitat in Unit 7 consists of 253 ha (626 ac) of private lands.

(5) We carefully considered the benefits of inclusion and the benefits of exclusion, under section 4(b)(2) of the Act, of the specific areas identified in the proposed critical habitat rule, particularly in areas where a management plan specific to the jumping mouse is in place, and also where the maintenance and fostering of important conservation partnerships were a consideration. Based on the results of our analysis, we are excluding approximately 94 ha (230 ac) of Subunits 6A and 6B from this final critical habitat designation for the jumping mouse (see *Tribal Lands—Exclusions Under Section 4(b)(2) of the Act,* below). Due to these changes in our final critical habitat designation, proposed critical habitat Subunit 6C is now Unit 6 in this rule.

Exclusion from critical habitat should not be interpreted as a determination that these areas are unimportant, that they do not provide physical or biological features essential to the conservation of the species (for occupied areas), or are not otherwise essential for conservation (for unoccupied areas); exclusion merely reflects the Secretary's determination that the benefits of excluding those particular areas outweigh the benefits of including them in the designation.

(5) We corrected an error in our area calculations for Subunit 6C, Bosque del Apache NWR (now Unit 6). In the proposed rule (78 FR 37328; June 20, 2013), we identified 201 ha (496 ac) as critical habitat on the Bosque del Apache NWR. This final rule correctly identifies 403 ha (995 ac) of critical habitat.

(6) We corrected an error in our area calculations for Unit 1. In the proposed rule (78 FR 37328; June 20, 2013), we erroneously identified Unit 1 as having 344 ha (849 ac) of private lands within critical habitat. However, there are not any private lands designated as critical habitat within Unit 1. The proposed rule identified 687 ha (1,698 ac) for the total area of Unit 1. The corrected total in this final rule for Unit 1 is 343 ha (849 ac).

(7) Descriptions and critical habitat maps can be found later in this document. This final designation of critical habitat represents a reduction of 235 ha (587 ac) from our proposed critical habitat for the jumping mouse for the reasons detailed above.

**Critical Habitat**

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features:

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under 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 geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical 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 specific elements of physical or biological features that provide for a species' life-history processes, and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the 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 and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species (for the jumping mouse, as reviewed in the SSA Report (Service 2014)) and the proposed and final rules for listing the species. Additional information sources may include 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) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best 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 section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are 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 jumping mouse from studies of this species' habitat, ecology, and life history as described below. Unfortunately, there have been relatively few studies on the jumping mouse and its natural life history, and information gaps remain. However, we have used the best available information as described in the SSA Report (Service 2014). To identify the physical and biological needs of the jumping mouse, we relied on conditions at currently occupied locations where the jumping mouse has been observed during surveys, and the best information available on the species and its close relatives. Below, we summarize the physical and biological features needed by foraging, breeding, and hibernating New Mexico meadow jumping mice. For a complete review of the physical and biological features required by the jumping mouse, see chapter 2 in the SSA Report (Service 2014).

For the jumping mouse to be considered viable, individual mice need specific vital resources for survival and completion of their life history. One of the most important aspects of the jumping mouse's life history is that it hibernates about 8 or 9 months out of the year, longer than most mammals. Conversely, it is only active 3 or 4 months during the summer. Within this short timeframe, it must breed, birth, raise young, and store up sufficient fat reserves to survive the next year's hibernation period. In addition, New Mexico meadow jumping mice only live 3 years or less and have one small litter annually with 7 or fewer young, so the subspecies has limited capacity for high population growth rates due to this low fecundity. As a result, if resources are not available in a single season, jumping mice populations will be greatly impacted.

The jumping mouse has exceptionally specialized habitat requirements to support these life-history needs and maintain adequate population sizes. Habitat requirements are characterized by tall (averaging at least 61 cm (24 in)), dense herbaceous (plants with no woody tissue) riparian vegetation composed primarily of sedges and forbs. This suitable habitat is found only when wetland vegetation achieves full growth potential associated with seasonally perennial (persistent water during the vegetation growing season) flowing water and saturated soils. This vegetation is an important resource need for the jumping mouse because it provides vital food sources (insects and seeds), as well as the structural material for building day nests that are used for shelter from predators. It is imperative that the jumping mouse have rich abundant food sources during the summer so that it can accumulate sufficient fat reserves to survive the long hibernation period because the subspecies does not cache food for the winter. In addition, individual New Mexico meadow jumping mice also need intact upland areas adjacent to riparian wetland areas because this is where they build nests or use burrows to give birth to young in the summer and to hibernate over the winter.

These suitable habitat conditions need to be in appropriate locations and of adequate sizes to support healthy populations of the jumping mouse. Historically, these wetland habitats would have been in large patches located intermittently along long stretches of streams. The ability of jumping mouse populations to be resilient to adverse stochastic events depends on the robustness of a population and the ability to recolonize if populations are extirpated. Because counting individual New Mexico meadow jumping mice to assess population sizes is very difficult and data are unavailable, we can best measure population health by the size of the intact, suitable habitat available. We estimate that resilient populations of New Mexico meadow jumping mice need at least 27.5 to 73.2 ha (68 to 181 ac) of suitable habitat along 9 to 24 km (5.6 to 15 mi) of flowing streams, ditches, or canals. This distribution and amount of suitable habitat will support multiple subpopulations of New Mexico meadow jumping mice throughout each of the waterways and would provide for sources of recolonization if some areas were extirpated due to disturbances, thereby increasing the chance of jumping mouse populations surviving the elimination or alteration of suitable habitat from a variety of sources and persisting while the necessary vegetation is restored. The suitable habitat patches must be relatively close together because the jumping mouse has limited dispersal capacity for natural recolonization. In our SSA Report (Service 2014), we determined that rangewide, the jumping mouse needs at least two resilient populations (where at least two existed historically) within each of eight identified geographic management areas. The eight geographic management areas are defined by the external boundaries of the geographic distribution of historical populations. We use the term geographic management area to describe the geographic region where populations of jumping mice are located. This number and distribution of resilient populations is expected to provide the subspecies

with the necessary redundancy and representation to provide for viability.

Populations of New Mexico meadow jumping mice with a high likelihood of long-term viability require functionally connected areas throughout stream reaches, ditches, or canals. This continuous suitable habitat is necessary to attain the population sizes and densities needed to increase the probability that populations of the subspecies will persist in the face of natural or manmade events and seasonal fluctuations of food resources. Because the subspecies occurs only in areas that are water-saturated, populations have a high potential for extirpation when habitat dries due to ground and surface water depletion, draining of wetlands, or drought. Jumping mouse habitat is subject to dynamic changes that result from flooding and drying of these waterways and the ensuing fluctuations (loss and regrowth) in the quantity and location of dense herbaceous riparian vegetation over time. Consequently, fluctuating water levels may create circumstances in which New Mexico meadow jumping mouse population sizes and locations within a waterway vary over time, and populations may be periodically extirpated and subsequently recolonized. To encompass the daily and seasonal movements of the majority of individual New Mexico meadow jumping mice and allow for the occasional inter-population dispersal to occur unimpeded, appropriately sized patches of suitable habitat should be no more than 200 m (656 ft) apart within designated waterways (see section 2.7.2 ''Habitat Patch and Population Sizes'' in the SSA Report (Service 2014)).

*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 jumping mouse in the geographic area occupied by the species at the time of listing, focusing on the features' primary constituent elements (PCEs). Primary constituent elements are those specific elements of physical or biological features that provide for a species' life-history processes and that 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 (see chapter 2 in the SSA Report (Service 2014)), we determine that the PCEs specific to the jumping mouse consist of the following:

(1) Riparian communities along rivers and streams, springs and wetlands, or canals and ditches that contain:

(a) Persistent emergent herbaceous wetlands especially characterized by presence of primarily forbs and sedges (*Carex* spp. or *Schoenoplectus pungens*); or

(b) Scrub-shrub riparian areas that are dominated by willows (*Salix* spp.) or alders (*Alnus* spp.) with an understory of primarily forbs and sedges; and

(2) Flowing water that provides saturated soils throughout the jumping mouse's active season that supports tall (average stubble height of herbaceous vegetation of at least 61 cm (24 inches)) and dense herbaceous riparian vegetation composed primarily of sedges (*Carex* spp. or *Schoenoplectus pungens*) and forbs, including, but not limited to, one or more of the following associated species: Spikerush (*Eleocharis macrostachya*), beaked sedge (*Carex rostrata*), rushes (*Juncus* spp. and *Scirpus* spp.), and numerous species of grasses such as bluegrass (*Poa* spp.), slender wheatgrass (*Elymus trachycaulus*), brome (*Bromus* spp.), foxtail barley (*Hordeum jubatum*), or Japanese brome (*Bromus japonicas*), and forbs such as water hemlock (*Circuta douglasii*), field mint (*Mentha arvense*), asters (*Aster* spp.), or cutleaf coneflower (*Rudbeckia laciniata*); and

(3) Sufficient areas of 9 to 24 km (5.6 to 15 mi) along a stream, ditch, or canal that contain suitable or restorable habitat to support movements of individual New Mexico meadow jumping mice; and

(4) Adjacent floodplain and upland areas extending approximately 100 m (330 ft) outward from the boundary between the active water channel and the floodplain (as defined by the bankfull stage of streams) or from the top edge of the ditch or canal.

This designation is designed to support the necessary life-history functions of the subspecies and the areas containing those PCEs in the appropriate quantity and spatial arrangement essential for the conservation of the subspecies. We determined that these primary constituent elements provide for the physiological, behavioral, and ecological requirements of the subspecies. New Mexico meadow jumping mice require herbaceous riparian vegetation associated with seasonally perennial flowing water and adjacent uplands that can support the necessary habitat components needed by foraging, breeding, and hibernating individuals. Jumping mice must also have sufficient cover within which to forage in an appropriate configuration and proximity to day, maternal, and hibernation nesting sites. This vegetation enables jumping mice to find adequate food resources not only to successfully raise young, but also to accumulate sufficient body fat for survival during hibernation. The appropriate configuration is provided by protecting multiple local subpopulations throughout a minimum length of stream, ditch, or canal of 9 to 24 km (5.6 to 15 mi) of suitable habitat, as described above, which will ensure sufficient resiliency of populations such that the species will be able to withstand and recover from periodic disturbances. Therefore, this amount of suitable habitat will support multiple local populations throughout each of the waterways, thereby increasing the chance of jumping mouse populations surviving periodic temporary disturbances of suitable habitat.

Populations of New Mexico meadow jumping mice with a high likelihood of long-term viability require functionally connected areas throughout stream reaches, ditches, or canals. This continuous suitable habitat is necessary to attain the population sizes and densities needed to ensure that the subspecies will persist in the face of stochastic events and seasonal fluctuations of food resources. This configuration of suitable habitat will encompass the daily and seasonal movements of the majority of individual jumping mice and will allow occasional inter-population dispersal to occur.

*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 this species may require special management considerations or protection to reduce the following threats: Excessive grazing pressure, water use and management, highway reconstruction, commercial and residential development, severe wildland fires, unregulated recreation, and the reduction in the distribution and abundance of beaver ponds. These activities have the potential to affect the PCEs if they are conducted within or adjacent to units designated as critical habitat.

Management activities that could ameliorate these threats include, but are not limited to: (1) Maintaining occupied jumping mouse sites with active

management to continue the protection of these areas from livestock grazing; (2) restoring, enhancing, and managing additional habitat through fencing of riparian areas, especially the Santa Fe, Lincoln, and Apache-Sitgreaves National Forests (this will facilitate restoration of the required vegetative components and support the expansion of populations of the jumping mouse into areas that were historically occupied by the species, but where natural expansion is currently unlikely because no suitable habitat remains); (3) restoring habitat on Bosque del Apache NWR or other areas by carefully managing mowing (*e.g.,* not mowing during the active season) and removing willows older than 5 years to maintain early seral habitat conditions along irrigation canals and ditches; and (4) developing and implementing a beaver management or restoration plan for occupied and historic jumping mouse localities where appropriate. In addition, Federal agencies should look to guidance provided by the completed recovery outline (available online at *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0023) and the recovery plan that will be developed for the jumping mouse. A more complete discussion of the threats to the jumping mouse and its habitats can be found in the SSA Report (Service 2014).

*Criteria Used To Identify Critical Habitat*

The following discussion describes the process and methodology that we used to identify the areas to propose and finalize critical habitat units for the jumping mouse. As required by section 4(b)(2) of the Act, we used the best scientific data available to designate critical habitat. For this rule, we relied heavily on the analysis of biological information reviewed in the SSA Report (Service 2014). In accordance with section 3(5)(A) of the Act and its implementing regulation at 50 CFR 424.12(b), we determined the specific areas within the geographical area occupied by the species, at the time it is listed, where are found the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protections. Next, we determined the specific areas outside the geographical area occupied by the species at the time it is listed that are found to be essential for the conservation of the species. Finally, we described how we determined the lateral extent and mapping processes used in developing the critical habitat units.

Occupied Areas—Section 3(5)(A)(i) of the Act

Our initial step was to determine what areas are within the geographic area occupied by the jumping mouse at the time of listing (occupied areas). In reviewing all of the available data on jumping mouse occurrences, we decided that verified collections of the species between 2005 to 2014 would be used to identify the areas considered occupied by the jumping mouse at the time of listing. This timeframe was selected because we found no capture records of jumping mice between 1996 and 2005. For a detailed review of this assessment, see chapter 3 of the SSA Report (Service 2014), where we referenced historical records as those from the 1980s and 1990s, and current records as those verified from 2005 to 2014. This assessment resulted in 29 locations of the jumping mouse considered occupied at the time of listing. However, there is uncertainty regarding the current status of the 29 populations that have been found since 2005 because 11 of the 29 populations and their habitat have been substantially compromised since 2011 (due to water shortages, grazing, or wildfire and postfire flooding), and these populations could already be extirpated. Moreover, an additional seven populations may continue to experience loss of habitat from postfire flooding in the near term. Nevertheless, there is no information that shows the jumping mouse to be extirpated from any of these 29 locations, so we conclude that the best available information supports that these areas are within the geographic area occupied by the jumping mouse at the time of listing.

The areas considered occupied include the 29 locations that contain suitable habitat plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these capture localities. These additional 0.8-km (0.5-mi) segments are considered occupied because this is approximately the maximum distance travelled between two successive points by all radio-collared jumping mice on Bosque del Apache NWR, which was 744 m (2,441 ft) (Frey and Wright 2012, pp. 16, 109; Figure 9). Although the subspecies usually exhibits extreme site fidelity with regular daily and seasonal movements of less than 100 m (330 feet) (Frey and Wright 2012, pp. 16, 109), these additional 0.8-km (0.5-mi) segments have the potential to be occupied during the active season of the subspecies if a jumping mouse moves the known maximum distance beyond the protective herbaceous cover found within the 29 locations. For each of the occupied areas, we next decided whether these areas contain the PCEs of the physical and biological features, which may require special management considerations or protections. As noted, all of the 29 locations found since 2005 are considered currently occupied by the jumping mouse and contain the PCEs 1 and 2. Each of these 29 locations documented since 2005 occur within eight critical habitat units. Three of these eight units have multiple subunits, bringing the total number of units and subunits to 21. Two of these subunits are considered unoccupied (discussed below), and the remaining 19 subunits contain the 29 locations documented since 2005. For a site-by-site analysis of the 29 locations, see chapter 4 of the SSA Report (Service 2014).

Partially Occupied Areas—Section 3(5)(A)(ii) of the Act

We then decided which areas that are outside the geographic area occupied by the species at the time of listing (unoccupied areas) are essential for the conservation of the jumping mouse. We first determined that, because of the loss of a substantial number (approximately 70) of historically occupied locations of the jumping mouse (Service 2014, chapter 4), the number and distribution of populations need to increase at all of the currently occupied areas for the jumping mouse to be viable. Increased populations at these areas are needed to maintain sufficient redundancy and representation to provide for the subspecies' viability (see chapters 3 and 6 of the SSA Report (Service 2014)). However, the areas occupied by the mouse since 2005 do not contain enough suitable, connected habitat to support resilient populations of jumping mouse (see chapter 3 of the SSA Report (Service 2014)).

Because the subspecies needs multiple local populations along streams and other waterways to maintain genetic diversity and provide sources for recolonization when local populations are extirpated, areas adjacent to the 29 locations (including the 0.8-km (0.5-mi) areas) are essential to the conservation of the subspecies to provide for population resiliency and subspecies viability. We found that it is essential for the conservation of the jumping mouse to expand its occupied habitats into areas considered currently unoccupied, but within its historical range. The inclusion of essential but unoccupied areas will not only protect these areas and provide habitat for population expansion from the 29 locations documented since 2005, but

also provide sites for possible future reintroduction that will improve the subspecies' status through added population resiliency. For example, when unoccupied habitat is restored, the jumping mouse would have the ability to expand beyond the 0.8-km (0.5-mi) areas surrounding each of the 29 locations and populate the additional areas along the individual stream reaches or waterways. Consequently, the currently unoccupied areas within individual stream reaches or waterways need to be of sufficient size to allow for the expansion of current and future populations and provide connectivity (active season movements and dispersal) between multiple populations as they become established.

So for each of the 19 units (encompassing 29 locations) considered occupied, we include areas that are considered unoccupied that are adjacent to the occupied areas in designated critical habitat units. The currently occupied areas contain PCEs 1 and 2. However, the unoccupied areas are essential for the conservation of the subspecies, and the all of the PCEs (1, 2, 3, and 4) can be restored along streams and other waterways within these unoccupied areas. Each of these 19 units are considered ''partially occupied'' because they include some small areas (within the 0.8-km (0.5-mi) areas) that have been occupied by the species since 2005, and other larger areas upstream or downstream (beyond the 0.8-km (0.5-mi) areas) that are not known to be occupied by the jumping mouse at the time of listing.

To decide what geographic areas of unoccupied habitat upstream and downstream adjacent to occupied areas should be included in critical habitat units, we focused on areas that had historical collection records confirmed to be the jumping mouse. Historic capture locations were then used to approximate previously occupied habitat and guide our designation of unoccupied critical habitat areas. Within the historic range of the subspecies, we then identified areas of potential habitat that have been recently restored, areas that likely still contain the habitat characteristics sufficient to support the life history of the subspecies, and areas where functionally connected patches of suitable habitat will be required to provide for resilient populations and to conserve the subspecies.

In considering how much area to include in critical habitat units we considered how much suitable habitat might be needed to support resilient populations. Based upon review of the available information, jumping mouse populations generally need connected areas of suitable habitat along at least 9 to 24 km (5.6 to 15 mi) of continuous suitable habitat to support viable populations of jumping mice with a high likelihood of long-term persistence (see section 2.7 of the SSA Report (Service 2014)). This stream length will increase the probability of the populations to withstand catastrophic events such as wildfire. We used this length as a general guide for determining critical habitat units and subunits along waterways, but each unit and subunit were evaluated on a site-by-site basis to determine the best configuration of critical habitat to support jumping mouse populations in that unit or subunit.

In designating critical habitat boundaries, we also considered the need for movement and dispersal to occur between suitable habitat areas within a critical habitat unit or subunit. We do not anticipate that suitable habitat containing dense riparian herbaceous vegetation will be continuous throughout each of the critical habitat units, but rather, that suitable habitat should be dispersed throughout waterways in the critical habitat units to allow for natural behaviors and perhaps occasional longer distance (*i.e.,* from 200 to 700 m (656 to 2,297 ft)) exploratory movements (Frey and Wright 2012, p. 109), including dispersal.

These movement and dispersal corridors are needed to connect occupied sites to one another within individual units (see section 2.6 of the SSA Report (Service 2014)). Historically, populations were likely distributed throughout drainages, with a series of interconnected local populations (also called subpopulations) occupying suitable habitat patches within individual streams. Interconnected local populations were likely arranged within suitable habitat patches along streams in such a way that individuals could fulfill their daily and seasonal movements of about 200 m (656 ft), but also occasionally move greater distances (*i.e.,* 200 to 744 m (656 to 2,441 ft)) to disperse to other habitat patches within stream areas (Frey and Wright 2012, p. 109). This ability to have multiple local populations is important to maintaining genetic diversity within the populations along streams and providing sources for recolonization when local populations are extirpated. For example, if a site is extirpated, recolonization from persisting local source populations within the same general area would have to occur along riparian corridors that contain suitable habitat (Frey 2011, p. 41).

Based on the above information, the most likely routes for dispersal of jumping mice among sites would occur along perennial or intermittent drainages where suitable habitat is present or restorable. Although we did not select specific areas in which to designate movement corridors (but rather geographic areas of suitable habitat along at least 9 to 24 km (5.6 to 15 mi)), we assumed perennial drainages are better movement corridors than ephemeral or intermittent drainages, and the ephemeral or intermittent drainages are better movement corridors than upland routes. We also assume that, if all else is equal, the shorter the route the more likely New Mexico meadow jumping mice will successfully move. Because jumping mouse habitat is subject to the dynamic process of flooding, inundation, and drought, the extent and location of riparian corridors along streams and rivers may not remain constant and, depending on local conditions, are likely to expand and contract. Nevertheless, areas containing suitable habitat should be no more than 200 m (656 ft) apart within these waterways, which would encompass the majority of daily and seasonal movements of individual jumping mice (Wright and Frey 2012, p. 109). This configuration of habitat provides for a local population to be ''functionally connected'' (as described in the SSA Report (Service 2014)), such that the movements of the majority of individual jumping mice and perhaps occasional interpopulation dispersal occur unimpeded.

As a result of this analysis, we have determined that some of the areas within the critical habitat units are essential for the conservation of the species even though they do not contain currently suitable habitat and are more than 0.8 km (0.5 mi) away from occupied sites. For example, within Unit 2, we include the Harold Brock Fishing Easement that is located between the two sites that we consider occupied on Coyote Creek. The fishing easement is considered unoccupied because there are no current records indicating this area is occupied, it does not currently contain suitable habitat, and it is beyond the distance travelled by jumping mice for the majority of daily and seasonal movements within the two occupied sites along Coyote Creek. Restoring currently degraded habitat in units like Coyote Creek is essential to the conservation of the subspecies because it expands the available habitat within a given unit that can be occupied by the subspecies and

provides for potentially increasing population size within that riparian system. Increased population sizes are essential to conserving the subspecies as higher numbers of individuals in the populations increases the likelihood of the persistence of the populations over time, increasing population resiliency.

Completely Unoccupied Areas—Section 3(5)(A)(ii) of the Act

We next considered whether there were any other areas within the species' historical range but outside of the geographic area occupied at the time of listing (in other words completely unoccupied areas) that are essential for the conservation of the jumping mouse. We examined whether resilient populations at the 19 partially occupied units and subunits (with 29 locations occupied since 2005) would be sufficient to provide for viability of the jumping mouse. We reviewed the current and historical distribution of the subspecies within each of the eight geographic management areas across its range and the need for sufficient redundancy for the jumping mouse (see chapter 3 of the SSA Report (Service 2014)). We found five of the eight geographic management areas would have sufficient populations to support species viability if the current jumping mouse areas were expanded to provide for resilient populations. The three exceptions where the historic distribution is not adequately represented by recently located populations were in the Jemez Mountains, the Sacramento Mountains, and the Rio Grande geographic management areas. We found that the conservation of the subspecies requires increasing the number and distribution of populations of the jumping mouse to allow for the restoration of new populations and expansion of current populations into areas that were historically occupied within the Jemez Mountains, Sacramento Mountains, and the middle Rio Grande.

On June 20, 2013 (78 FR 37328), we proposed four subunits (3C, 4B, 6A, and 6B) within three geographic management areas that are completely unoccupied, but are essential for the conservation of the jumping mouse. Inclusion of these areas provides for expansion of the overall geographic distribution of the species and increases the redundancy within these geographic management areas. Much of the habitat within these four unoccupied subunits contained New Mexico meadow jumping mice as recently as the late 1980s (Morrison 1985, entire; 1988, pp. 22–35; 1989, pp. 7–23; 1992, p. 311; Frey 2005a, p. 7). In this rule, we have excluded proposed subunits 6A and 6B (Isleta Pueblo and Ohkay Owingeh) from the final designation under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of including these areas as critical habitat (see *Tribal Lands—Exclusions Under Section 4(b)(2) of the Act,* below).

In evaluating what areas are essential for jumping mouse, we are not designating as critical habitat a number of historical locations of the jumping mouse because we do not think they are essential for conservation of the species. These omitted locations are, compared to other habitat segments, of lesser quality, have a low potential of being restored, and would not contribute to connectivity, stability, or protection against catastrophic loss. Consequently, we are not designating other historical locations along riparian areas as critical habitat because we did not find them to be essential for conservation of the jumping mouse. The currently unoccupied units that are included in this final designation (Subunits 3C and 4B) both contain perennial flowing water with saturated soils, making these units highly restorable and essential for the conservation of the species.

Lateral Extent

To allow normal behavior, to ensure protection of the jumping mouse and the physical and biological habitat features, and to ensure maintenance of sufficient PCEs on which the subspecies depends, the outward, lateral extent of critical habitat from the riparian habitats should at least approximate the 100-year floodplain. Unfortunately, floodplains have not been mapped for many streams within the jumping mouse's range. While alternative delineation of critical habitat based on geomorphology and existing vegetation could accurately portray the presence and extent of required habitat components, we lack the explicit data to allow us to conduct such a delineation of critical habitat on a site-by-site basis. To address these issues, we use a set distance of 100 m (328 ft) outward from either side of the bankfull stage, which is defined as the boundary between the active water channel (*i.e.,* river or stream) and the floodplain (Moody *et al.* 2003, entire). Moreover, some locations are associated with canals and ditches (*e.g.,* Bosque del Apache NWR) that are manmade and do not have any associated floodplain. For ditches or canals we use a set distance of 100 m (328 ft) outward from the top edge of the ditch or canal because there is no bankfull stage. We consider this width necessary to accommodate not only stream meandering and high flows within natural waterways, but also to capture essential upland areas to ensure that this designation contains the features essential to all of the life-history stages (*e.g.,* foraging, breeding, and hibernation) and the conservation of the subspecies (see chapter 3 of the SSA Report (Service 2014)). While this lateral extent of critical habitat may not extend outward to all areas used by individual jumping mice over time, we expect that it will support the full range of PCEs essential for conservation of jumping mouse populations in these reaches.

Bankfull stage is defined as the upper level of the range of channel-forming flows, which transport the bulk of available sediment over time. Bankfull stage is generally considered to be that level of stream discharge reached just before flows spill out onto the adjacent floodplain. The discharge that occurs at bankfull stage, in combination with the range of flows that occur over a length of time, govern the shape and size of the river channel (Rosgen 1996, pp. 2–2 to 2–4). The use of bankfull stage and 100 m (328 ft) on either side recognizes the naturally dynamic nature of riverine systems, recognizes that floodplains are an integral part of the stream ecosystem, and contains the area and associated features essential to the conservation of the subspecies. The location of the bankfull stage is not an ephemeral feature, meaning it does not disappear. Bankfull stage can be determined and delineated for any stream and for the canals and ditches we are designating as critical habitat. There are consistent indicators or physical evidence (*e.g.,* deposition features, slopes of stream banks, and vegetation) and regional relationships that help to identify the bankfull stage in the arid southwest (Moody *et al.* 2003, entire). We acknowledge that the bankfull stage of any given segment may change depending on the magnitude of a flood event, but it is a definable and standard measurement for stream systems. Following high flow events, stream channels can move from one side of a canyon to the opposite side, for example. If we were to designate critical habitat based on the location of the stream on a specific date, the area within the designation could be a dry channel in less than 1 year from the publication of the determination, should a high flow event occur.

Mapping

The critical habitat units were first delineated by creating rough areas for each unit by screen-digitizing polygons using Google Earth. We then digitized and refined the units using ArcMap version 10 (Environmental Systems

Research Institute, Inc.), a computer GIS program. The polygons were created by using current (2005 to 2014) and historical (1985 to 1996) species location points. No New Mexico meadow jumping mice were captured between 1996 and 2005, and so the delineation of current and historic is based on dates of capture records or lack of capture records. These current and historic location points were then used in conjunction with hydrology, vegetation, and expert opinion.

We set the limits of each critical habitat unit by identifying landmarks (islands, confluences, roadways, crossings, dams) that clearly delineated each area. Stream confluences are often used to delineate the boundaries of a unit for an aquatic species because the confluence of a tributary typically marks a significant change in the size or habitat characteristics of the stream. Stream confluences are also logical and recognizable termini. When a named tributary was not available, or if another landmark provided a more recognizable boundary, we used that landmark as a boundary.

When current or historical locations of New Mexico meadow jumping mice were used to delineate upstream and downstream boundaries of critical habitat, we extended the boundaries by about 0.8 km (0.5 mi) to encompass areas that have the potential to be occupied during the active season of the species. We then refined the starting and end points by evaluating appropriate habitat conditions based on the presence or absence of perennial water or suitable vegetation. We selected upstream and downstream cutoff points that would avoid including highly degraded areas that are not likely restorable. For example, we did not include areas that were permanently dewatered or permanently developed (*i.e.,* natural vegetation removed), or areas in which there was some other indication that suitable habitat no longer existed and was not likely to be restored.

When determining critical habitat boundaries, we also made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological habitat features for the jumping mouse. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the final rule 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

In summary, we are designating as critical habitat those geographic areas that we have determined to be occupied by the jumping mouse at the time of listing and that contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species and require special management. We are also designating as critical habitat additional areas that are considered presently unoccupied, but are essential to the conservation of the jumping mouse.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented in the Regulation Promulgation section of this rule. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R2–ES–2013–0014, at *http://www.fws.gov/southwest/es/NewMexico/,* and at the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

**Final Critical Habitat Designation**

We are designating approximately 5,657 hectares (13,973 acres) along 272.4 kilometers (169.3 miles) of flowing streams, ditches, and canals in eight units as critical habitat for the jumping mouse in the States of Colorado, New Mexico, and Arizona. Units 3, 4, and 5 have subunits, resulting in a total of 21 subunits and units designated. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the jumping mouse. The units we designate as critical habitat and the approximate area of each critical habitat unit and land ownership are shown in Table 1. A summary of the areas by land ownership and State are provided in Table 2.

TABLE 1—CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE

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

| Stream segment | Occupied at the time of listing | Land ownership | Length of unit, km (mi) | Area, ha (ac) |
|---|---|---|---|---|
| **Unit 1—Sugarite Canyon** | | | | |
| Chicorica Creek | Partial | State of New Mexico | | 229 (567) |
| | | State of Colorado | | 114 (282) |
| Total Unit 1 | | | 13.0 (8.1) | 344 (849) |
| **Unit 2—Coyote Creek** | | | | |
| Coyote Creek | Partial | State of New Mexico | | 26 (64) |
| | | Private | | 213 (527) |
| Total Unit 2 | | | 11.8 (7.4) | 239 (591) |
| **Unit 3—Jemez Mountains** | | | | |
| *Subunit 3A—San Antonio:* | | | | |
| San Antonio Creek | Partial | Forest Service | | 223 (550) |
| | | Private | | 10 (26) |
| | | Other Federal Agency | | 1 (3) |

TABLE 1—CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE—Continued

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

| Stream segment | Occupied at the time of listing | Land ownership | Length of unit, km (mi) | Area, ha (ac) |
|---|---|---|---|---|
| Total Subunit 3A | | | 11.5 (7.1) | 234 (579) |
| *Subunit 3B—Rio Cebolla:* | | | | |
| Rio Cebolla | Partial | Forest Service | | 278 (686) |
| | | Private | | 76 (187) |
| | | State of New Mexico | | 76 (187) |
| Total Subunit 3B | | | 20.7 (12.9) | 429 (1,060) |
| *Subunit 3C—Rio de las Vacas:* | | | | |
| Rio de las Vacas | No | Forest Service | | 332 (820) |
| | | Private | | 122 (302) |
| Total Subunit 3C | | | 23.3 (14.5) | 454 (1,122) |
| Total Unit 3 | | | 55.5 (34.5) | 1,118 (2,761) |
| **Unit 4—Sacramento Mountains** | | | | |
| *Subunit 4A—Silver Springs:* | | | | |
| Silver Springs Creek | Partial | Forest Service | | 28 (70) |
| | | Private | | 77 (190) |
| Total Subunit 4A | | | 5.2 (3.2) | 105 (260) |
| *Subunit 4B—Upper Peñasco:* | | | | |
| Rio Peñasco | No | Forest Service | | 118 (291) |
| | | Private | | 18 (44) |
| Total Subunit 4B | | | 6.4 (4.0) | 136 (335) |
| *Subunit 4C—Middle Peñasco:* | | | | |
| Rio Peñasco | Partial | Forest Service | | 26 (65) |
| | | Private | | 238 (587) |
| Total Subunit 4C | | | 11.4 (7.1) | 264 (652) |
| *Subunit 4D—Wills Canyon:* | | | | |
| Mauldin Springs | Partial | Forest Service | | 65 (162) |
| | | Private | | 46 (113) |
| Total Subunit 4D | | | 5.5 (3.4) | 111 (275) |
| *Subunit 4E—Agua Chiquita Canyon:* | | | | |
| Agua Chiquita Creek | Partial | Forest Service | | 161 (398) |
| Total Subunit 4E | | | 7.7 (4.8) | 161 (398) |
| Total Unit 4 | | | 36.2 (22.5) | 777 (1,920) |
| **Unit 5—White Mountains** | | | | |
| *Subunit 5A—Little Colorado:* | | | | |
| Little Colorado River | Partial | Forest Service | | 445 (1,100) |
| | | Private | | 33 (81) |
| Total Subunit 5A | | | 22.6 (14.0) | 478 (1,181) |
| *Subunit 5B—Nutrioso:* | | | | |
| Nutrioso River | Partial | Forest Service | | 142 (351) |
| | | Private | | 271 (670) |
| Total Subunit 5B | | | 20.4 (12.7) | 413 (1,021) |
| *Subunit 5C—San Francisco:* | | | | |
| San Francisco River | Partial | Forest Service | | 68 (167) |
| | | Private | | 184 (455) |
| Total Subunit 5C | | | 11.8 (7.3) | 252 (622) |
| *Subunit 5D—East Fork Black:* | | | | |
| East Fork Black River | Partial | Forest Service | | 421 (1,040) |
| Total Subunit 5D | | | 20.3 (12.6) | 421 (1,040) |
| *Subunit 5E—West Fork Black:* | | | | |
| West Fork Black River | Partial | Forest Service | | 415 (1,025) |
| | | Private | | 17 (43) |

TABLE 1—CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE—Continued

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

| Stream segment | Occupied at the time of listing | Land ownership | Length of unit, km (mi) | Area, ha (ac) |
|---|---|---|---|---|
| | | State of Arizona | | 49 (120) |
| Total Subunit 5E | | | 23.0 (14.3) | 481 (1,188) |
| *Subunit 5F—Boggy and Centerfire:* | | | | |
| Boggy and Centerfire Creeks | Partial | Forest Service | | 197 (485) |
| Total Subunit 5F | | | 8.9 (5.5) | 197 (485) |
| *Subunit 5G—Corduroy:* | | | | |
| Corduroy Creek | Partial | Forest Service | | 104 (256) |
| Total Subunit 5G | | | 4.8 (3.0) | 104 (256) |
| *Subunit 5H—Campbell Blue:* | | | | |
| Campbell Blue Creek | Partial | Forest Service | | 100 (247) |
| | | Private | | 2 (6) |
| Total Subunit 5H | | | 4.8 (3.0) | 102 (253) |
| Total Unit 5 | | | 116.6 (72.4) | 2,448 (6,046) |
| **Unit 6—Bosque del Apache NWR** | | | | |
| Canal | Partial | Service | | 403 (995) |
| Total Unit 6 | | | 21.1 (13.1) | 403 (995) |
| **Unit 7—Florida** | | | | |
| Florida River | Partial | Private | | 251 (620) |
| | | Bureau of Land Mgt | | 3 (6) |
| Total Unit 7 | | | 13.6 (8.4) | 253 (626) |
| **Unit 8—Sambrito Creek** | | | | |
| Sambrito Creek | Partial | State of Colorado | | 61 (150) |
| | | Private | | 14 (35) |
| Total Unit 8 | | | 4.6 (2.9) | 75 (185) |
| Grand Total All Units | | | 272.4 (169.3) | 5,657 (13,973) |

**Note:** Area sizes may not sum due to rounding.

TABLE 2—CRITICAL HABITAT UNITS FOR THE NEW MEXICO MEADOW JUMPING MOUSE, SUMMARIZED BY LAND OWNERSHIP AND STATE

| State | Land ownership, ha (ac) | | | |
|---|---|---|---|---|
| | Federal | State | Private | Total |
| New Mexico | 1,635 (4,040) | 331 (818) | 800 (1,976) | 2,766 (6,834) |
| Arizona | 1,892 (4,671) | 49 (120) | 507 (1,255) | 2,448 (6,046) |
| Colorado | 3 (6) | 175 (432) | 265 (655) | 443 (1,093) |
| Total | 3,530 (8,717) | 555 (1,370) | 1,572 (3,886) | 5,657 (13,973) |

*Unit Descriptions*

We present brief descriptions of each of the critical habitat units, and reasons why they meet the definition of critical habitat for the jumping mouse, below. For additional information on each unit, see chapter 4 in the SSA Report (Service 2014).

We consider the 29 locations where the jumping mouse has been found since 2005 to be within the geographic area occupied at the time of listing (occupied areas). All of these 29 occupied areas are contained within 19 of the 21 critical habitat units that we refer to as partially occupied in Table 1. There are two completely unoccupied subunits (Subunit 3C—Rio de las Vacas, and Subunit 4B—Upper Peñasco). We specifically describe each of the occupied areas within the critical habitat unit descriptions presented below. All of these occupied areas contain suitable habitat with one or more of the essential physical or biological features that may require special management and are, therefore, included in the designation under section 3(5)(A)(i) of the Act. All of these occupied areas exhibit both PCE 1—

appropriate wetland vegetation communities, and PCE 2—flowing water with tall herbaceous vegetation. The occupied areas within these 19 units may require special management or protection to address the direct or indirect loss or alteration of the essential physical and biological features. These special management considerations or protections may be needed to address water development, recreational use, livestock grazing, road reconstruction, the loss of beaver ponds, and vegetation mowing.

Every critical habitat unit contains areas outside the geographic area occupied by the species at the time of listing (unoccupied areas) that we conclude are essential for the conservation of the jumping mouse. As noted, two of these units (Subunits 3C and 4B) are considered completely unoccupied. The remaining 19 critical habitat subunits include unoccupied areas that are upstream or downstream of the occupied areas, but do not currently have the necessary vegetation to protect jumping mice from predators or to provide food sources. We describe these subunits containing both occupied and unoccupied areas within the same stream reach as partially occupied (Table 1). All of the completely or partially occupied areas currently have flowing water to allow for future restoration of the PCEs 1 and 2, as well as PCE 3—sufficient areas of streams, ditches, or canals; and PCE 4—adjacent floodplain and upland areas that would collectively provide the needed physical and biological features of habitat required to sustain the species' life-history processes.

We conclude that all of these areas, whether they are within partially occupied or completely unoccupied units, are essential to the conservation of the jumping mouse because: (1) The areas occupied by the mouse since 2005 do not contain enough suitable, connected habitat to support resilient populations of jumping mouse; (2) the currently unoccupied segments within individual stream reaches or waterways need to be of sufficient size to allow for the expansion of populations and provide connectivity (active season movements and dispersal) between multiple populations as they become established; (3) additional areas need habitat protection to allow restoration of the necessary herbaceous vegetation for possible future reintroductions; and (4) multiple local populations along streams are important to maintaining genetic diversity within the populations and for providing sources for recolonization if local populations are extirpated. Therefore, all of the partially occupied or completely unoccupied areas are included in the designation under section 3(5)(A)(ii) of the Act.

Unit 1—Sugarite Canyon

Unit 1 consists of 344 ha (849 ac) along 13.0 km (8.1 mi) of streams on private lands and areas owned by the States of Colorado and New Mexico. The Colorado stream areas are found within Las Animas County, Colorado, and the New Mexico stream areas are found within Colfax County, New Mexico. The unit begins 0.6 km (0.4 mi) north of the headwaters of Lake Dorothey, Colorado, along the East Fork and 1.1 km (0.7 mi) north of the headwaters of Lake Dorothey along the West Fork of Schwacheim Creek and follows the drainage downstream, to include a 2.0-km (1.25-mi) segment of Chicorica Creek that is a tributary flowing into the headwaters of Lake Maloya and a 0.8-km (0.5-mi) segment of Segerstrom Creek, which is a tributary flowing into the western edge of Lake Maloya, New Mexico. The unit continues through Lake Maloya and includes about 1.8 km (1.1 mi) of the small western tributary Soda Pocket Creek, which flows into and includes lower Chicorica Creek below Lake Maloya Dam downstream to the terminus of the area at Lake Alice Dam within Sugarite Canyon State Park.

Based upon captures of the jumping mouse since 2005 (Frey 2006d, pp. 19–21, 67; Frey and Kopp 2013, entire; Colorado Parks and Wildlife 2013a, p. 1) approximately 2.8 ha (7 ac) within Unit 1 are considered occupied at the time of listing and contain suitable habitat. The occupied areas occur within Sugarite Canyon State Park in New Mexico along Sugarite Canyon at five locations: (1) Chicorica Creek 0.6 km (0.4 mi) below Lake Maloya Dam; (2) Segerstrom Creek just above the western confluence with Lake Maloya; (3) the headwaters of Lake Alice; and (4) Soda Pocket Creek and Campground along the two streams (2 separate locations) that cross the open meadow on Barlett Mesa near the campfire program area and behind campsite number 16 (Frey 2006d, pp. 19–21, 67; Frey and Kopp 2013, entire; Colorado Parks and Wildlife 2013a, p. 1). In 2011, the Track Fire burned nearly the entire watershed of Sugarite Canyon, significantly impacting the population at Sugarite Canyon State Park (Frey and Kopp 2013, entire; Service 2013c, entire). We consider this area within the geographical area occupied by the jumping mouse at the time of listing. The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, water use and management, floods, the reduction in the distribution and abundance of beaver ponds, and coalbed methane development. The occupied areas are centered around the five capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of each of these areas where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Unit 1 are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

Unit 2—Coyote Creek

Unit 2 consists of 239 ha (591 ac) along 11.8 km (7.4 mi) of Coyote Creek on private lands and an area owned by the State of New Mexico within Mora County. The unit begins at the confluence of Little Blue Creek and Coyote Creek and extends downstream to about the terminus just south of the Village of Guadalupita.

Based upon captures of the jumping mouse since 2006 (Frey 2006d, pp. 24, 70; Frey 2012, p. 6), approximately 1.7 ha (4.3 ac) within Unit 2 are considered occupied at the time of listing and contain suitable habitat. The occupied areas occur within Coyote Creek State Park and several miles north of the park along Highway 434 in New Mexico at two locations along Coyote Creek including: (1) An area that contains extensive beaver ponds, dams, and canals and is located between the only vehicle bridge within the southwestern part of Coyote Creek State Park and the southern boundary of the park; and (2) within another area that contains extensive beaver activity about 1.9 km (1.2 mi) south of the confluence of Little Blue Creek and Coyote Creek. The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, water use and management, floods, the reduction in the distribution and abundance of beaver ponds, and development. The occupied areas are centered around the two capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Unit 2 are found both upstream and downstream of the occupied areas, and are considered essential to the conservation

of the jumping mouse (as described under the heading *Unit Descriptions,* above).

Unit 3—Jemez Mountains

Unit 3 consists of 1,118 ha (2,761 ac) along 55.5 km (34.5 mi) of streams within three subunits on private lands and areas owned by the Forest Service and the State of New Mexico within Sandoval County, New Mexico. Areas designated as critical habitat for the jumping mouse in this unit incorporate the only habitat known to be occupied by the species since 2005 within the Jemez Mountains with the capability to support the breeding and reproduction of the species.

*Subunit 3A—San Antonio:* Subunit 3A consists of 234 ha (579 ac) along 11.5 km (7.1 mi) of San Antonio Creek on private lands and areas owned by the Forest Service. This subunit begins along the northern part of San Antonio Creek where it exits the boundary of the Valles Caldera National Preserve and follows the creek through mostly Forest Service lands where it meets private land immediately downstream of the San Antonio Campground.

Based upon the capture of one jumping mouse since 2005 (Frey 2005a, pp. 15, 24, 58), approximately 0.4 ha (1 ac) within Subunit 3A are considered occupied at the time of listing and contain suitable habitat. The occupied area is located along San Antonio Creek within a wet meadow near the southwestern part of San Antonio Campground (Frey 2005a, pp. 15, 24, 58). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the one capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 3A are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 3B—Rio Cebolla:* Subunit 3B consists of 429 ha (1,060 ac) along 20.7 km (12.9 mi) of the Rio Cebolla on private lands and areas owned by the Forest Service and the State of New Mexico. This subunit extends from an old beaver dam about 0.6 km (0.4 mi) north of Hay Canyon downstream about where it meets the Rio de las Vacas.

Based upon captures of the jumping mouse since 2005 (Frey 2005a, pp. 23–28, 37–38; Frey 2007b, p. 11), approximately 10.7 ha (26.4 ac) within Subunit 3B are considered occupied at the time of listing and contain suitable habitat. The occupied areas occurs on State of New Mexico and Forest Service lands in New Mexico at six locations along the Rio Cebolla: (1) Near the western edge of the northwestern pond along the access road within the New Mexico Department of Game and Fish's Seven Springs Hatchery; (2) within Fenton Lake State Park at the upper end of Fenton Lake Marsh above Highway 126 and the New Mexico Highway 126 bridge; (3) within Fenton Lake State Park Day Use Area at the mouth of a small tributary that enters the southwest side of Fenton Lake; (4) within Lake Fork Canyon inside a livestock exclosure above the bridge on Forest Road 376; (5) within a network of channels, beaver ponds, and wet meadows about 0.9 km (0.6 mi) southwest of Forest Road 376 bridge; and (6) about 2.7 km (1.7 mi) north of the confluence of the Rio Cebolla and the Rio de las Vacas (Frey 2005a, pp. 23–28, 37–38; Frey 2007b, p. 11). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, floods, the reduction in the distribution and abundance of beaver ponds, development, and highway reconstruction. The occupied areas are centered around the six capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 3B are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 3C—Rio de las Vacas:* Subunit 3C consists of 454 ha (1,122 ac) along 23.3 km (14.5 mi) of the Rio de las Vacas on private lands and areas owned by the Forest Service. This subunit starts about 0.8 km (0.5 mi) north of Forest Road 94 adjacent to Burned Canyon and extends downstream to the confluence with Subunit 3B.

Although much of the habitat was historically occupied with individuals detected as recently as 1989 (Morrison 1985; 1992, p. 311; Frey 2005a, p. 7), no New Mexico meadow jumping mice were captured during surveys in 2005 (Frey 2005a, p. 18). The entire subunit is considered unoccupied at the time of listing. This subunit has perennial flowing water with saturated soils and a high potential of being restored to suitable habitat. It has the potential for natural recolonization of jumping mice populations through individuals that naturally disperse. This subunit would provide connectivity to Subunit 3B and allow for possible expansion of jumping mice from that currently occupied subunit, which is contiguous with Subunit 3C, into historically occupied habitat along the Rio de las Vacas drainage. We found this entire stream section would provide further connectivity to the adjacently occupied habitat within Subunit 3B and increase the length and size of the suitable habitat. All of the areas within Subunit 3C are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

Unit 4—Sacramento Mountains

Unit 4 consists of 777 ha (1,920 ac) along 36.2 km (22.5 mi) of streams within five subunits on private lands and areas owned by the Forest Service within Otero County, New Mexico. Areas designated as critical habitat for the jumping mouse in this unit incorporate the only habitat known to be occupied by the species since 2005 within the Sacramento Mountains with the capability to support the breeding and reproduction of the species.

*Subunit 4A—Silver Springs:* Subunit 4A consists of 105 ha (260 ac) along 5.2 km (3.2 mi) of Silver Springs Creek on private lands and areas owned by the Forest Service. This subunit begins about 0.3 km (0.2 mi) north of the intersection of Forest Road 162 and New Mexico Highway 244 and follows Silver Springs Creek downstream to the boundary of Forest Service and Mescalero Apache lands.

Based upon the capture of one jumping mouse since 2005 (Frey 2005a, p. 31), approximately 5.4 ha (13.3 ac) within Subunit 4A are considered occupied at the time of listing. The occupied area is located on Forest Service lands in New Mexico within a grazing exclosure containing well-developed riparian habitat about 7.4 km (4.6 mi) north of Cloudcroft along middle Silver Springs Creek, at Junction of Turkey Pen Canyon and Forest Road 405 (Frey 2005a, pp. 31, 38). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver

ponds. The occupied area is centered around one capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 4A are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 4B—Upper Peñasco:* Subunit 4B consists of 136 ha (335 ac) along 6.4 km (4.0 mi) of the Rio Peñasco on private lands and areas owned by the Forest Service. This subunit begins at the junction of Forest Service Road 164 and New Mexico Highway 6563 and follows the Rio Peñasco drainage downstream to about 2.4 km (1.5 mi) below Bluff Spring at the boundary of private and Forest Service lands.

Although much of the habitat was historically occupied with individuals detected as recently as 1988 (Morrison 1989, pp. 7–10, Frey 2005a, pp. 30–31), no New Mexico meadow jumping mice were captured during surveys in 2005 (Frey 2005a, pp. 19–20, 32–34). The entire subunit is considered unoccupied at the time of listing. This subunit contains perennial flowing water with saturated soils and has a high potential of being restored to suitable habitat. It would augment the current size and connectivity of suitable habitat to increase the distribution of the jumping mouse in the Sacramento Mountains and provide population redundancy and resiliency. All of the areas within Subunit 4B are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 4C—Middle Peñasco:* Subunit 4C consists of 264 ha (652 ac) along 11.4 km (7.1 mi) of the Rio Peñasco on private lands and areas owned by the Forest Service. This subunit begins at the junction of Wills Canyon and Forest Service Road 169 and follows the Rio Peñasco drainage downstream to the junction of Forest Road 212.

Based upon the capture of two jumping mice in 2012, following the cessation of grazing for 2 years (Forest Service 2012a, entire; 2012c, entire; Forest Service 2012h, pp. 2–4; Service 2012d; U.S. Army Corps of Engineers 2012, entire; 2012a, entire), approximately 0.3 ha (0.75 ac) within Subunit 4C are considered occupied at the time of listing. The occupied area is located on Forest Service lands in New Mexico within a wetland at the junction of Cox Canyon and the Rio Peñasco (Forest Service 2012h, pp. 2–4). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around one capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 4C are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 4D—Wills Canyon:* Subunit 4D consists of 111 ha (275 ac) along 5.5 km (3.4 mi) of streams on private lands and areas owned by the Forest Service. This subunit begins at upper Mauldin Spring, the head of the Wills Canyon, and follows the drainage downstream along Forest Service Road 169 to the boundary of Forest Service and private lands in the vicinity of Bear Spring.

Based upon the capture of jumping mice in 2012 and 2013 (Forest Service 2012a, entire; 2012h, pp. 2–5; 2013a, entire; Service 2012d, pp. 2, 8), approximately 0.8 ha (1.9 ac) within Subunit 4D are considered occupied at the time of listing. The occupied area is located on Forest Service lands in New Mexico within the grazing exclosures at Mauldin Spring in Wills Canyon (Forest Service 2012a, entire; 2012h, pp. 2–5; 2013a, entire; Service 2012d, pp. 2, 8). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 4D are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 4E—Agua Chiquita Canyon:* Subunit 4E consists of 161 ha (398 ac) along 7.7 km (4.8 mi) of Agua Chiquita Creek on areas owned by the Forest Service. This subunit begins about 0.8 km (0.5 mi) upstream of the livestock exclosure around Barrel and Sand Springs along Agua Chiquita Creek and follows the canyon downstream along Forest Service Road 64 to Crisp, a Forest Service riparian pasture.

Based upon multiple captures of jumping mice since 2005 (Frey 2005a, p. 34; Forest Service 2010, entire; Service 2012d, pp. 1–2), approximately 4.9 ha (12.0 ac) within Subunit 4E are considered occupied at the time of listing. The occupied areas are located on Forest Service lands in New Mexico within two of four fenced livestock exclosures, which includes the exclosure surrounding Sand and Barrel Springs and the most downstream section of the second in the series of four exclosures (Frey 2005a, p. 34; Forest Service 2010, entire; Service 2012d, pp. 1–2). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied areas are centered around the two capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 4E are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

Unit 5—White Mountains

Unit 5 consists of 2,448 ha (6,046 ac) along 116.6 km (72.4 mi) of streams within eight subunits on private lands and areas owned by the Forest Service and the State of Arizona within Greenlee and Apache Counties, Arizona. Areas designated as critical habitat for the jumping mouse in this unit incorporate the only habitat known to be occupied by the species since 2005 within the White Mountains with the capability to support the breeding and reproduction of the species.

*Subunit 5A—Little Colorado:* Subunit 5A consists of 478 ha (1,181 ac) along 22.6 km (14.0 mi) of the Little Colorado River on private lands and areas owned by the Forest Service. This subunit encompasses the East and West Forks of the Little Colorado River. The East Fork Segment begins 0.8 km (0.5 mi) upstream of the Phelps Research Natural Area and follows the drainage downstream about 3.2 km (2.0 mi) to the confluence of Lee Valley Creek and then runs upstream about 1.6 km (1.0 mi) to the dam of Lee Valley Reservoir. The

subunit continues from the confluence of Lee Valley Creek and the East Fork, downstream to the confluence of the West Fork of the Little Colorado River, continuing to about 8.9 km (5.5 mi) upstream along the drainage to about 0.8 km (0.5 mi) past Sheep's Crossing.

Based upon multiple captures of jumping mice since 2008 (Frey 2011, pp. 29, 87; AGFD 2012a, p. 3), approximately 0.6 ha (1.5 ac) within Subunit 5A are considered occupied at the time of listing. The occupied area is located on Forest Service lands in Arizona within a livestock exclosure along a short 0.4-km (0.25-mi) stream reach that is 1.8 km (1.1 mi) south of Greer, below Montlure Camp (Frey 2011, pp. 29, 87; AGFD 2012a, p. 3). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (AGFD 2012a, p. 3). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, recreation, grazing, floods, the reduction in the distribution and abundance of beaver ponds, and development. The occupied areas are centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5A are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 5B—Nutrioso:* Subunit 5B consists of 413 ha (1,021 ac) along 20.4 km (12.7 mi) of Nutrioso Creek on private lands and areas owned by the Forest Service. This subunit begins at the confluence of Paddy Creek about 4.8 km (3 mi) south of the town of Nutrioso and follows the drainage downstream about 16 km (10 mi) to Nelson Reservoir.

Based upon multiple captures of jumping mice since 2008 (Frey 2011, pp. 29, 35, 89, 95; AGFD 2012a, p. 3), approximately 1.9 ha (4.9 ac) within Subunit 5B are considered occupied at the time of listing. The occupied area is located on Forest Service lands in Arizona along a short 1.3-km (0.8-mi) stream reach 3.9 km (2.4 mi) south of the town of Nutrioso. In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (AGFD 2012a, p. 3). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, highway reconstruction, and development. The occupied area is centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5B are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 5C—San Francisco:* Subunit 5C consists of 252 ha (622 ac) along 11.8 km (7.3 mi) of the San Francisco River and its tributary Turkey (=Talwiwi) Creek on private lands and areas owned by the Forest Service. This subunit begins about 0.6 km (0.4 mi) west of Forest Road 8854 along the San Francisco River and follows the drainage downstream about 10.5 km (6.5 mi), including a 1.3-km (0.8-mi) segment of Turkey (=Talwiwi) Creek that is south of Arizona Highway 180, then continues downstream to the headwaters of Luna Lake.

Based upon multiple captures of jumping mice since 2008 (Frey 2011, pp. 29, 97, 100), approximately 0.9 ha (2.3 ac) within Subunit 5C are considered occupied at the time of listing. There are two occupied areas within this unit located on Forest Service lands in Arizona including: (1) A small livestock exclosure along a 0.2-km (0.1-mi) stream reach of upper Turkey Creek at the junction of Highway 80 and Forest Road 289; and (2) two fenced livestock exclosures along a 0.4-km (0.2-mi) stream reach at the junction of the San Francisco River and Forest Road 8854 (Frey 2011, p. 97). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 did not detect New Mexico meadow jumping mice (AGFD 2012, entire, 2012a, p. 2). However, until multiple years of surveys determine that the population has been extirpated, we consider this area within the geographical area occupied by the jumping mouse at the time of listing. The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, highway reconstruction, and development. The occupied areas are centered around the two capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5C are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 5D—East Fork Black:* Subunit 5D consists of 421 ha (1,040 ac) along 20.3 km (12.6 mi) of the East Fork of the Black River areas owned by the Forest Service. This subunit begins 0.8 km (0.5 mi) north of the intersection of Three Forks Road and Route 285 and follows the drainage downstream about 20.3 km (12.6 mi), where it abuts Subunit 5E.

Based upon multiple captures of jumping mice since 2008 (Frey 2011, p. 97; AGFD 2012, entire, 2012a, p. 2), approximately 6.9 ha (16.9 ac) within Subunit 5D are considered occupied at the time of listing. The occupied area is located on Forest Service lands in Arizona along the headwaters of the East Fork Black River near the intersection of Three Forks Road and Route 285 (Frey 2011, p. 29, 35, 40, 104; AGFD 2012, entire, 2012a, p. 2). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (AGFD 2012a, p. 2). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, and highway reconstruction. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5D are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 5E—West Fork Black:* Subunit 5E consists of 481 ha (1,188 ac) along 23.0 km (14.3 mi) of the West Fork of the Black River on private lands and areas owned by the Forest Service and the State of Arizona. The subunit begins at the confluence of the West Fork of the Black River and Burro Creek and follows the drainage downstream where it abuts Subunit 5D.

Based upon multiple captures of jumping mice since 2007 (Underwood, 2007, entire; Frey 2011, pp. 29, 40, 104; AGFD 2012, p. 2), approximately 13.7 ha (33.9 ac) within Subunit 5E are considered occupied at the time of listing. The occupied areas occur on Forest Service lands in Arizona at four locations: (1) Along the upper West Fork Black River just north of Forest Road 116; (2) immediately adjacent to the campground along the middle Fork of the Black River; (3) at the junction of Forest Road 68 and the middle Fork of the Black River; and (4) near the junction of the lower Fork of the Black River and Home Creek (Underwood 2007, entire; Frey 2011, pp. 29, 40, 104; AGFD 2012, p. 2012a, pp. 2–3). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice at the lower and middle sections of the West Fork Black River (AGFD 2012a, pp. 2–3). Although New Mexico meadow jumping mice were not detected at the upper West Fork Black River location, until multiple years of surveys determine that the population has been extirpated, we consider this area within the geographical area occupied by the jumping mouse at the time of listing. The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, the reduction in the distribution and abundance of beaver ponds, and highway reconstruction. The occupied areas are centered around the four capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5E are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 5F—Boggy and Centerfire:* Subunit 5F consists of 197 ha (485 ac) along 8.9 km (5.5 mi) of Boggy Creek and Centerfire Creek on areas owned by the Forest Service. The east segment of the subunit begins 0.8 km (0.5 mi) north of the intersection of Route 25 and Boggy Creek and follows the drainage downstream to the confluence with Centerfire Creek. The west segment begins 0.8 km (0.5 mi) north of the intersection of Route 25 and Centerfire Creek, and follows the drainage downstream to the confluence with Boggy Creek, then continues downstream to the confluence with the Black River.

Based upon multiple captures of jumping mice since 2008 (Frey 2011, pp. 29, 104–105; AGFD 2012, pp. 3–4; 2012a, p. 3), approximately 3.0 ha (7.5 ac) within Subunit 5F are considered occupied at the time of listing. The occupied areas are located on Forest Service lands in Arizona within fenced livestock exclosures at the junction of Forest Road 25 and Boggy Creek; and within a fenced livestock exclosure at the junction of Forest Road 25 and Centerfire Creek (Frey 2011, pp. 29, 104–105; AGFD 2012, pp. 3–4; 2012a, p. 3). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (AGFD 2012a, p. 3). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied areas are centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of these areas where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5F are found both upstream and downstream of the occupied areas, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 5G—Corduroy:* Subunit 5G consists of 104 ha (256 ac) along 4.8 km (3.0 mi) of Corduroy Creek on lands owned by the Forest Service. The subunit begins at the headwaters about 0.8 km (0.5 mi) south of the intersection of County Road 24 and County Road 8184A and follows the drainage downstream to the confluence with Fish Creek.

Based upon multiple captures of jumping mice since 2009 (Frey 2011, pp. 104–105; AGFD 2012, entire, 2012a, p. 4), approximately 0.4 ha (1.1 ac) within Subunit 5G are considered occupied at the time of listing. The occupied area is located on Forest Service lands in Arizona within fenced livestock exclosures at the junction of Forest Road 8184A and Corduroy Creek (Frey 2011, pp. 104–105; AGFD 2012, entire, 2012a, p. 4). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 continued to detect New Mexico meadow jumping mice (AGFD 2012a, p. 4). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5G are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

*Subunit 5H—Campbell Blue:* Subunit 5H consists of 102 ha (253 ac) along 4.8 km (3.0 mi) of Campbell Blue Creek on private lands and areas owned by the Forest Service. The subunit begins at the confluence with Cat Creek along Forest Road 281 and extends downstream to the confluence with Turkey Creek.

Based upon multiple captures of jumping mice since 2008 (Frey 2011, pp. 29, 101), approximately 0.008 ha (0.02 ac) within Subunit 5H are considered occupied at the time of listing. The occupied area is located on Forest Service lands in Arizona within a livestock exclosure 13 km (8 mi) north of the community of Blue (Frey 2011, pp. 29, 101). In 2011, the Wallow Fire burned much of this area, and surveys during 2012 did not detect New Mexico meadow jumping mice (AGFD 2012, entire, 2012a, p. 2). However, until multiple years of surveys determine that the population has been extirpated, we consider this area within the geographical area occupied by the jumping mouse at the time of listing. The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Severe wildland fires, grazing, floods, and the reduction in the distribution and abundance of beaver ponds. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Subunit 5H are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

Unit 6—Bosque del Apache National Wildlife Refuge (NWR)

Unit 6 consists of 403 ha (995 ac) along 21.1 km (13.1 mi) of ditches and canals on the Service's Bosque del Apache NWR, Socorro County, New Mexico. This unit includes parts of a complex ditch system with associated irrigation of NWR management units, making habitat within this area unique. This unit begins in the northern part of the NWR and generally follows the Riverside Canal to the southern end. The NWR is the only locality within the middle Rio Grande considered still in existence (Frey and Wright 2012; Service 2014a, entire).

Based upon multiple captures of the jumping mouse since 2009 (Frey and Wright 2012, entire; Service 2014a, entire), approximately 4.1 ha (10.1 ac) within Unit 6 are considered occupied at the time of listing. The occupied area is located on NWR lands in New Mexico along a 2.7-km (1.7-mi) segment of the Riverside Canal (Frey and Wright 2012, entire; Service 2014a, entire). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Water use and management; severe wildland fires; and thinning, mowing, or removing tamarisk (also known as saltcedar, *Tamarix ramosissima*), decadent stands of willow that are greater than 3 years old or 1.5 m (4.9 ft) tall. The occupied area is centered around the capture locations plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Unit 6 are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

Unit 7—Florida

Unit 7 consists of 253 ha (626 ac) along 13.6 km (8.4 mi) of the Florida River on private lands and an area owned by the Bureau of Land Management, La Plata County, Colorado. The unit begins at the irrigation diversion structure (Florida Ditch main headgate) of the Florida Water Conservancy District about 0.8 km (0.5 mi) northeast of the intersection of La Plata County Road 234 and 237 and follows the drainage downstream to about 0.16 km (0.1 mi) north of Ranchos Florida Road.

Based upon the capture of two jumping mice since 2007 (Museum of Southwestern Biology 2007; 2007a; Frey 2008c, pp. 42–45, 56; 2011a, pp. 19, 33), approximately 0.15 ha (0.37 ac) within Unit 7 are considered occupied at the time of listing. The occupied area is located on private lands in Colorado 0.9 km (0.6 mi) north of Highway 160 along the Florida River (Museum of Southwestern Biology 2007; 2007a; Frey 2008c, pp. 42–45, 56; 2011a, pp. 19, 33). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Floods, water use and management, development, and coalbed methane. The occupied area is centered around the capture location plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Unit 7 are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

Unit 8—Sambrito Creek

Unit 8 consists of 75 ha (185 ac) along 4.6 km (2.9 mi) of Sambrito Creek on private lands and areas owned by the State of Colorado within Navajo State Park, near Arboles, Archuleta County, Colorado. There are two segments within this unit. One segment begins at Archuleta County Road 977, following Sambrito Creek downstream to the headwaters of Navajo Reservoir. The second segment starts about 0.3 km (0.2 mi) west of the intersection of Colorado Road 977 and 988 and follows the drainage about 3.9 km (2.1 mi) through the Sambrito Wetlands Area downstream about to the headwaters of Navajo Reservoir.

Based upon multiple captures of jumping mice since 2012 (Colorado Parks and Wildlife 2012, entire, 2013, entire; Ecosphere 2014, entire), approximately 0.9 ha (2.3 ac) within Unit 8 are considered occupied at the time of listing. The occupied area is located on State of Colorado lands immediately south of Archuleta County Road 977 along the unnamed drainage through the Sambrito Wetlands Areas about 1.8 km (1.1 mi) due west of Sambrito Creek (Colorado Parks and Wildlife 2012, entire). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce the following threats: Floods, grazing, water use and management, the reduction in the distribution and abundance of beaver ponds, development, recreation, and coalbed methane. The occupied area is centered around the capture location that is about 0.5 km (0.3 mi) south of Archuleta County Road 977 plus an additional 0.8-km (0.5-mi) segment upstream and downstream of this area where the physical and biological features of critical habitat are found. The remaining unoccupied areas within Unit 8 are found both upstream and downstream of the occupied area, and are considered essential to the conservation of the jumping mouse (as described under the heading *Unit Descriptions,* above).

**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 they appreciably reduce the conservation value of critical habitat for the jumping mouse. As discussed above, the role of critical habitat is to support life-history needs of the subspecies and provide for the conservation of the subspecies.

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 jumping mouse. These activities include, but are not limited to:

(1) Any activity that destroys, modifies, alters, or removes the herbaceous riparian vegetation that comprises the subspecies' habitat, as described in this final rule or within the SSA Report (Service 2014), especially if these activities occur during the jumping mouse's active season. Such activities could include, but are not limited to: Domestic livestock grazing; land clearing or mowing; activities associated with construction for roads, bridges, pipelines, or bank stabilization; residential or commercial development; channel alteration; timber harvest; prescribed fires; off-road vehicle activity; recreational use; the removal of beaver (excluding irrigation ditches and canals); and other alterations of watersheds and floodplains. These activities may affect the physical or biological features of critical habitat for the jumping mouse, by removing sources of food, shelter, nesting or hibernation sites, or by otherwise impacting habitat essential for completion of its life history.

(2) Any activity that results in changes in the hydrology of the critical habitat unit, including modification to any stream or water body that results in the removal or destruction of herbaceous riparian vegetation in any stream or water body. Such activities that could cause these effects include, but are not limited to, water diversions, groundwater pumping, watershed degradation, construction or destruction of dams or impoundments, developments or 'improvements' at a spring, channelization, dredging, road and bridge construction, destruction of riparian or wetland vegetation, and other activities resulting in the draining or inundation of a unit.

(3) Any activity (*e.g.,* instream dredging, impoundment, water diversion or withdrawal, channelization, discharge of fill material) that detrimentally alters natural processes in a unit, including changes to inputs of water, sediment, and nutrients, or any activity that significantly and detrimentally alters water quantity in the unit.

(4) Any activity that could lead to the introduction, expansion, or increased density of an exotic plant or animal species that is detrimental to the jumping mouse and to its habitat.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands within the critical habitat designation for the jumping mouse; therefore, we are not exempting any areas under section 4(a)(3)(B)(i) of the Act.

**Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from

critical habitat if he 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.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the jumping mouse, the benefits of critical habitat include promotion of public awareness of the presence of the jumping mouse and the importance of habitat protection, and in cases where a Federal nexus exists, potentially greater habitat protection for the jumping mouse due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments we received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the jumping mouse:

TABLE 3—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

| Proposed subunit | Specific area | Areas meeting the definition of critical habitat, in hectares (acres) | Areas excluded from critical habitat, in hectares (acres) |
|---|---|---|---|
| 6A | Isleta Pueblo | 43 ha (105 ac) | 43 ha (105 ac). |
| 6B | Ohkay Owingeh | 51 ha (125 ac) | 51 ha (125 ac). |

**Consideration of Economic Impacts**

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an incremental effects memorandum and screening analysis, which together with our narrative and interpretation of effects, we consider our draft economic analysis of the proposed critical habitat designation and related factors (IEc 2014a, entire).

The analysis, dated April 8, 2014, was made available for public review from April 8, 2014, through May 8, 2014 (79 FR 19307). The draft economic analysis addressed potential economic impacts of critical habitat designation for jumping mouse. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Additional information relevant to the probable incremental economic impacts of critical habitat designation for the jumping mouse is summarized below and available in the screening analysis for the jumping mouse (IEc 2014, entire), available at *http://www.regulations.gov.*

The economic screening memorandum is our economic analysis of the proposed critical habitat designation (IEc 2014, entire). The purpose of the economic analysis is to provide us with the information on the potential for the proposed critical habitat rule to result in costs exceeding $100 million in a single year. The draft economic analysis addressed potential economic impacts of critical habitat designation for the jumping mouse. To that end, the analysis estimates impacts to activities, including grazing, water use, and recreation, that may experience the greatest impacts in compliance with section 4(b)(2) of the Act. The draft screening memo is provided to the public for review and comment. Following the close of the comment period, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable economic impacts of this critical habitat designation. We conclude that critical habitat designation for the jumping mouse is unlikely to generate costs exceeding $100 million in a single year.

*Exclusions Based on Economic Impacts*

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the jumping mouse based on economic impacts.

A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the New Mexico Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Critical habitat designation for the jumping mouse is unlikely to generate costs exceeding $100 million in a single year. In occupied areas, the economic impacts of implementing the rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse

modification. This finding is based on the following factors:

- Any activities with a Federal nexus occurring within occupied habitat will be subject to section 7 consultation requirements regardless of critical habitat designation, due to the presence of the listed species; and
- In most cases, project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy in occupied habitat.

This analysis forecasts the total number and administrative cost of future consultations likely to occur for grazing, transportation, recreation, water management, and species and habitat management undertaken by or permitted by Federal agencies within the study area. In addition, the analysis forecasts costs associated with conservation efforts that may be recommended in consultation for those activities occurring in unoccupied areas. The total incremental section 7 costs associated with the proposed designation are estimated to be $20,000,000 in 2014, for both administrative and conservation effort costs; therefore, the total costs of the proposed rule are unlikely to exceed $100 million in a given year.

Various economic benefits may result from the incremental conservation efforts identified in this analysis, including: (1) Those associated with the primary goal of species conservation (*i.e.,* direct benefits), and (2) those additional beneficial services that derive from conservation efforts but are not the purpose of the Act (*i.e.,* ancillary benefits). Due to existing data limitations, we are unable to assess the likely magnitude of these benefits.

*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 where a national security impact might exist. In preparing this final rule, we have determined that no lands within the designation of critical habitat for the jumping mouse are owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security or homeland security. Consequently, the Secretary is not exerting her discretion to exclude any areas from this final designation based on impacts on national security.

*Exclusions Based on Other Relevant Impacts*

Under section 4(b)(2) of the Act, we also consider any other relevant impacts resulting from the designation of critical habitat. 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 there are conservation partnerships that 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.

*Tribal Lands—Exclusions Under Section 4(b)(2) of the Act*

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; and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we coordinate with federally-recognized tribes on a government-to-government basis. Further, Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (1997) states that (1) critical habitat shall not be designated in areas that may impact tribal trust resources, may impact tribally-owned fee lands, or are used to exercise tribal rights unless it is determined essential to conserve a listed species; and (2) in designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We indicated in the proposed rule that our final decision regarding the exclusions of tribal lands under section 4(b)(2) of the Act would consider tribal management and the recognition of their capability to appropriately manage their own resources, and the government-to-government relationship of the United States with tribal entities (79 FR 37328; June 20, 2013). We also acknowledged our responsibilities to work directly with tribes in developing programs for healthy ecosystems, that tribal lands are not subject to the same controls as Federal public lands, our need to remain sensitive to Indian culture, and to make information available to tribes (79 FR 37328; June 20, 2013). We identified the tribal lands of Isleta Pueblo and Ohkay Owingeh included within the proposal as areas we were considering for exclusion (79 FR 37328; June 20, 2013).

Isleta Pueblo

On Isleta Pueblo (within Subunit 6A in the proposed rule), we proposed 43 ha (105 ac) of critical habitat along 3.7 km (2.3 mi) of ditches, canals, and marshes within Bernalillo County, New Mexico. Much of the habitat was historically occupied with individuals detected as recently as 1988 (Morrison 1988, pp. 22–27; Frey 2006c, entire); however, surveys within parts of the two proposed critical habitat segments during 2014 did not detect New Mexico meadow jumping mice (Bureau of Reclamation 2014, entire). The entire area is considered unoccupied at the time of listing.

As analyzed below, we have excluded Isleta Pueblo from critical habitat based on their Riverine Management Plan and our ongoing conservation partnership where the benefits of exclusion from critical habitat outweigh the benefits of including an area within critical habitat. We believe that the Isleta Riverine Management Plan fulfills our criteria described below, and these benefits outweigh the benefits from inclusion as critical habitat. Moreover, Isleta Pueblo has a demonstrated productive working relationship on a Government-to-Government basis with us. The designation of critical habitat on Isleta Pueblo would be expected to adversely impact our working relationship. During our discussions with Isleta Pueblo and from comments we received on the proposed designation of critical habitat for the jumping mouse, they informed us that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources in accordance with their own policies, customs, and laws. The perceived restrictions of a critical habitat designation could have a more damaging effect to coordination efforts, possibly preventing actions that might maintain, improve, or restore habitat for the jumping mouse and other endangered or threatened species like the southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) and Rio Grande silvery minnow (*Hybognathus amarus*) (silvery minnow). As a result, we found Isleta Pueblo would prefer to work with us on a government-to-government basis.

The Pueblo of Isleta has developed and maintained a Riverine Management Plan that includes the flycatcher and silvery minnow (Service 2005; 70 FR 60955, October 19, 2005; Pueblo of Isleta 2005, entire; 2014, entire). The objective of this plan is to protect, conserve, and promote the management of the flycatcher and silvery minnow and their associated habitats within the

Pueblo's boundaries. The Pueblo recently updated and Tribal Council subsequently approved, the Riverine Management Plan to specifically include management of the jumping mouse and its habitat by: (1) Evaluating jumping mouse populations within their management areas; (2) developing science-based management actions that address and mitigate potential threats to the subspecies on the Pueblo; (3) prescribing appropriate measures to sustain existing habitat; and (4) promoting a comprehensive, integrated, and adaptive resource management approach for the riverine ecosystem administered by the Pueblo (Pueblo of Isleta 2014, entire). The Pueblo will continue to protect its bosque and does not intend to develop the areas we proposed as jumping mouse critical habitat. Moreover, under the comprehensive Riverine Management Plan, the Isleta Pueblo has conducted a variety of voluntary measures, restoration projects, and management actions to conserve riparian vegetation, including not allowing cattle to graze within the bosque, protecting riparian habitat from fire, maintaining native vegetation, and preventing habitat fragmentation (Service 2005; 70 FR 60955, October 19, 2005; Pueblo of Isleta 2005, entire).

We considered their current conservation plan to provide adequate management or protection because it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

For these reasons, we believe that our working relationship will be better maintained if Isleta Pueblo was excluded from the designation of jumping mouse critical habitat. We view this as a substantial benefit since we have developed a cooperative working relationship for the mutual benefit of endangered and threatened species, including the jumping mouse.

Benefits of Inclusion—Isleta Pueblo

Through application of Section 4(b)(2) of the Act, Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat.

Proposed Subunit 6A is unoccupied by the jumping mouse (Bureau of Reclamation 2014, entire); therefore, if a Federal action or permitting occurs, there may not be a consultation under section 7 of the Act unless critical habitat is designated. Our draft economic analysis found that if we designate critical habitat on Isleta Pueblo, it is expected that consultation would occur with the Bureau of Indian Affairs (for actions such as riparian habitat restoration, fire management plans, fire suppression, and fuel reduction treatments). Federal agencies would be required to ensure their actions do not destroy or adversely modify that critical habitat.

Our economic analysis found that the incremental costs in proposed Subunit 6A would be limited to the administrative costs of consultation and none related to project modifications recommended by the Service during section 7 consultation. We also do not anticipate any formal consultations from grazing or recreation if critical habitat were designated, primarily because these activities do not occur in the proposed unit. Moreover, the types of projects we might anticipate (riparian habitat restoration, fire management plans, fire suppression, and fuel reduction treatments) would all provide long-term benefits to jumping mouse habitat, suggesting that effects to the jumping mouse from Federal projects would likely result in insignificant and discountable conclusions because conservation measures would be focused on habitat improvement and management. Because of how Isleta Pueblo manages and conserves their lands, we do not anticipate that Isleta Pueblo's actions would considerably change in the future. Therefore, the regulatory benefit of critical habitat designation on these lands is minimized.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, agencies, tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the jumping mouse that reaches a wide audience, including parties engaged in conservation activities, is valuable. The designation of critical habitat may also strengthen or reinforce some Federal laws such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

Isleta Pueblo is familiar with the jumping mouse and its habitat needs, and has a demonstrated commitment to address management and recovery of the flycatcher, silvery minnow, and jumping mouse through their revision of the Riverine Management Plan (Pueblo of Isleta 2014, entire). Isleta Pueblo lands and the former jumping mouse population on those lands has been widely known since the 1980s (Hink and Ohmart 1984, p. 97; Morrison 1988, pp. 22–27; Frey 2006c, entire). Thus, the educational benefits that might follow critical habitat designation, such as providing information to Isleta Pueblo on areas that are important for the long-term survival and conservation of the subspecies, have already been provided. For these reasons, we believe there is little educational benefit or support for other laws and regulations attributable to critical habitat beyond those benefits already achieved from listing the jumping mouse under the Act (79 FR 33119; June 10, 2014).

Benefits of Exclusion—Isleta Pueblo

The benefits of excluding Isleta Pueblo from designated critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the jumping mouse; (2) the conservation benefits to the jumping mouse and its habitat through the management plan that might not otherwise occur; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the jumping mouse and its habitat, and other species.

We have an effective working relationship with Isleta Pueblo, which was established when we proposed critical habitat for the silvery minnow (67 FR 39206; June 6, 2002) and has evolved through consultations on the flycatcher (69 FR 60706; October 12, 2004) and other riparian restoration. During the comment periods, we received input from Isleta Pueblo expressing the view that designating jumping mouse critical habitat on tribal land would adversely affect the

Service's working relationship with the Pueblo. They noted that the beneficial cooperative working relationship has assisted in the conservation of listed species and other natural resources. They indicated that critical habitat designation would amount to additional Federal regulation of sovereign lands, and would be viewed as an unwarranted and unwanted intrusion. Consequently, the development of future voluntary management actions for the jumping mouse and other listed species may be compromised if these lands are designated as critical habitat for the jumping mouse. Thus, a benefit of excluding these lands is future conservation efforts that would benefit listed species, including the jumping mouse.

During development of the jumping mouse critical habitat proposal (and coordination for other critical habitat proposals such as flycatcher and silvery minnow) and other efforts such as development of the flycatcher recovery plan, formal consultations, and during emergency fire suppression, we have met and communicated with the Pueblo to discuss how they might be affected by the regulations associated with endangered species management, recovery, the designation of critical habitat, and measures to minimize any impacts from planned projects as well as emergency actions such as fire suppression. As such, we established relationships for the management and conservation of endangered species and their habitats. As part of our relationship, we have provided technical assistance to develop measures to conserve endangered and threatened species and their habitats; we expect that the Pueblo will request similar assistance for the jumping mouse.

All of these proactive actions were conducted in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2); and Secretarial Order 3317, ''Department of Interior Policy on Consultation with Indian Tribes'' (December 1, 2011). During our communications with Isleta Pueblo, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to riparian habitat where the jumping mouse existed historically.

The updated Riverine Management Plan will continue to provide guidance and oversight on the management of endangered species on Isleta Pueblo. We find that the Isleta Pueblo's Riverine Management Plan is complete and the commitment to implement conservation activities described provides significant conservation benefit to the jumping mouse, which might not otherwise occur. We believe that the resolution passed by the Tribal Council of the Pueblo of Isleta concerning the Riverine Management Plan demonstrates that the management plan will be implemented. The Riverine Management Plan specifically provides periodic updates as appropriate, including species updates for the flycatcher, silvery minnow, and jumping mouse.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Isleta Pueblo

The benefits of including Isleta Pueblo in the critical habitat designation are limited to the administrative costs of consultation, agency and educational awareness, and the implementation of other law and regulations. However, as discussed in detail above, we believe these benefits are minimized because they are provided for through other mechanisms, such as (1) The advancement of our Federal Indian Trust obligations; (2) the conservation benefits to jumping mouse, other riparian habitats, and other endangered species from implementation of conservation actions under the Riverine Management Plan; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the jumping mouse and its habitat.

The benefits of excluding Isleta Pueblo from being designated as jumping mouse critical habitat are more significant and include encouraging the continued implementation of the Riverine Management Plan, which contains conservation actions for the flycatcher, silvery minnow, and jumping mouse. Overall, these conservation actions, including management of these endangered and threatened species and their habitat accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis. Excluding the Pueblo from critical habitat will allow Isleta Pueblo to manage their natural resources to benefit riparian habitat for the jumping mouse, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to other listed species that would not otherwise be available without the Service maintaining a cooperative working relationship and the Riverine Management Plan. In conclusion, we find that the benefits of excluding Isleta Pueblo from critical habitat designation outweigh the benefits of including these areas. As a result of the assurances, protections, and conservation benefit to the Rio Grande ecosystem, the flycatcher, the silvery minnow, and the New Mexico meadow jumping mouse and their habitats on Pueblo lands, we are excluding this area from jumping mouse critical habitat.

Exclusion Will Not Result in Extinction of the Species—Isleta Pueblo

We have determined that exclusion of Isleta Pueblo will not result in extinction of the species. First, the jumping mouse is currently extirpated from these areas (Bureau of Reclamation 2014, entire). Second, Isleta Pueblo is committed to protecting and managing their lands and species found on those lands according to the Riverine Management Plan and their tribal, cultural, and natural resource management objectives, which provide conservation benefits for the jumping mouse and its habitat as well as other listed species. Therefore, Isleta Pueblo is committed to greater conservation measures on their land than would be available through the designation of critical habitat. Accordingly, we have excluded Isleta Pueblo from the designation of critical habitat under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species.

*Ohkay Owingeh*

Ohkay Owingeh Pueblo is located along the Rio Grande just north of Espanola in Rio Arriba County, New Mexico, and adjoins the lands of Santa Clara Pueblo. The Ohkay Owingeh Pueblo includes the southern or downstream end of the Velarde reach of the Rio Grande, and comprises the largest contiguous area of generally intact riparian woodland, as well as the largest riparian area under the control of a single landowner within the Velarde reach. A total of about 16.6 km (10.3 mi) of the Rio Grande are located within the Pueblo and over 450 ha (1,100 acres) of riparian habitat are still extant within the Pueblo boundaries. On Ohkay Owingeh (within Subunit 6B in the proposed rule), we proposed 51 ha (125 ac) of critical habitat along 4.8 km (3.0 mi) of ditches, canals, and marshes within Rio Arriba, County, New Mexico. Much of the habitat was historically occupied with individuals detected as

recently as 1988 (Morrison 1988, pp. 28–35; Frey 2006c, entire); however, no New Mexico meadow jumping mice were captured during surveys conducted recently (Morrison 2012, entire). The entire unit is considered unoccupied at the time of listing.

As analyzed below, we have excluded Ohkay Owingeh from critical habitat based on our ongoing conservation partnership where the benefits of exclusion from critical habitat outweigh the benefits of including an area within critical habitat. We believe that Ohkay Owingeh has a demonstrated productive working relationship on a Government-to-Government basis with us. The designation of critical habitat on Ohkay Owingeh would be expected to adversely impact our working relationship. During our discussions with Ohkay Owingeh and from comments we received on the proposed designation of critical habitat for the jumping mouse, they informed us that critical habitat would be viewed as an intrusion on their sovereign abilities to manage natural resources. The perceived restrictions of a critical habitat designation could have a more damaging effect to coordination efforts, possibly preventing actions that might maintain, improve, or restore habitat for the jumping mouse and other endangered or threatened species like the flycatcher. Therefore, we are excluding Ohkay Owingeh based on a variety of voluntary measures, restoration projects, and management actions to conserve the jumping mouse and its habitat on their lands and their demonstrated productive working relationship on a Government-to-Government basis with us.

Benefits of Inclusion—Ohkay Owingeh

Through application of Section 4(b)(2) of the Act, Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat.

Proposed Subunit 6B is unoccupied by the jumping mouse (Ohkay Owingeh 2014, entire); therefore, if a Federal action or permitting occurs, there may not be a consultation under section 7 of the Act unless critical habitat is designated. Our draft economic analysis found that if we designate critical habitat on Ohkay Owingeh, it is expected that consultation would occur with the Bureau of Indian Affairs (for actions such as riparian habitat restoration, fire management plans, fire suppression, and fuel reduction treatments). Federal agencies would be required to ensure their actions do not destroy or adversely modify that critical habitat.

Our section 7 consultation history for another riparian species, the flycatcher, shows that since listing in 1995, no formal section 7 consultations addressing the flycatcher have occurred as a result of implementing Federal actions on Ohkay Owingeh. We have conducted informal consultations on the flycatcher with agencies implementing actions or providing funding and provided the technical assistance on project implementation. Effects to the flycatcher from Federal projects have all resulted in insignificant and discountable impacts due to conservation measures that focused on habitat improvement and management for the flycatcher. It would likely be the same scenario for the jumping mouse, which has even more restricted habitat than the flycatcher on Ohkay Owingeh.

If we designate critical habitat on Ohkay Owingeh, our previous section 7 consultation history for the flycatcher in riparian habitat indicates that there could be some, but likely few, regulatory benefits to the jumping mouse. Even with flycatchers occurring on Ohkay Owingeh, no formal flycatcher-related section 7 consultations have occurred. Because no jumping mice currently occur on Ohkay Owingeh, it is even more likely that no formal jumping mouse-related section 7 consultations would occur. Projects initiated by Federal agencies in the future would likely only be associated with actions pertaining to the implementation of grants or funding of habitat improvement projects that would benefit the jumping mouse. Because of how Ohkay Owingeh has chosen to manage and conserve their lands and the lack of a past formal section 7 consultation history for the flycatcher, we do not anticipate that Ohkay Owingeh's actions would considerably change in the future, generating a noticeable increase in section 7 consultations that would cause impacts to the jumping mouse or its habitat. Therefore, the effect of a critical habitat designation on these lands is minimized.

Our economic analysis found that the incremental costs in proposed Subunit 6B would be limited to the administrative costs of consultation and none related to project modifications recommended by the Service during section 7 consultation. We also do not anticipate any formal consultations from grazing or recreation if critical habitat were designated, primarily because these activities do not occur in the proposed unit. Moreover, the types of projects we might anticipate (riparian habitat restoration, fire management plans, fire suppression, and fuel reduction treatments) would all provide long-term benefits to jumping mouse habitat, suggesting that effects to the jumping mouse from Federal projects would likely result in insignificant and discountable impacts because conservation measures would be focused on habitat improvement and management. Because of how Ohkay Owingeh manages and conserves their lands, we do not anticipate that Ohkay Owingeh's actions would considerably change in the future. Therefore, the regulatory benefit of critical habitat designation on these lands is minimized.

Another important benefit of including lands in a critical habitat designation is that the designation can serve to educate landowners, agencies, tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the jumping mouse that reaches a wide audience, including parties engaged in conservation activities, is valuable. The designation of critical habitat may also strengthen or reinforce some Federal laws such as the Clean Water Act. These laws analyze the potential for projects to significantly affect the environment. Critical habitat may signal the presence of sensitive habitat that could otherwise be missed in the review process for these other environmental laws.

Ohkay Owingeh is familiar with the jumping mouse and its habitat needs, and has successfully worked with the Service to address jumping mouse management and recovery. Further, Ohkay Owingeh lands and the former jumping mouse population that once inhabited them has been widely known since the 1980s (Morrison 1988, pp. 28–35; Frey 2006c, entire). Thus, the educational benefits that might follow critical habitat designation, such as providing information to Ohkay Owingeh on areas that are important for the long-term survival and conservation of the subspecies, have already been provided. For these reasons, we believe there is little educational benefit or support for other laws and regulations attributable to critical habitat beyond those benefits already achieved from listing the jumping mouse under the Act (79 FR 33119; June 10, 2014).

Benefits of Exclusion—Ohkay Owingeh

The benefits of excluding the Pueblo of Ohkay Owingeh from designated critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the jumping mouse; (2) the conservation benefits to the jumping mouse and its habitat that might not otherwise occur; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the jumping mouse and its habitat, and other species.

We have an effective working relationship with Ohkay Owingeh, which has evolved through consultations on the flycatcher (69 FR 60706; October 12, 2004) and other riparian restoration. As part of our relationship, we have provided technical assistance to develop measures to conserve the flycatcher and its habitat on their lands, as well as provided funding for managing jumping mouse habitat and conducting surveys. These proactive actions were conducted in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2); and Secretarial Order 3317, ''Department of Interior Policy on Consultation with Indian Tribes'' (December 1, 2011). During our communication with Ohkay Owingeh, we recognized and endorsed their fundamental right to provide for tribal resource management activities, including those relating to riparian habitat.

During the comment periods, we received input from Ohkay Owingeh expressing the view that designating jumping mouse critical habitat on tribal land would adversely affect the Service's working relationship. They noted that the positive cooperative working relationship has assisted in the conservation of listed species and other natural resources. They indicated that critical habitat designation would amount to additional Federal regulation of sovereign lands, and would be viewed as an unwarranted and unwanted intrusion. Consequently, the development of future voluntary management actions for the jumping mouse and other listed species may be compromised if these lands are designated as critical habitat for the jumping mouse. To this end, we found Ohkay Owingeh would prefer to work with us on a Government-to-Government basis. For these reasons, we believe that our working relationship would be better maintained if they were excluded from the designation of jumping mouse critical habitat. We view this as a substantial benefit since we have developed a cooperative working relationship that benefits the conservation of endangered and threatened species.

We have coordinated and collaborated with Ohkay Owingeh on the management and recovery of the flycatcher, jumping mouse, and their habitats and have established a conservation partnership. Many tribes and pueblos recognize that their management of riparian habitat and conservation of these endangered species are common goals they share with the Service. Ohkay Owingeh's management actions are evidence of their commitment toward measures to improve riparian habitat for endangered species. Some of the common management strategies are maintaining riparian conservation areas, preserving habitat, improving habitat, reducing occurrence of fire, and conducting surveys (Ohkay Owingeh 2005, entire; 2014, entire). Ohkay Owingeh's Environmental Affairs Department implements conservation measures to improve riparian habitat conditions.

Ohkay Owingeh is willing to work cooperatively with us and others to benefit other listed species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for the jumping mouse and other listed species may be compromised if these lands are designated as critical habitat for the jumping mouse. As a result of the cooperative working relationship, we are excluding this area from jumping mouse critical habitat.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Ohkay Owingeh

The benefits of including Ohkay Owingeh in the critical habitat designation are limited to the incremental benefits gained through the regulatory requirement to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, agency and educational awareness, and the improved implementation of other laws and regulations. However, as discussed in detail above, we believe these benefits are minimized because they are provided for through other mechanisms, such as (1) The advancement of our Federal Indian Trust obligations; (2) the conservation benefits to jumping mouse and other endangered species and riparian habitats from implementation of conservation actions; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the jumping mouse and its habitat.

The benefits of excluding Ohkay Owingeh from being designated as jumping mouse critical habitat are more significant and include encouraging the continued implementation of tribal management and conservation measures such as monitoring, surveying, habitat management and protection, and fire-risk reduction activities that are planned for the future or are currently being implemented. Overall, these conservation actions and management of riparian habitat likely accomplish greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis (especially when formal section 7 consultations rarely occur). These programs will allow Ohkay Owingeh to manage their natural resources to benefit riparian habitat for the jumping mouse, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to other listed species that would not otherwise be available without the Service's maintaining a cooperative working relationship. In conclusion, we find that the benefits of excluding Ohkay Owingeh from critical habitat designation outweigh the benefits of including these areas.

Exclusion Will Not Result in Extinction of the Species—Ohkay Owingeh

We have determined that exclusion of Ohkay Owingeh will not result in extinction of the species. First, the jumping mouse is currently extirpated from these areas. Second, Ohkay Owingeh is committed to protecting and managing their lands and species found on those lands according to their tribal, cultural, and natural resource management objectives, which provide conservation benefits for the jumping mouse and its habitat as well as other listed species. In short, Ohkay Owingeh is committed to greater conservation measures on their land than would be available through the designation of critical habitat. Accordingly, we have determined that Ohkay Owingeh should be excluded under section 4(b)(2) of the Act because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species.

**Required Determinations**

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that the critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration.

The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with the jumping mouse conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental Mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were:

Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because most of the lands within the designated critical habitat do not occur within the jurisdiction of small governments. This rule will not produce a Federal mandate of $100 million or greater in any year. Therefore, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the jumping mouse in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding or assistance or 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.

The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the jumping mouse. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis and described within this document, economic impacts to a property owner are unlikely to be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the jumping mouse does not pose significant takings implications for lands within or affected by the designation. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the jumping mouse does not pose significant takings implications.

*Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Arizona, Colorado, and New Mexico. We received comments from State wildlife agencies of Arizona, Colorado, and New Mexico. We have addressed them in the Summary of Comments and Recommendations section of this rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments in that 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) of the Act will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Executive Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the subspecies, the rule identifies the elements of physical or biological features essential to the conservation of the jumping mouse. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain any new collections of information that require approval by the 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.)*

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 (42 U.S.C. 4321 *et seq.*) in conjunction with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996). However, when the range of the species includes States within the Tenth Circuit, such as that of the jumping mouse, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation.

We performed the NEPA analysis, and drafts of the environmental assessment were made available for public comment in the **Federal Register** on April 8, 2014 (79 FR 19307). The final environmental assessment has been completed and is available for review with the publication of this final rule. You may obtain a copy of the final environmental assessment and finding of no significant impact at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0014, and at the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

We analyzed the potential impacts of critical habitat designation on the following resources and resource management types: Fish, wildlife, vegetation, floodplains and wetlands, water use and management, agriculture, livestock grazing, fire management, highway construction and reconstruction, development, energy resources, recreation, cultural or historic resources, socioeconomics, and environmental justice.

We found that the designation of critical habitat for the jumping mouse would not have direct impacts on the environment as designation is not expected to impose land use restrictions or prohibit land use activities. However, the designation of critical habitat could increase the administrative effort for section 7 consultations to incorporate critical habitat considerations and add project modifications to reduce impacts to primary constituent elements.

The primary purpose of preparing an environmental assessment under NEPA is to determine whether a proposed action would have significant impacts on the human environment. If significant impacts may result from a proposed action, then an environmental impact statement is required (40 CFR 1502.3). Whether a proposed action exceeds a threshold of significance is determined by analyzing the context and the intensity of the proposed action (40 CFR 1508.27). Our environmental assessment found that the impacts of the proposed critical habitat designation would be minor and not rise to a significant level, so preparation of an environmental impact statement is not required.

*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 sent notification letters in November 2011, to both the Isleta Pueblo and Ohkay Owingeh, describing the exclusion process under section 4(b)(2) of the Act, and we have engaged in conversations with both tribes about the proposed rule to the extent possible without disclosing predecisional information. We sent out notification letters on June 20, 2013, notifying the tribes that the proposed rule had published in the **Federal Register** to allow for the maximum time to submit comments. On April 8, 2014, we also sent letters notifying the tribes that we had made available the draft environmental assessment and draft economic analysis in the **Federal Register**.

Following their invitation, we met with Isleta Pueblo on August 14, 2013, and May 6, 2014, to discuss the proposed rule, and their endangered species management plan. In addition to the letters sent to Ohkay Owingeh and telephone conversations, Ohkay Owingeh did not request Government-to-Government consultations or meetings. In addition, we sent coordination letters to the Bureau of Indian Affairs on September 18, 2013, seeking information for our economic analysis. We considered these tribal areas for exclusion from final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act, and subsequently, excluded Isleta Pueblo and Ohkay Owingeh from this final designation.

**References Cited**

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov,* in the May 2014 version of the New Mexico Meadow Jumping Mouse Species Status Assessment Report (Service 2014), and upon request from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this document are the staff members of the New Mexico Ecological Services Field Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16. U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Mouse, New Mexico meadow jumping'' under MAMMALS in the List of Endangered and Threatened Wildlife, to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | * | * |
| Mouse, New Mexico meadow jumping. | *Zapus hudsonius luteus.* | U.S. (AZ, CO, NM) | Entire | E | 838 | 17.95(a) | NA |
| * | * | * | * | * | * | * | * |

■ 3. In § 17.95, amend paragraph (a) by adding an entry for ''New Mexico Meadow Jumping Mouse (*Zapus hudsonius luteus*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(a) *Mammals.*

* * * * *

New Mexico Meadow Jumping Mouse (*Zapus hudsonius luteus*)

(1) Critical habitat units are depicted for Colfax, Mora, Otero, Sandoval, and Socorro Counties in New Mexico; Las Animas, Archuleta, and La Plata Counties in Colorado; and Greenlee and Apache Counties in Arizona on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the New Mexico meadow jumping mouse consist of the following:

(i) Riparian communities along rivers and streams, springs and wetlands, or canals and ditches that contain:

(A) Persistent emergent herbaceous wetlands especially characterized by presence of primarily forbs and sedges (*Carex* spp. or *Schoenoplectus pungens*); or

(B) Scrub-shrub riparian areas that are dominated by willows (*Salix* spp.) or alders (*Alnus* spp.) with an understory of primarily forbs and sedges; and

(ii) Flowing water that provides saturated soils throughout the New Mexico meadow jumping mouse's active season that supports tall (average stubble height of herbaceous vegetation of at least 61 centimeters (24 inches)) and dense herbaceous riparian vegetation composed primarily of sedges (*Carex* spp. or *Schoenoplectus pungens*) and forbs, including, but not limited to, one or more of the following associated species: Spikerush (*Eleocharis macrostachya*), beaked sedge (*Carex rostrata*), rushes (*Juncus* spp. and *Scirpus* spp.), and numerous species of grasses such as bluegrass (*Poa* spp.), slender wheatgrass (*Elymus trachycaulus*), brome (*Bromus* spp.), foxtail barley (*Hordeum jubatum*), or Japanese brome (*Bromus japonicas*), and forbs such as water hemlock (*Circuta douglasii*), field mint (*Mentha arvense*), asters (*Aster* spp.), or cutleaf coneflower (*Rudbeckia laciniata*); and

(iii) Sufficient areas of 9 to 24 kilometers (5.6 to 15 miles) along a stream, ditch, or canal that contain suitable or restorable habitat to support movements of individual New Mexico meadow jumping mice; and

(iv) Adjacent floodplain and upland areas extending approximately 100 meters (330 feet) outward from the boundary between the active water channel and the floodplain (as defined by the bankfull stage of streams) or from the top edge of the ditch or canal.

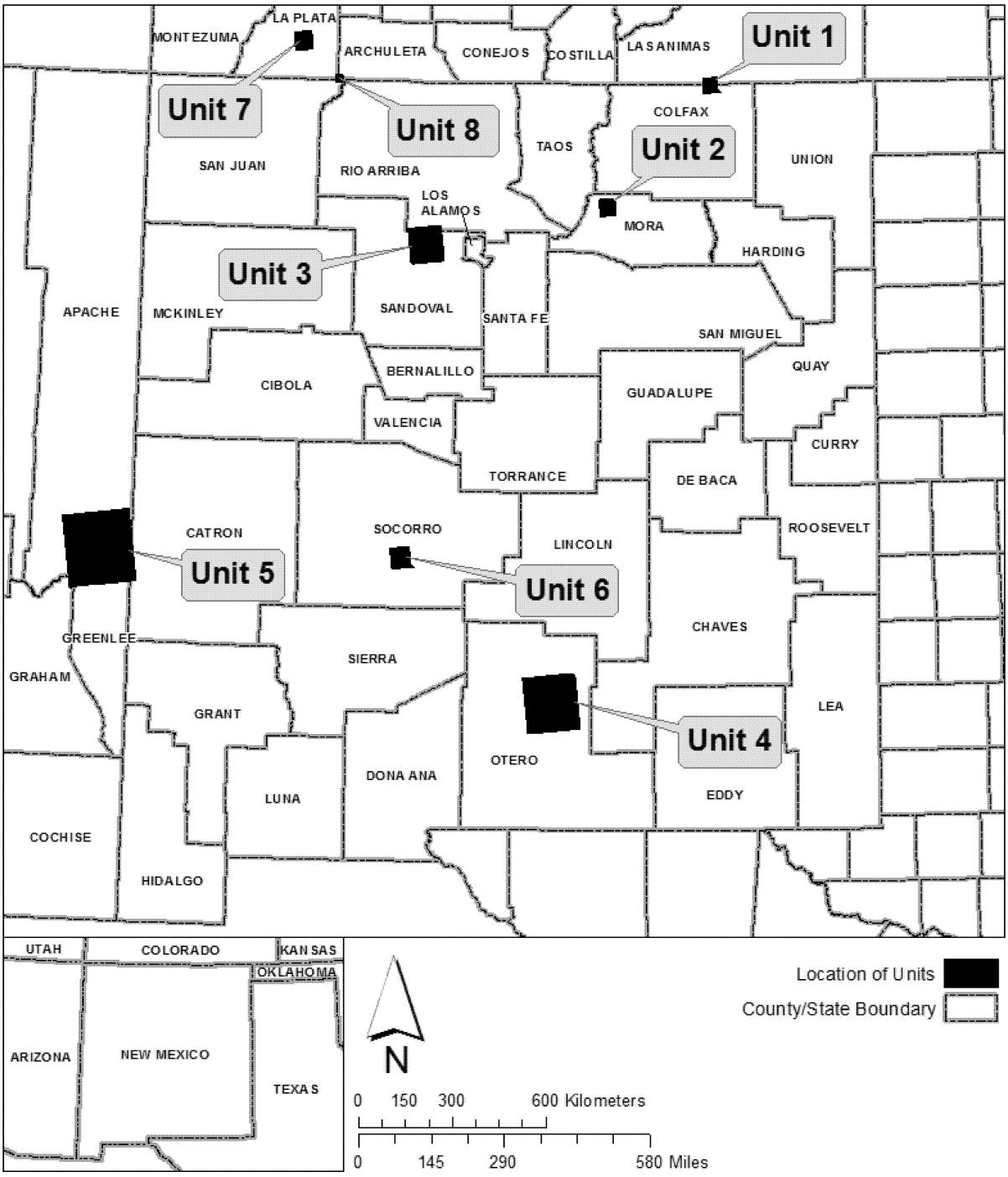
(3) Critical habitat does not include manmade structures (such as buildings, fire lookout stations, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on April 15, 2016.

(4) *Critical habitat map units.* Data layers defining map units were created using the USA Contiguous Albers Equal Area Conic USGS version projection. 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 at the Service's internet site *http://www.fws.gov/southwest/es/NewMexico/,* at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0014, and at the New Mexico Ecological Services Field Office. 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.

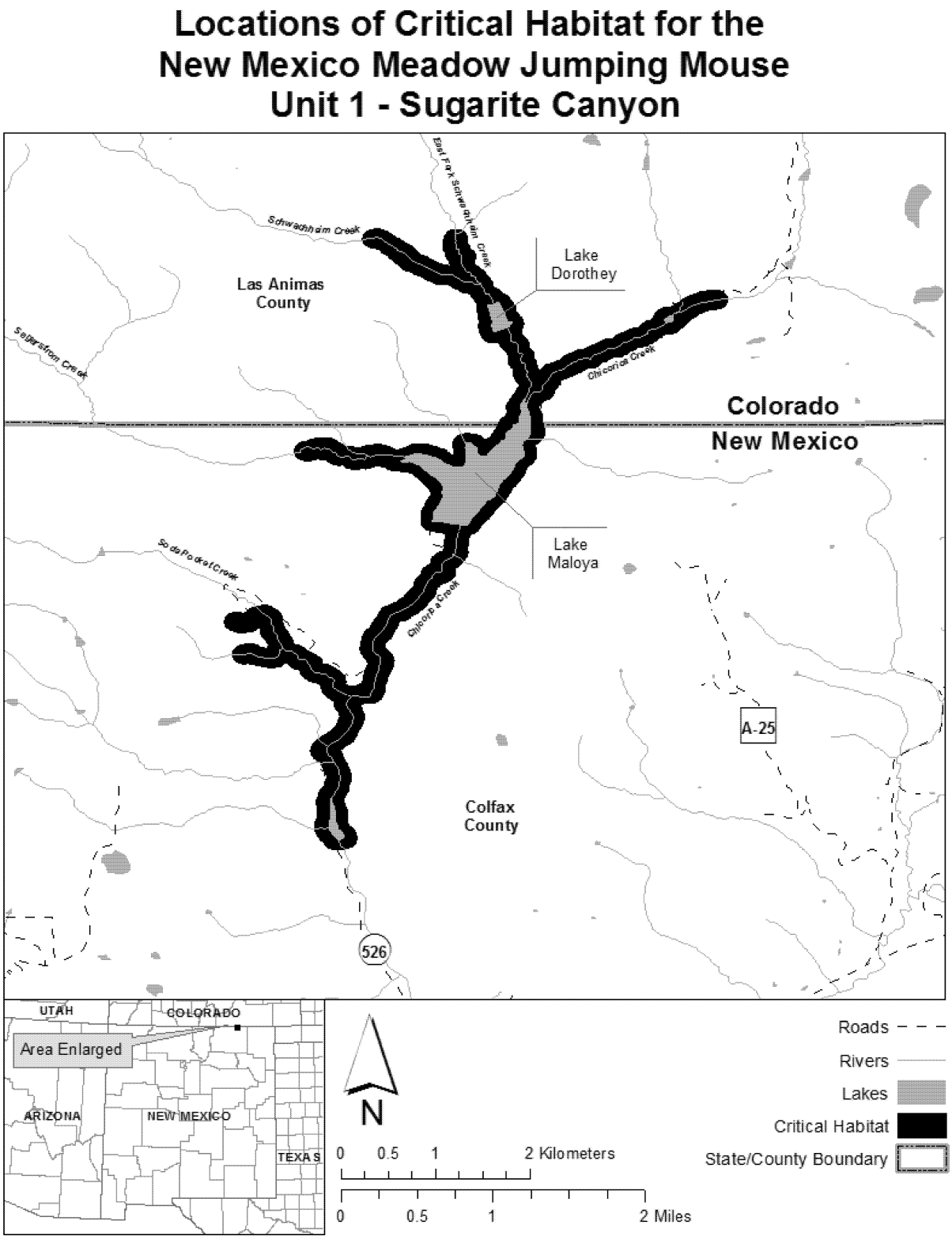
(5) *Note:* General Locations of Critical Habitat for the New Mexico Meadow Jumping Mouse—Overview, follows:

BILLING CODE 4333–15–C

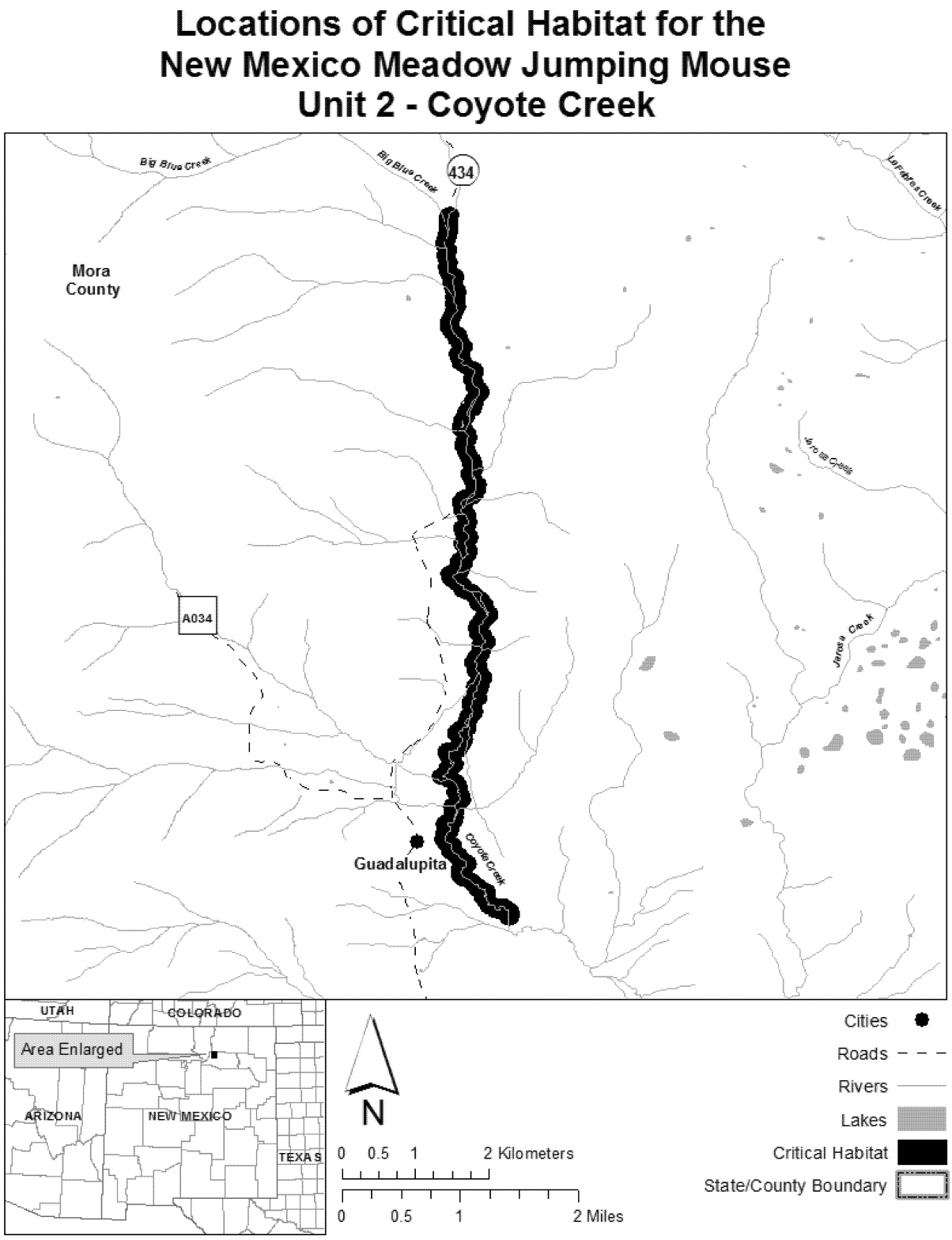
# General Locations of Critical Habitat for the New Mexico Meadow Jumping Mouse - Overview



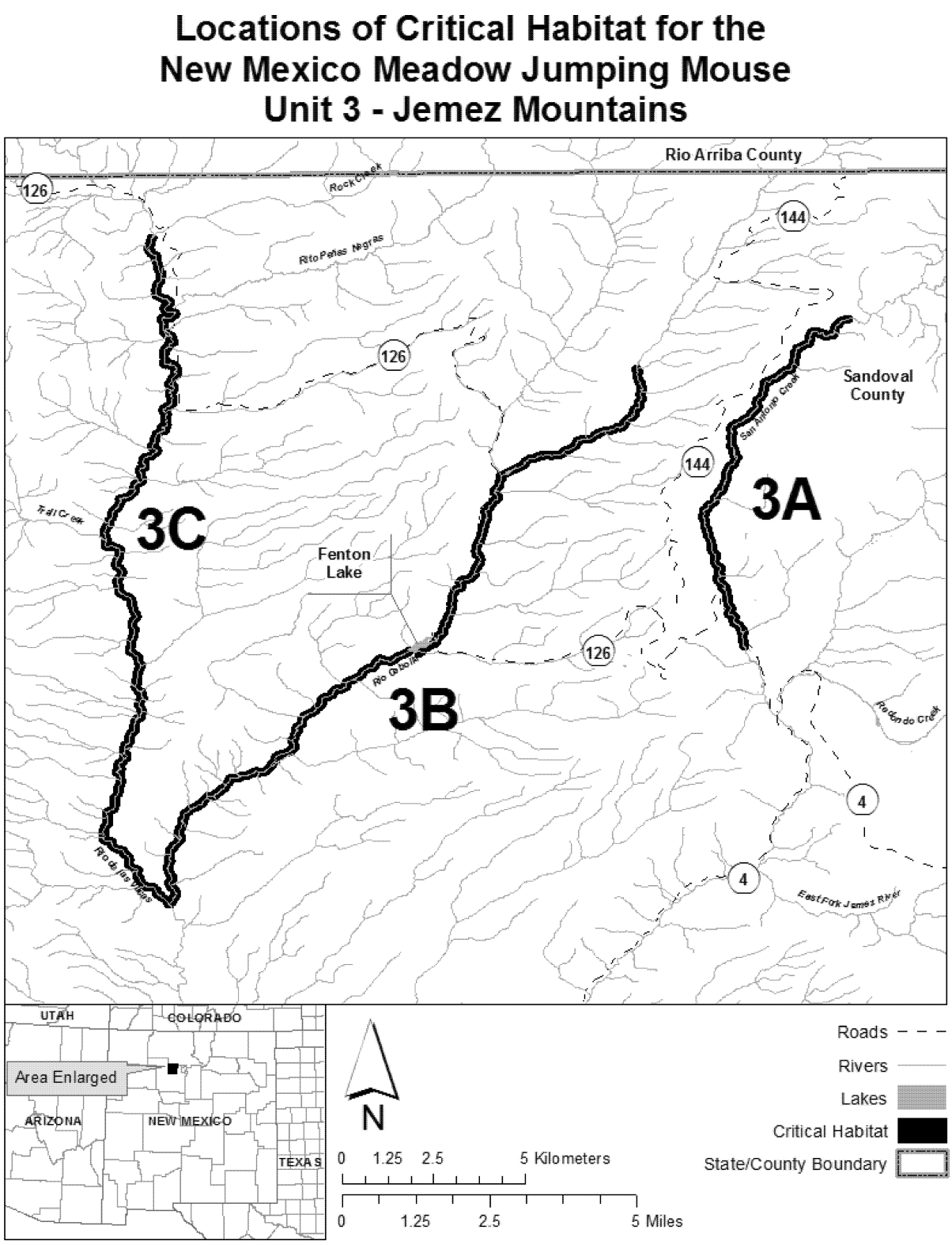
(6) Unit 1—Sugarite Canyon. Map follows:



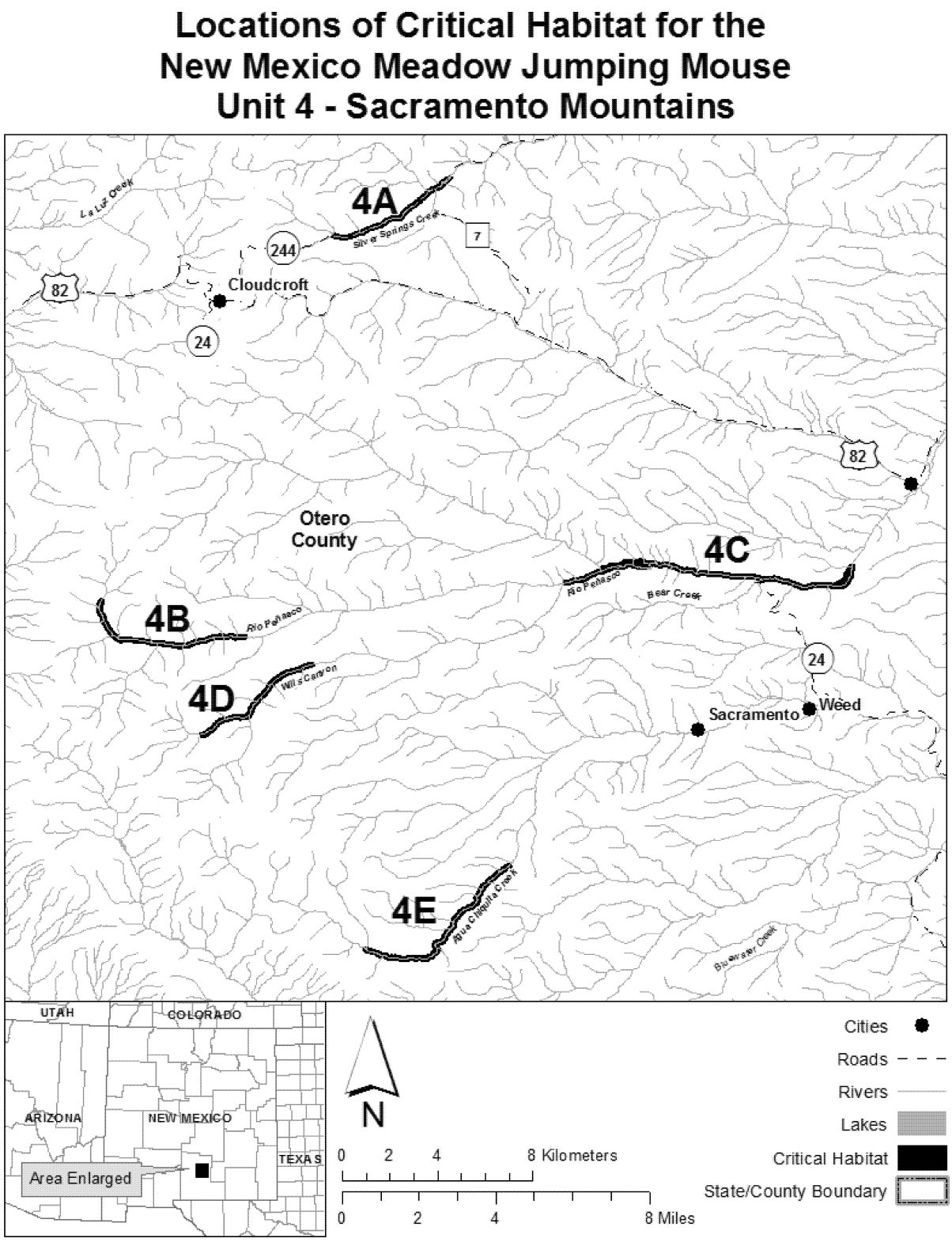
(7) Unit 2—Coyote Creek. Map follows:



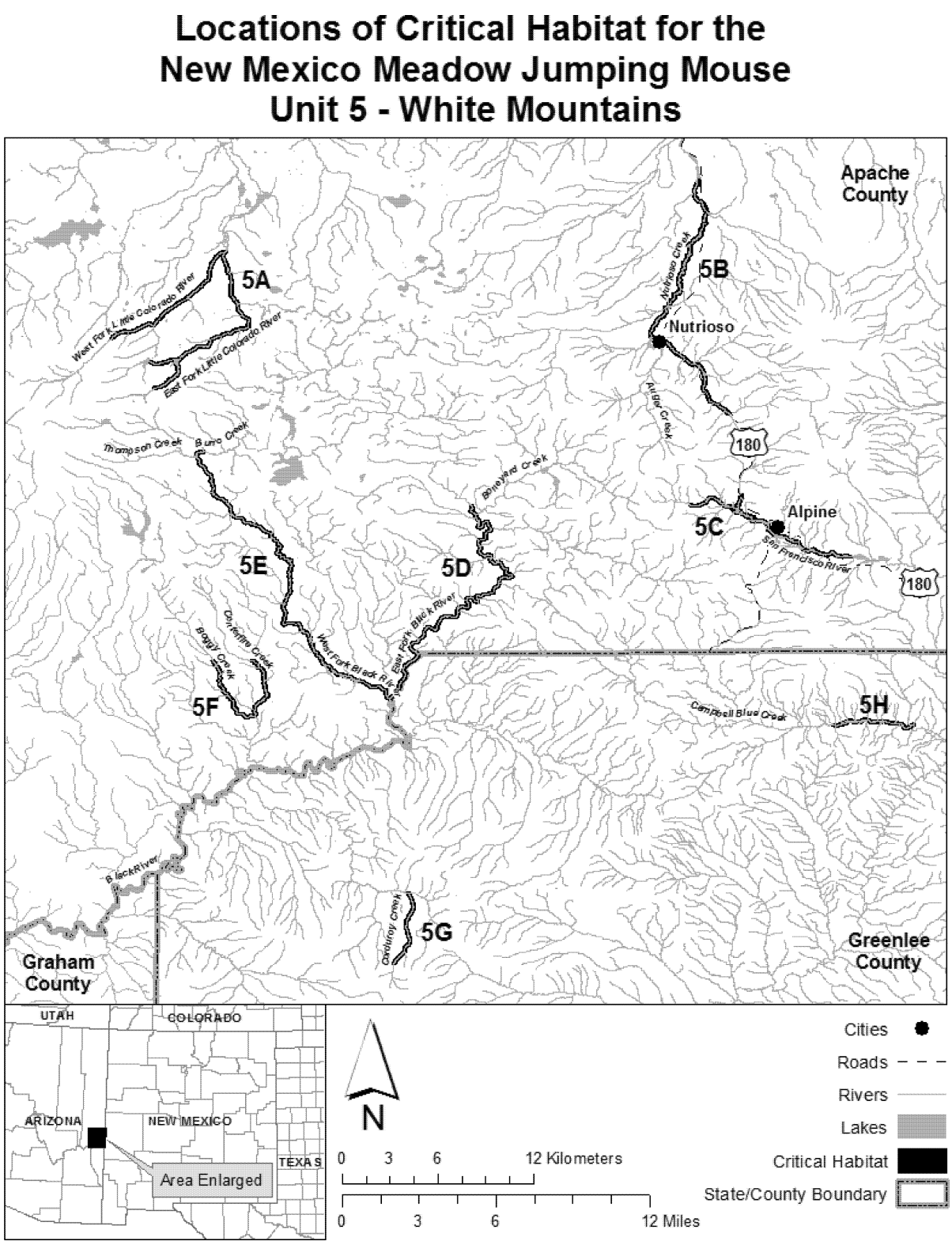
(8) Unit 3—Jemez Mountains. Map follows:



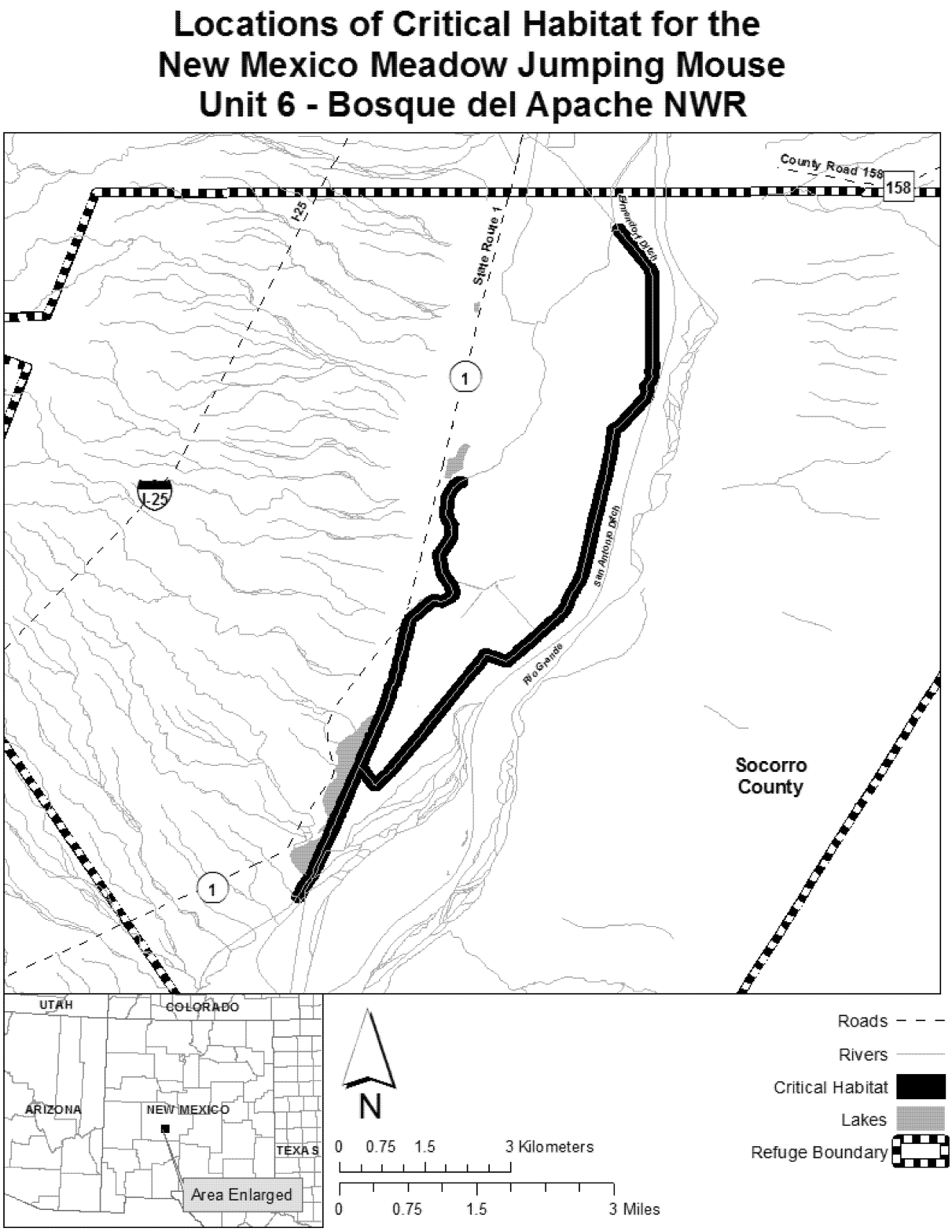
(9) Unit 4—Sacramento Mountains.
Map follows:



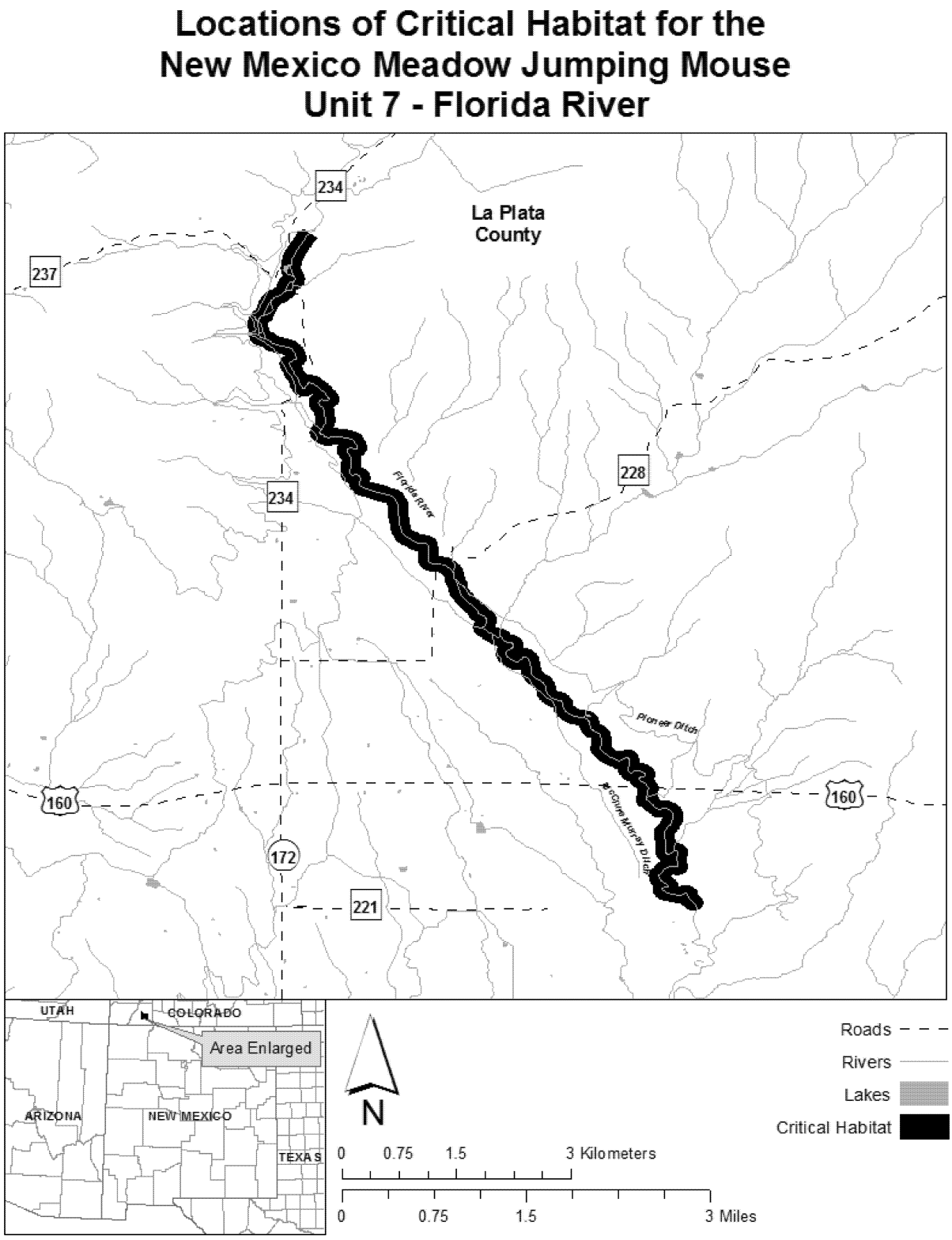
(10) Unit 5—White Mountains. Map follows:



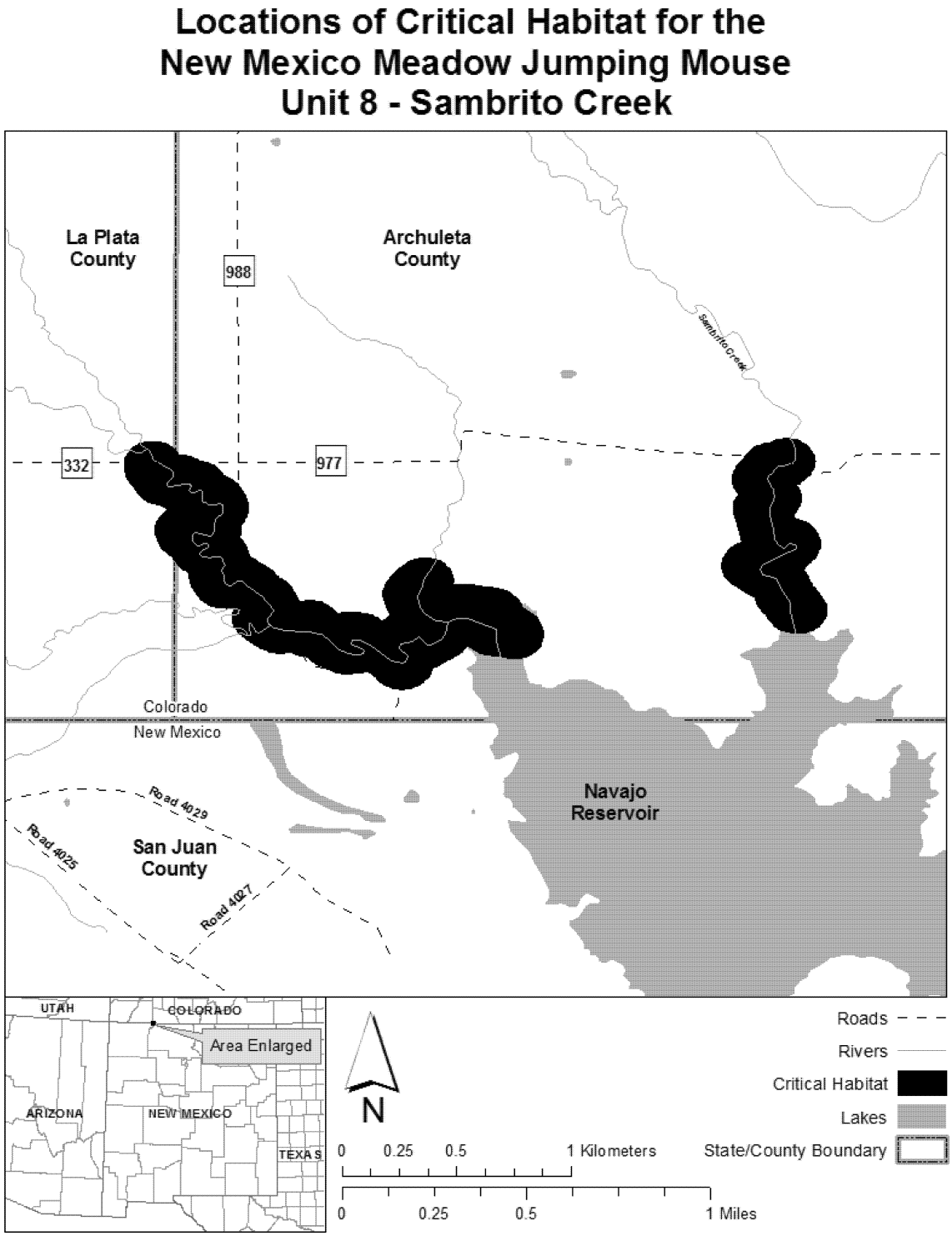
(11) Unit 6—Bosque del Apache National Wildlife Refuge (NWR). Map follows:



(12) Unit 7—Florida River. Map follows:



(13) Unit 8—Sambrito Creek. Map follows:




* * * * *

Dated: March 7, 2016.

**Karen Hyun,**

*Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2016–05912 Filed 3–15–16; 8:45 am]

**BILLING CODE 4333–15–P**


# FEDERAL REGISTER

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Part IV

## Federal Reserve System

12 CFR Part 252
Single-Counterparty Credit Limits for Large Banking Organizations; Proposed Rule

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 252**

**[Regulation YY; Docket No. R–1534]**

**RIN 7100–AE 48**

## Single-Counterparty Credit Limits for Large Banking Organizations

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Board is inviting comment on proposed rules that would establish single-counterparty credit limits for domestic and foreign bank holding companies with $50 billion or more in total consolidated assets. The proposed rules would implement section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which requires the Board to impose limits on the amount of credit exposure that such a domestic or foreign bank holding company can have to an unaffiliated company in order to reduce the risks arising from the company's failure. The proposed rules, which build on earlier proposed rules by the Board to establish single-counterparty credit limits for large domestic and foreign banking organizations, would increase in stringency based on the systemic importance of the firms to which they apply.

**DATES:** Comments should be received by June 3, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. R–1534 and RIN No. 7100 AE–48, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments will be made available on the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Jordan Bleicher, Senior Supervisory Financial Analyst, (202) 973–6123, Division of Banking Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Benjamin McDonough, Special Counsel, (202) 452–2036, Pam Nardolilli, Senior Counsel, (202) 452–3289, or Lucy Chang, Attorney, (202) 475–6331, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

**SUPPLEMENTARY INFORMATION:**

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### Background

*General Background*

During the 2007–2008 financial crisis, some of the largest financial firms in the world collapsed or experienced material financial distress. Counterparties of failing firms were placed under severe strain when the failing firm could not meet its financial obligations, in some cases resulting in the counterparties' inability to meet their own financial obligations. Similarly, weakened financial firms came under increased stress when counterparties with large exposures to the firm suddenly attempted to reduce those exposures.

The effect of a large financial institution's failure or near collapse is amplified by the mutual interconnectedness of large, systemically important firms—that is, the degree to which they extend each other credit and serve as counterparties to one another. As demonstrated during the crisis, financial distress at a banking organization may materially raise the likelihood of distress at other firms given the network of contractual obligations throughout the financial system. Accordingly, a large banking organization's systemic impact is likely to be directly related to its interconnectedness vis-à-vis other financial institutions and the financial sector as a whole. This interconnectedness of financial firms also creates the potential for an increase in the likelihood of distress at non-financial firms that are dependent upon financial firms for funding.

The financial crisis also revealed inadequacies in the U.S. regulatory approach to credit exposure limits, which limited only some of the interconnectedness among large financial companies. For example, certain commercial banks were subject to single-borrower lending and investment limits. However, these limits often excluded credit exposures generated by derivatives and some securities financing transactions, and did not apply at the consolidated holding company level.[1]

Section 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) authorizes the Board to establish single-counterparty credit limits for bank holding companies with total consolidated assets of $50 billion or more (covered companies) and foreign banking organizations with total consolidated assets of $50 billion or more, and any U.S. intermediate holding company (covered entities), in order to limit the risks that the failure of any individual firm could pose to a covered company.[2] This section prohibits covered companies and covered entities from having credit exposure to any unaffiliated company that exceeds 25 percent of the capital stock and surplus of the covered company, or such lower amount as the Board may determine by regulation to be necessary to mitigate risks to the financial stability of the United States.[3]

[1] Section 610 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amends the term ''loans and extensions of credit'' for purposes of the lending limits applicable to national banks to include any credit exposure arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction. *See* Dodd-Frank Act, Public Law 111–203, 610, 124 Stat. 1376, 1611 (2010), codified at 12 U.S.C. 84(b). As discussed in more detail below, these types of transactions also are made subject to the single-counterparty credit limits of section 165(e). 12 U.S.C. 5365(e)(3).

[2] *See* 12 U.S.C. 5365(e)(1).

[3] 12 U.S.C. 5365(e)(2).

Credit exposure to a company is defined in section 165(e) of the Dodd-Frank Act to mean all extensions of credit to the company, including loans, deposits, and lines of credit; all repurchase agreements, reverse repurchase agreements, and securities borrowing and lending transactions with the company (to the extent that such transactions create credit exposure for the covered company); all guarantees, acceptances, and letters of credit (including endorsement or standby letters of credit) issued on behalf of the company; all purchases of, or investments in, securities issued by the company; counterparty credit exposure to the company in connection with derivative transactions between the covered company and the company; and any other similar transaction that the Board, by regulation, determines to be a credit exposure for purposes of section 165.[4]

Section 165(e) also grants the Board authority to issue such regulations and orders, including definitions consistent with section 165(e), as may be necessary to administer and carry out that section. In addition, it authorizes the Board to exempt transactions, in whole or in part, from the definition of the term ''credit exposure,'' if the Board finds that the exemption is in the public interest and consistent with the purposes of section 165(e).[5] Finally, section 165(e) authorizes the Board to establish single-counterparty credit limits for nonbank financial companies designated by the Financial Stability Oversight Council (FSOC) for supervision by the Board. The draft proposed rules would not at this time apply to any such nonbank financial company. The Board intends to apply similar requirements to these companies separately by rule or order at a later time.

The proposed framework of credit exposure limits for covered companies is similar to existing limits for depository institutions, including the investment securities limits and the lending limits imposed on certain depository institutions.[6] A national bank generally is limited, subject to certain exceptions, in the total amount of investment securities of any one obligor that it may purchase for its own account to no more than 10 percent of its capital stock and surplus.[7] In addition, a national bank's total outstanding loans and extensions of credit to one borrower may not exceed 15 percent of the bank's capital stock and surplus, plus an additional 10 percent of the bank's capital stock and surplus, if the amount that exceeds the bank's 15 percent general limit is fully secured by readily-marketable collateral.[8]

The requirements in section 165(e) operate as a separate and independent limit from the investment securities limits and lending limits in the National Bank Act and Federal Reserve Act, and a covered company or covered entity must comply with all of the limits that are applicable to it and its subsidiaries. A covered company would be required to ensure that it does not exceed the single-counterparty credit limits when all the credit exposures of the organization are consolidated. Because the proposed rules would impose limits on credit transactions by a covered company or covered entity on a consolidated basis, including its subsidiary depository institutions, the proposed rules may affect the amount of loans and extensions of credit that would otherwise be consistent with a subsidiary depository institution's lending limits.

The Board invited public comment on proposed rules to implement section 165(e) for domestic banking organizations in December 2011 and for foreign banking organizations in December 2012.[9] The Board is re-proposing rules to implement section 165(e) in order to take account of (1) the large volume of comments received on the original 165(e) proposed rules from banks, trade associations, public interest groups, and others; (2) the revised lending limits rules applicable to national banks; [10] (3) the introduction by the Basel Committee on Banking Supervision (BCBS) of a large exposures standard (LE Standard), which establishes an international standard for the maximum amount of credit exposure that an internationally active bank is permitted to have to a single counterparty; [11] and (4) the results of quantitative impact studies and related analysis conducted by Board staff to help gauge the impact of the original 165(e) proposed rules and these revised rules.

*Summary of Comments on the 2011 and 2012 Proposals*

The Board received 48 comments, representing approximately 60 parties, on the 2011 proposal on section 165(e) as it relates to domestic firms and 35 comments, representing over 45 organizations, on the 2012 proposed rule as it relates to foreign banking organizations. The comments were received from a wide range of individuals, banking organizations, industry and trade groups representing banking, insurance, and the broader financial services industry, and public interest groups. Board staff also met with industry representatives and government representatives to discuss issues relating to the proposed rules.

Some commenters expressed support for the broader goals of the proposed rules to limit single-counterparty concentrations at large financial companies. Numerous commenters expressed concerns, however, about various aspects of the proposed rules. The Board received comments on all aspects of the proposed rules, and the Board has taken into consideration these comments in these revised proposed rules for section 165(e).

In the 2011 proposed rule, the Board proposed to limit the aggregate net credit exposure of a covered company to a single unaffiliated counterparty to no more than 25 percent of the consolidated capital stock and surplus of the covered company. The Board further proposed to limit the aggregate net credit exposure of U.S. bank holding companies with over $500 billion in assets to any other unaffiliated bank holding company of similar size, or to a nonbank financial company designated by the FSOC for supervision by the Board, to 10 percent of the capital stock and surplus of the covered company.

Several commenters questioned the Board's basis for lowering the 25 percent statutory limit to 10 percent. These commenters generally questioned the financial stability need for the lower limit and questioned whether the 10 percent limit would have disruptive effects, such as reducing market liquidity, decreasing loan capacity, and driving financial services to the shadow banking sector. Several commenters questioned the Board's basis for selecting a $500 billion asset threshold as the cutoff for the lower 25 percent statutory credit limit. Commenters representing the insurance industry criticized the proposed standard because it did not take into account the unique features of the insurance business. The Board also received

[4] *See* 12 U.S.C. 5365(e)(3).

[5] *See* 12 U.S.C. 5365(e)(5)–(6).

[6] *See, e.g.,* 12 U.S.C. 24(7); 12 U.S.C. 84; 12 CFR 1 and 32; *see also* 12 U.S.C. 335 (applying the provisions of 12 U.S.C. 24(7) to state member banks).

[7] *See* 12 U.S.C. 24(7); 12 CFR 1.

[8] *See* 12 U.S.C. 84; 12 CFR 32.3. State-chartered banks, as well as state and federally-chartered savings associations, also are subject to lending limits imposed by relevant state and federal law.

[9] *http://www.federalreserve.gov/newsevents/press/bcreg/20111220a.htm; http://www.federalreserve.gov/newsevents/press/bcreg/20121214a.htm.*

[10] *See* 78 FR 37930 (June 25, 2013).

[11] *http://www.bis.org/press/p140415.htm.*

several comments that supported imposing the more stringent limits on single-counterparty credit exposures between very large organizations.

Some commenters on the 2011 proposed rule urged the Board to base single-counterparty credit limits on a narrower definition of capital. For example, one commenter noted that a central finding of the financial crisis was that only common equity was reliably loss absorbing, and further observed that the Basel III capital standard reflects this through its redefinition of capital instruments. This commenter also argued that there are advantages to coordinating regulatory capital definitions around a limited number of capital definitions that include only instruments that are reliably loss absorbing.

In its 2011 proposed rule, the Board proposed to exempt credit exposures that were direct claims on, and the portions of claims that were directly and fully guaranteed as to principal and interest by, the United States and its agencies. Many commenters supported expanding this exemption to include creditworthy non-U.S. sovereigns. Several commenters noted that sovereign entities generally are not regarded as ''companies,'' and the statute covers exposures to companies. Others argued there is no rationale for distinguishing between U.S. and other highly-rated sovereign exposures and that limiting the amount of exposure that a covered company can have to a highly-rated sovereign may increase systemic risk by limiting the company's ability to invest in or accept as collateral instruments issued by such sovereigns. Commenters suggested that exposures to those sovereigns that are assigned a low risk-weight under the Basel Capital rules should be exempt.

Commenters questioned the Board's approach to measuring the exposures resulting from derivative transactions. Under the 2011 proposed rule, a covered company generally would have been required to calculate credit exposure to a derivatives counterparty using the Current Exposure Method (CEM). Commenters argued that CEM is insufficiently risk-sensitive and that it overstates the realistic economic exposure of a derivative transaction. Commenters attributed this issue in significant part to the fact that CEM limits the extent to which netting benefits are taken into account in calculating counterparty exposures.

Some commenters also criticized the Board's proposed approach to measuring exposures from securities financing transactions.[12] These commenters argued that the collateral volatility haircuts included in the 2011 proposed rule do not recognize the risk-mitigating value of positive correlations between securities on loan and securities received as collateral. These commenters also pointed out that under the Board's risk-based capital rules, collateral volatility haircuts for securities lending and repurchase transactions reflect a five-day liquidation period, rather than the ten-day period used in the proposed 165(e) rule.

Many of the comments received concerning the proposed rule for foreign banking organizations were similar to those filed with respect to the domestic proposed rule, especially regarding the 2012 proposed rule's treatment of foreign sovereign instruments. Some commenters argued that, in light of the BCBS's development of the LE Standard that would apply to a foreign banking organization on a consolidated basis, it was unnecessary for the Board to develop single-counterparty credit limits for a foreign banking organization's combined U.S. operations. Some commenters also expressed concerns related to the definition of the relevant capital base for their organizations. For example, some foreign banking organizations that expected to form intermediate holding companies (IHCs) to hold their U.S. subsidiaries were concerned that their relevant capital base would be restricted to the capital of the IHC, and not the relevant consolidated capital level of their entire company.

After a review of these comments, the Board has modified the proposed rules in a number of key respects. The Board welcomes comments on all aspects of the proposed rules, including on the various questions and alternatives discussed below.

## Proposed Rule for Domestic Bank Holding Companies

### *Overview of Proposed Rule for Domestic Bank Holding Companies*

Under the proposed rule to implement section 165(e) of the Dodd-Frank Act, the aggregate net credit exposure of a bank holding company with total consolidated assets of $50 billion or more (covered company) to a single counterparty would be subject to one of three increasingly stringent credit exposure limits. The first category of limits would apply to covered companies that have less than $250 billion in total consolidated assets and less than $10 billion in on-balance-sheet foreign exposures. Covered companies that have less than $250 billion in total consolidated assets and less than $10 billion in on-balance sheet foreign exposures would be prohibited from having aggregate net credit exposure to an unaffiliated counterparty in excess of 25 percent of the covered company's total capital stock and surplus, defined under the rule as the covered company's total regulatory capital plus allowance for loan and lease losses (ALLL).

The second category of exposure limits would prohibit any covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, but which is not a global systemically important banking organization, from having aggregate net credit exposure to an unaffiliated counterparty in excess of 25 percent of the covered company's tier 1 capital.

The third category of exposure limits would prohibit any covered company that is a global systemically important banking organization (major covered company) from having aggregate net credit exposure in excess of 15 percent of the major covered company's tier 1 capital to a major counterparty, and 25 percent of the major covered company's tier 1 capital to any other counterparty. A ''major counterparty'' would be defined as a global systemically important banking organization or a nonbank financial company supervised by the Board. This framework would be consistent with the requirement in section 165(a)(1)(B) of the Dodd-Frank Act that the enhanced standards established by the Board under section 165 increase in stringency based on factors such as the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company.[13] The credit exposure limits are summarized in Table 1.

[12] ''Securities financing transactions'' include repurchase agreements, reverse repurchase agreements, securities lending transactions, and securities borrowing transactions.

[13] 12 U.S.C. 5323, 5365(e).

TABLE 1—SINGLE-COUNTERPARTY CREDIT LIMITS APPLICABLE TO COVERED COMPANIES

| Category of covered company | Applicable credit exposure limit |
|---|---|
| Covered companies that have less than $250 billion in total consolidated assets and less than $10 billion in on-balance-sheet foreign exposures. | Aggregate net credit exposure to a counterparty cannot exceed 25 percent of a covered company's total regulatory capital plus ALLL. |
| Covered companies that have $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposures, but are not major covered companies. | Aggregate net credit exposure to a counterparty cannot exceed 25 percent of a covered company's tier 1 capital. |
| Major covered companies | Aggregate net credit exposure to a *major counterparty* cannot exceed 15 percent of a major covered company's tier 1 capital.<br>Aggregate net credit exposure to *other counterparties* cannot exceed 25 percent of a major covered company's tier 1 capital. |

The limits of the proposed rule would apply to the credit exposures of a covered company on a consolidated basis, including any subsidiaries, to any unaffiliated counterparty. A ''subsidiary'' of a covered company would mean a company that is directly or indirectly controlled by the specified company for purposes of the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.*[14] If an investment fund or vehicle is not controlled by a covered company, the exposures of such fund or vehicle to its counterparties would not be aggregated with those of the covered company for purposes of the proposed single-counterparty credit limits applicable to that covered company.

A bank holding company should be able to monitor and control its credit exposures on a consolidated basis, including the credit exposures of its subsidiaries. Applying the single-counterparty credit limits in the proposed rule to bank holding companies on a consolidated basis, which would include the credit exposures of their subsidiaries, would help to avoid evasion of the rule's purposes.

*Question 1: As noted, the proposed rule would apply the single-counterparty credit limits to covered companies on a consolidated basis and could, therefore, impact the level of credit exposures of subsidiaries of these covered companies, including depository institutions. Is application on a consolidated basis appropriate?*

*Question 2: Should the definition of a ''subsidiary'' of a covered company for purposes of single-counterparty credit limits be based on the definition in the Bank Holding Company Act of 1956? Should a ''subsidiary'' instead be defined as any entity that a covered company (1) owns, controls, or holds with power to vote 25 percent or more of a class of voting securities; (2) owns or controls 25 percent or more of the total equity; or (3) consolidates for financial reporting purposes?*

*Question 3: Should funds or vehicles that a covered company sponsors or advises be expressly included as part of the covered company for purposes of the proposed rule? Should the proposed rule's definition of ''subsidiary'' be expanded to include any investment fund or vehicle advised or sponsored by a covered company? Should the proposed rule's definition of ''subsidiary'' be expanded to include any other entity?*

The proposed rule would establish limits on the credit exposure of a covered company to a single ''counterparty.'' [15] A counterparty would be defined to include natural persons (including the person's immediate family); a U.S. State (including all of its agencies, instrumentalities, and political subdivisions); and certain foreign sovereign entities (including their agencies, instrumentalities, and political subdivisions). The Board is proposing to include individuals and certain governmental entities within the definition of a ''counterparty'' because credit exposures to such entities create risks to the covered company that are similar to those created by large exposures to companies. The severe distress or failure of an individual, U.S. state or municipality, or sovereign entity could have effects on a covered company that are comparable to those caused by the failure of a financial firm or nonfinancial corporation to which the covered company has a large credit exposure. With respect to sovereign entities, these risks are most acute in the case of sovereigns that present greater credit risk. Therefore, the proposed rule would subject credit exposures to individuals, U.S. states and municipalities, and foreign sovereign governments that do not receive a zero percent risk weight under the Board's Standardized Approach risk-based capital rules in Regulation Q to the credit exposure framework in the same manner as credit exposures to companies.[16]

The Board proposes to extend the single-counterparty credit limits to individuals, U.S. states, and certain foreign sovereigns using two authorities. Under section 165(b)(1)(b) of the Dodd-Frank Act, the Board may impose such additional enhanced prudential standards as the Board of Governors determines are appropriate.[17] In addition, under section 5(b) of the Bank Holding Company Act, the Board may to issue such regulations as may be necessary to enable it to administer and carry out the purposes of this chapter and prevent evasions thereof.[18] Such purposes include examining the financial, operational, and other risks within the bank holding company system that may pose a threat to (1) the safety and soundness of the bank holding company or of any depository institution subsidiary of the bank holding company; or (2) the stability of the financial system of the United States.[19] The proposed rule would help to promote the safety and soundness of a covered company and mitigate risks to financial stability by limiting a covered company's maximum credit exposure to an individual, U.S. state, or foreign sovereign, and thereby reducing the risk that the failure of such individual or entity could cause the failure or material financial distress of a covered company.

For purposes of the proposed credit exposure limits, a covered company's exposures to a ''counterparty'' would include not only exposures to that particular entity but also exposures to any person with respect to which the counterparty (1) owns, controls, or holds with power to vote 25 percent or more of a class of voting securities; (2) owns or controls 25 percent or more of

[14] *See* proposed rule § 252.71(cc); *see also* section 252.2(g) of the Board's Regulation YY (12 CFR 252.2(g)).

[15] *See* proposed rule § 252.71(e).

[16] *See* 12 CFR part 217, subpart D.

[17] 12 U.S.C. 5363(b)(1)(B).

[18] 12 U.S.C. 1844(b).

[19] 12 U.S.C. 1844(c)(2)(A)(i)(II).

the total equity; or (3) consolidates for financial reporting purposes. To the extent that one or more of these conditions are met with respect to a company's relationship to an investment fund or vehicle, exposures to such fund or vehicle would need to be aggregated with that counterparty.

*Question 4: Under what circumstances should funds or vehicles that a counterparty sponsors or advises be expressly included as part of the counterparty for purposes of the proposed rule?*

Further, in cases where total exposures to a single counterparty exceed five percent of the covered company's eligible capital base (*i.e.,* total regulatory capital plus ALLL or tier 1 capital), the covered company would need to add to exposures to that counterparty all exposures to other counterparties that are ''economically interdependent'' with the first counterparty. The purpose of this proposed requirement is to limit a covered company's overall credit exposure to two or more counterparties where the underlying risk of one counterparty's financial distress or failure would cause the financial distress or failure of another counterparty. In particular, under the proposed rule, two counterparties would be considered economically interdependent when it is the case that, if one of the counterparties were to experience financial problems, the other counterparty would be likely to experience financial problems as a result. In determining whether two entities are economically interdependent, a covered company would be required to take into account (1) whether 50 percent of one counterparty's gross receipts or gross expenditures are derived from transactions with the other counterparty; (2) whether one counterparty has fully or partly guaranteed the exposure of the other counterparty, or is liable by other means, and the exposure is significant enough that the guarantor is likely to default if a claim occurs; (3) whether a significant part of one counterparty's production or output is sold to the other counterparty, which cannot easily be replaced by other customers; (4) whether one counterparty has made a loan to the other counterparty and is relying on repayment of that loan in order to satisfy its obligations to the covered company, and the first counterparty does not have another source of income that it can use to satisfy its obligations to the covered company; (5) whether it is likely that financial distress of one counterparty would cause difficulties for the other counterparty in terms of full and timely repayment of liabilities; and (6) when both counterparties rely on the same source for the majority of their funding and, in the event of the common provider's default, an alternative provider cannot be found.[20]

Two entities that are economically interdependent would be expected to default on their exposures in a highly correlated manner, and therefore they would be treated as a single counterparty for purposes of the proposed rule. At the same time, there may be cases in which the burdens of investigating economic interdependence would outweigh its credit risk mitigating benefits to the covered company. For this reason, a covered company would only be required to assess whether counterparties are economically interdependent if the sum of the covered company's exposures to one individual counterparty exceeds five percent of the covered company's capital stock and surplus, in the case of a covered company that does not have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, and tier 1 capital, in the case of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures.

In addition, under the proposed rule, a covered company would be required to add to exposures of an unaffiliated counterparty all exposures to other counterparties that are connected by certain control relationships, such as (i) the presence of voting agreements; (ii) the ability of one counterparty to influence significantly the appointment or dismissal of another counterparty's administrative, management or supervisory body, or the fact that a majority of members have been appointed solely as a result of the exercise of the first entity's voting rights; and (iii) the ability of one counterparty to significantly influence senior management or to exercise a controlling influence over the management or policies of another counterparty.[21] As with cases where two companies are economically interdependent, in cases where a counterparty is subject to some degree of control by another counterparty, a covered company's overall aggregate credit risk with respect to the two counterparties may be understated if such control relationships are not identified and their credit exposures added together for purposes of the proposed rule.

*Example:* A covered company has credit exposures to both a bank and a fund that is sponsored by the bank. The bank does not (1) own, control, or hold with power to vote 25 percent or more of a class of voting securities of the fund; (2) own or control 25 percent or more of the total equity of the fund; or (3) consolidate the fund for financial reporting purposes. Thus, the covered company generally would not be required to aggregate its exposures to the bank and the fund. The bank does, however, have the ability to appoint a majority of the directors of the fund. Under the proposed rule, a covered company would be required to add its credit exposures to the fund to the covered company's credit exposures to the bank for purposes of determining whether the covered company is in compliance with the proposed rule.

*Question 5: Should covered companies be required to aggregate exposures to entities that are economically interdependent? Are the criteria for determining whether entities are economically interdependent sufficiently clear, and if not, how should the criteria be further clarified? Should covered companies only be required to identify entities as economically interdependent when exposure to one of the entities exceeds five percent of the covered company's capital stock and surplus, in the case of a covered company that does not have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, and tier 1 capital, in the case of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures? Should only covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures be required to identify entities as economically interdependent? What other threshold(s) would be appropriate and why?*

*Question 6: What operational or other challenges, if any, would covered companies face in identifying companies that are economically interdependent? Will covered companies have access to all of the information needed to complete the analysis of economic interdependence? Is this type of information collected by covered companies in the ordinary course of business as part of underwriting or other, similar processes?*

*Question 7: Should covered companies be required to aggregate exposures to entities that are connected by certain control relationships? Should*

[20] *See* proposed rule § 252.76(a).

[21] *See* proposed rule § 252.76(b).

*covered companies only be required to aggregate exposures to entities that are connected by certain control relationships if the exposure exceeds five percent of the covered company's capital stock and surplus, in the case of a covered company that does not have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, and tier 1 capital, in the case of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures? Should only covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures be required to aggregate exposures to entities that are connected by certain control relationships? Are the criteria for determining whether entities are connected by control relationships sufficiently clear, and if not, how could the criteria be further clarified? Are there additional criteria that the Board should consider?*

Section 165(e) of the Dodd-Frank Act directs the Board to impose single-counterparty credit limits based on the ''capital stock and surplus'' of a covered company, or ''such lower amount as the Board may determine by regulation to be necessary to mitigate risks to the financial stability of the United States.'' [22] Under the proposed rule, ''capital stock and surplus'' of a covered company would be defined as the sum of the company's total regulatory capital as calculated under the capital adequacy guidelines applicable to that bank holding company under Regulation Q (12 CFR part 217) and the balance of the bank holding company's ALLL not included in tier 2 capital under the capital adequacy guidelines applicable to that bank holding company under Regulation Q (12 CFR part 217).[23] This definition of capital stock and surplus is conceptually similar to the definition of the same term in the Board's Regulations O and W and the OCC's national bank lending limit regulation.[24]

As indicated, for those covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposure, the proposed credit limits would be calculated by reference to those companies' tier 1 capital as defined under Regulation Q, rather than their total regulatory capital plus ALLL.[25] A key financial stability benefit of single-counterparty credit limits is that such limits help reduce the likelihood that the failure of one financial institution will lead to the failure of other financial institutions. By reducing the likelihood of multiple simultaneous failures arising from interconnectedness, single-counterparty credit limits reduce the probability of future financial crises and the social costs that would be associated with such crises. For this benefit to be realized, single-counterparty credit limits for firms whose failure is more likely to have an adverse impact on financial stability need to be based on a measure of capital that is available to absorb losses on a going-concern basis.

Total regulatory capital plus ALLL includes capital elements that do not absorb losses on a going-concern basis. For example, total regulatory capital includes a covered company's subordinated debt, which is senior in the creditor hierarchy to equity and therefore only takes losses once a company's equity has been wiped out. In contrast, a company's tier 1 capital consists only of equity claims on the company, such as common equity and certain preferred shares. By definition, these equity claims are available to absorb losses on a going-concern basis. Therefore, in order to limit the aggregate net credit exposure that a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures can have to a single counterparty relative to the covered company's ability to absorb losses on a going-concern basis, single-counterparty credit limits applicable to such companies should be based on their tier 1 capital. Basing single-counterparty credit limits for such companies on tier 1 capital also is consistent with the direction given in section 165(a)(1)(B) of the Dodd-Frank Act to impose enhanced prudential standards that increase in stringency based on the systemic footprint of the firms to which they apply.[26]

Basing single-counterparty credit limits for covered companies with total consolidated assets of $250 billion or more, or $10 billion or more in on-balance-sheet foreign exposures on tier 1 capital would be consistent with lessons learned during the financial crisis of 2007–2009. During the crisis, counterparties and other creditors of distressed financial institutions discounted lower-quality regulatory capital instruments issued by such institutions, such as trust preferred shares, hybrid capital instruments, and other term instruments. Instead, market participants focused on a financial institution's common equity capital and other simple, perpetual-maturity instruments that now qualify as tier 1 regulatory capital. For this reason, the Board's revised capital framework introduced a new definition of common equity tier 1 capital, restricted the set of instruments that qualify as additional tier 1 capital, and raised the tier 1 capital regulatory minimum from 4 to 6 percent.[27] In contrast, the Board's revised capital framework left the total regulatory capital minimum requirement unchanged from its pre-crisis calibration of 8 percent.

Thus, basing single-counterparty credit limits for such covered companies on tier 1 capital would be consistent with the post-crisis focus on higher-quality forms of capital and, based on the experience in the crisis whereby market participants significantly discounted the value of capital instruments such as subordinate debt that count in total regulatory capital, would provide a more reliable capital base for the credit limits. In addition, the analysis that follows suggests that using a narrower definition of capital for such covered companies could help to mitigate risks to U.S. financial stability.

The marginal impact of basing single-counterparty credit limits on tier 1 capital for firms with $250 billion or more in total assets, or $10 billion or more in on-balance-sheet foreign exposures, appears to be limited. As of September 30, 2015, tier 1 capital represented approximately 82 percent of the total regulatory capital plus ALLL for these firms. Further, the quantitative impact study Board staff conducted to help gauge the likely effects of the proposed requirements suggests that using tier 1 capital as the eligible capital base for bank holding companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures likely would increase the total amount of excess exposure among U.S. bank holding companies by approximately $30 billion. This incremental amount of excess credit exposure could be largely eliminated by firms through compression of derivatives, collection of additional collateral from counterparties, greater use of central clearing, and modest rebalancing of portfolios among counterparties.

[22] 12 U.S.C. 5365(e)(2).

[23] *See* proposed rule § 252.71(d).

[24] *See* 12 CFR 215.3(i), 12 CFR 223.3(d); *see also* 12 CFR 32.2(b).

[25] *See* 12 CFR 217.2; 12 CFR 217.20.

[26] 12 U.S.C. 5365(a)(1)(B).

[27] *See* 12 CFR part 217.

*Question 8: Are the proposed definitions relating to capital stock and surplus and tier 1 capital clear? Should the single-counterparty credit limits applicable to covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures be based on a different capital base than that used for other firms?*

Credit Exposure Limits

Section 252.72 of the proposed rule contains the key quantitative limitations on credit exposure of a covered company to a single counterparty.[28] First, the general limit in proposed section 252.72 provides that no covered company may have aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the capital stock and surplus or tier 1 capital, as appropriate, of the covered company.[29] Second, proposed section 252.72 provides that no ''major covered company,'' defined as a covered company that is a U.S. global systemically important banking organization, may have aggregate net credit exposure to a major counterparty in excess of 15 percent of the major covered company's tier 1 capital.[30] ''Aggregate net credit exposure'' would be defined in this section to mean the sum of all net credit exposures of a covered company to a single counterparty.[31] As described in detail below, sections 252.73 and 252.74 of the proposed rule describe how a covered company would calculate gross and net credit exposure in order to arrive at the aggregate net credit exposure relevant to the single-counterparty credit limits in section 252.72.[32]

A ''major counterparty'' would be defined as (1) any major covered company and all of its subsidiaries, collectively; (2) any foreign banking organization and all of its subsidiaries, collectively, that would be considered a global systemically important foreign banking organization; and (3) any nonbank financial company supervised by the Board.[33]

The Board's proposed rule regarding the single-counterparty credit limits that should apply to credit exposures of a major covered company to a major counterparty reflects the financial stability consequences associated with such credit extensions. A credit extension between a major covered company and a major counterparty is expected to result in a heightened degree of credit risk to the major covered company relative to the case in which a major covered company extends credit to a counterparty that is not a major counterparty. The heightened credit risk arises because major covered companies and major counterparties are often engaged in common business lines and often have common counterparties and common funding sources. This creates a significant degree of commonality in their economic performance. In particular, factors that would likely cause the distress of a major counterparty would also likely be expected to simultaneously adversely affect a major covered company that has extended credit to the major counterparty. As a result, such credit extensions would be expected to present more credit risk, and greater potential for financial instability, than a credit extension made by a major covered company to a counterparty that is not a major counterparty.

In a white paper that has been released in conjunction with these proposed rules, Board staff has analyzed data on the default correlation between systemically important financial institutions (SIFIs) as well as data on the default correlation between SIFIs and a sample of non-SIFI companies.[34] The analysis supports the view that the correlation between SIFIs, and hence the correlation between major covered companies and major counterparties, is measurably higher than the correlation between SIFIs and other companies. This finding further supports the view that credit extensions between SIFIs, and hence by a major covered company to a major counterparty, present a higher degree of risk and the potential for greater financial instability than credit extensions of a major covered company to a non-major counterparty.

Because credit extensions of a major covered company to a major counterparty present a heightened degree of credit risk and a greater potential for heightened financial instability, the Board is proposing to set a more stringent single-counterparty credit limit for credit extensions between a major covered company and a major counterparty of 15 percent rather than the statutory limit of 25 percent. The more stringent credit limit of 15 percent is informed by the results of a credit risk model that is described in detail in the white paper. More specifically, data on correlations, as described above, is used to calibrate a credit risk model. The credit risk model is then used to set the single-counterparty credit limit between SIFIs such that the amount of credit risk that a SIFI is permitted to incur through extensions of credit to another SIFI is no greater than the amount of credit risk that the SIFI would be permitted to incur through extensions of credit to a non-SIFI under the 25 percent limit applicable to such exposures. The resulting calibrated model produces inter-SIFI single-counterparty credit limits that are in line with the proposed limit of 15 percent.

An additional consideration that is not considered explicitly in the context of the white paper's credit risk model, but which should influence the calibration of the credit limit between major covered companies and major counterparties, is the relative difference in adverse consequences arising from multiple SIFI defaults relative to the default of a SIFI and non-SIFI counterparty. The financial stability consequences of multiple SIFI defaults caused by the default of a SIFI borrower and the resulting default of a SIFI lender are likely substantially greater than the adverse consequences that would result from the default of a single SIFI lender and a single non-SIFI borrower. As a result, there is a compelling rationale to require that credit risk posed by inter-SIFI credit extensions be materially smaller than that posed by credit extensions between a SIFI lender and non-SIFI borrower. This consideration suggests that an appropriate inter-SIFI single-counterparty credit limit would be even lower than the 15 percent limit suggested by the calibrated credit risk model that is presented in the white paper.

Accordingly, the more stringent 15 percent single-counterparty credit limit on credit exposures of a major covered company to a major counterparty should help to mitigate risks to U.S. financial stability. The Board seeks comment on the analytical rationale that has been presented for a tighter single-counterparty credit limit for exposures of a major covered company to a major counterparty. The Board also invites comment on the data, analysis, and economic model that is used in the white paper to support the proposed more stringent limit. Commenters are encouraged to provide any specific

[28] *See* proposed rule § 252.72.

[29] *See* proposed rule §§ 252.72(a)–(b).

[30] *See* proposed rule § 252.72(c).

[31] *See* proposed rule § 252.71(b).

[32] *See* proposed rule §§ 252.73–252.74.

[33] *See* proposed rule § 252.72(v). The Financial Stability Board maintains and periodically publishes a list of entities that have the characteristics of a global systemically important banking organization: *http://www.fsb.org/.*

[34] *See Calibrating the Single-Counterparty Credit Limit between Systemically Important Financial Institutions.* For purposes of the white paper, SIFIs include global systemically important banking organizations and nonbank financial companies designated by FSOC for supervision by the Board.

analyses that could be used to support an alternative view on the appropriate level of the single-counterparty credit limit between major covered companies and major counterparties.

*Question 9: Should more stringent credit exposure limits apply to credit exposures of a major covered company to a major counterparty than would apply to other credit exposures?*

*Question 10: Are the proposed definitions of a ''major covered company'' and a ''major counterparty'' appropriate? What alternative definitions should the Board consider?*

*Question 11: Should more stringent credit exposure limits apply to exposures of major covered companies to a nonbank financial company that has been designated by FSOC for Board supervision? Should more stringent limits also apply to exposures of a major covered company to other entities that have been designated as global systemically important financial institutions by the Financial Stability Board ( e.g., global systemically important insurance companies)? If so, what limits should apply?*

*Question 12: What other limits or modifications to the proposed limits on aggregate net credit exposure should the Board consider? For example, should the Board consider developing aggregate exposure limits to certain categories of firms (e.g., a limit on the aggregate amount of credit exposure that a major covered company can have to all major counterparties)? How should the Board identify any such categories and the applicable exposure thresholds?*

Gross Credit Exposure

As noted, the proposed rule would impose limits on a covered company's aggregate net credit exposure, rather than aggregate gross credit exposure, to a counterparty. The key difference between these two amounts is that a company's net credit exposure would take into account any available credit risk mitigants, such as collateral, guarantees, credit or equity derivatives, and other hedges, provided the credit risk mitigants meet certain requirements in the rule, as discussed more fully below. For example, if a covered company had $100 in gross credit exposure to a counterparty with respect to a particular credit transaction, and the counterparty pledged collateral with an adjusted market value of $50, the full amount of which qualified as ''eligible collateral'' under the rule, the covered company's net credit exposure to the counterparty on the transaction would be $50.

In order to calculate its aggregate net credit exposure to a counterparty, a covered company first would calculate its gross credit exposure to the counterparty on each credit transaction in accordance with certain valuation and other requirements under the rule. Second, the covered company would reduce its gross credit exposure amount based on eligible credit risk mitigants to determine its net credit exposure for each credit transaction with the counterparty. Third and finally, the covered company would sum all of its net credit exposures to the counterparty to calculate the covered company's aggregate net credit exposure to the counterparty. It is this final amount, the aggregate net credit exposure, that would be subject to a credit exposure limit under the rule.

With respect to a credit exposure involving eligible collateral or an eligible protection provider, the proposed rule would apply a ''risk-shifting'' approach. In general, any reduction in the exposure amount to the original counterparty relating to the eligible collateral or eligible protection provider would result in a dollar-for-dollar increase in exposure to the eligible collateral issuer or eligible protection provider (as applicable). For example, in the case discussed above where a covered company had $100 in gross credit exposure to a counterparty and the counterparty pledged collateral with an adjusted market value of $50, the covered company would have net credit exposure to the counterparty on the transaction of $50 and net credit exposure to the issuer of the collateral of $50.

However, in cases where a covered company hedges its exposure to an entity that is not a ''financial entity'' (a non-financial entity) using an eligible credit or equity derivative, and the underlying exposure is subject to the Board's market risk capital rule (12 CFR part 217, subpart F), the covered company would calculate its exposure to the eligible protection provider using methodologies that it is permitted to use under the Board's risk-based capital rules. For these purposes, a ''financial entity'' would include regulated U.S. financial institutions, such as insurance companies, broker-dealers, banks, thrifts, and futures commission merchants, as well as foreign banking organizations and a non-U.S.-based securities firm or a non-U.S.-based insurance company subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies.[35] ''Financial entities'' would also include companies whose primary business includes the management of financial assets, lending, factoring, leasing, provision of credit enhancements, securitization, investments, financial custody, central counterparty services, proprietary trading, insurance, and other financial services.[36]

*Question 13: Is the definition of a ''financial entity'' sufficiently clear? If not, what further guidance should be provided?*

Section 252.73 of the proposed rule explains in detail how a covered company would calculate its ''gross credit exposure'' with respect to a counterparty. Gross credit exposure would be defined to mean, with respect to any credit transaction, the credit exposure of the covered company to the counterparty before adjusting for the effect of any qualifying master netting agreements, eligible collateral, eligible guarantees, eligible credit derivatives and eligible equity derivatives, and other eligible hedges (*i.e.,* a short position in the counterparty's debt or equity securities).[37] Consistent with the statutory definition of credit exposure, the proposed rule defines ''credit transaction'' to mean, with respect to a counterparty, any (i) extension of credit to the counterparty, including loans, deposits, and lines of credit, but excluding advised or other uncommitted lines of credit; (ii) repurchase or reverse repurchase agreement with the counterparty; (iii) securities lending or securities borrowing transaction with the counterparty; (iv) guarantee, acceptance, or letter of credit (including any confirmed letter of credit or standby letter of credit) issued on behalf of the counterparty; (v) purchase of, or investment in, securities issued by the counterparty; (vi) credit exposure to the counterparty in connection with a derivative transaction between the covered company and the counterparty; (vii) credit exposure to the counterparty in connection with a credit derivative or equity derivative transaction between the covered company and a third party, the reference asset of which is an obligation or equity security issued by the counterparty; [38] and (viii) any transaction that is the functional equivalent of the above, and any similar transaction that the Board determines to

[35] *See* proposed rule § 252.71(q).

[36] *Id.*

[37] *See* proposed rule § 252.71(r). Section 252.74 of the proposed rule explains how these adjustments are made.

[38] ''Credit derivative'' and ''equity derivative'' are defined in sections 252.71(g) and (p) of the proposed rule, respectively.

be a credit transaction for purposes of this subpart.[39]

Section 252.73 describes how the gross credit exposure of a covered company to a counterparty should be calculated for each type of credit transaction described above.[40] In general, the methodologies contained in the proposed rule are similar to those used to calculate credit exposure under the standardized risk-based capital rules for bank holding companies.[41] More specifically, section 252.73(a) of the proposed rule provides that, for purposes of calculating gross credit exposure:

(1) The value of loans by a covered company to a counterparty (and leases in which the covered company is the lessor and the counterparty is the lessee) would be equal to the amount owed by the counterparty to the covered company under the transaction;

(2) The value of debt securities held by the covered company that are issued by the counterparty would be equal to the market value of the securities (in the case of trading and available-for-sale securities) or the amortized purchase price of the securities (in the case of securities that are held to maturity);

(3) The value of equity securities held by the covered company that are issued by the counterparty would be equal to the market value of such securities;

(4) The value of repurchase agreements would be equal to the adjusted market value of the securities transferred by the covered company to the counterparty;

(5) The value of reverse repurchase agreements would be equal to the amount of cash transferred by the covered company to the counterparty;

(6) The value of securities borrowing transactions would be equal to the sum of the amount of cash collateral transferred by the covered company to the counterparty and the adjusted market value of the securities collateral transferred to the counterparty;

(7) The value of securities lending transactions would be equal to the adjusted market value of the securities lent by the covered company to the counterparty;

(8) Committed credit lines extended by a covered company to the counterparty would be valued at the face amount of the credit line;

(9) Guarantees and letters of credit issued by a covered company on behalf of the counterparty would be equal to the maximum potential loss to the covered company on the transaction;

(10) Derivative transactions between the covered company and the counterparty not subject to a qualifying master netting agreement would be valued in an amount equal to the sum of the current exposure of the derivatives contract and the potential future exposure of the derivatives contract, calculated using methodologies that the covered company is permitted to use under Regulation Q (12 CFR part 217, subparts D and E);

(11) Derivative transactions between the covered company and the counterparty subject to a qualifying master netting agreement would be valued in an amount equal to the exposure at default amount calculated using methodologies that the covered company is permitted to use under subpart E of Regulation Q (12 CFR part 217); and

(12) Credit or equity derivative transactions between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or equity security of the counterparty, would be valued in an amount equal to the maximum potential loss to the covered company on the transaction.

Under the proposed rule, trading and available-for-sale debt securities held by the covered company, as well as equity securities, would be valued for purposes of single-counterparty credit limits based on their market value. This approach would require a covered company to revalue upwards the amount of an investment in such securities when the market value of the securities increases. In these circumstances, the re-valuation would reflect the covered company's greater financial exposure to the counterparty and would reduce the covered company's ability to engage in additional transactions with the counterparty. In circumstances where the market value of the securities falls, however, a covered company under the proposal would revalue downwards its exposure to the issuer of the securities. This reflects the fact that, just as an increase in the value of a security results in greater exposure to the issuer of that security, a decrease in the value of the security leaves a firm with less exposure to that issuer.

*Question 14: Should the Board provide further guidance regarding the calculation of the ''market value'' of a debt or equity security, particularly for securities that are illiquid or otherwise hard-to-value? If so, what guidance should be provided?*

In the context of repurchase agreements, securities borrowing transactions, and securities lending transactions, the ''adjusted market value'' of a security would mean the sum of (i) the market value of the security and (ii) the market value of the security multiplied by the product of (a) the collateral haircut set forth in Table 1 to section 217.132 of the Board's Regulation Q (12 CFR 217.132) that is applicable to the security and (b) the square root of ½.[42] The purpose of adjusting the value of a security in this manner is to capture the market volatility (and associated potential increase in counterparty credit exposure) of the securities transferred or lent by the covered company in these transactions. Multiplying the values in Table 1 to section 217.132 of the Board's Regulation Q by the square root of ½ would align with the requirements in the Board's risk-based capital rules, which assume a 5-day liquidation period for ''repo-style'' transactions,[43] rather than the 10-day liquidation period that is assumed for other transactions. With respect to derivative transactions between a covered company and a counterparty that are not subject to a qualifying master netting agreement, the gross credit exposure of a covered company to the counterparty would be valued as the sum of the current exposure and the potential future exposure of the contract.[44] With respect to derivative transactions between a covered company and a counterparty that are subject to a qualifying master netting agreement, the proposed rule would require covered companies to calculate gross credit exposure to a counterparty as the amount that would be calculated using any methodologies that the covered company is permitted to use under the Board's risk-based capital rules (12 CFR part 217, subpart D and E).[45] This approach would allow certain covered companies to calculate counterparty exposures for derivatives transactions subject to a qualifying master netting agreement using the internal model method in the Board's Regulation Q (12 CFR part 217, subpart E). The Board is

[39] *See* proposed rule § 252.71(h). The definition of ''credit transaction'' in the proposed rule is similar to the definition of ''credit exposure'' in section 165(e) of the Dodd-Frank Act. *See* 12 U.S.C. 5365(e)(3).

[40] *See* proposed rule § 252.73(a)(1)–(12).

[41] 12 CFR part 217, subpart D.

[42] *See* proposed rule § 252.71(a).

[43] A ''repo-style'' transaction is a repurchase or reverse repurchase transaction, or a securities borrowing or lending transaction, that meets certain criteria. *See* 12 CFR 217.2.

[44] *See* proposed rule § 252.73(a)(10). ''Qualifying master netting agreement'' is defined in section 252.71(z) of the proposed rule in a manner consistent with the Board's advanced risk-based capital rules for bank holding companies.

[45] *See* proposed rule § 252.73(a)(11).

proposing this approach, rather than proposing to require all covered companies to use CEM because of concerns that CEM may not take fully into account correlations and netting relationships, and therefore, under certain circumstances, may overstate counterparty credit risk.

The Board notes, however, that the BCBS has recently finalized a revised standardized approach (SA–CCR) for measuring credit exposure to a derivatives counterparty.[46] The Board expects to consider the benefits of incorporating SA–CCR in the single-counterparty credit limit rule at such time as the Board considers the benefits of SA–CCR for risk-based capital purposes.

With respect to derivative transactions between a covered company and a third party, where the covered company is the protection provider and the reference asset is an obligation or equity security of the counterparty, the credit exposure of the covered company to the counterparty would be equal to the maximum potential loss to the covered company on the transaction.[47]

With respect to cleared and uncleared derivatives, the amount of initial margin and excess variation margin (*i.e.,* variation margin in excess of that needed to secure the mark-to-market value of a derivative) posted to a bilateral or central counterparty would be treated as credit exposure to the counterparty unless the margin is held in a segregated account at a third party custodian.

Section 252.73(c) of the proposed rule includes the statutory attribution rule, which provides that a covered company must treat a transaction with any person as a credit exposure to a counterparty to the extent the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty.[48] This attribution rule seeks to prevent firms from evading the single-counterparty credit limits by using intermediaries and thereby avoiding a direct credit transaction with a particular counterparty. It is the Board's intention to avoid interpreting the attribution rule in a manner that would impose undue burden on covered companies by requiring firms to monitor and trace the proceeds of transactions made in the ordinary course of business. In general, credit exposures resulting from transactions made in the ordinary course of business will not be subject to the attribution rule.

*Question 15: The Board invites comment on all aspects of the proposed approaches for calculating gross credit exposures.*

*Question 16: With respect to derivative transactions, the Board invites comment on the proposed reliance on the methodologies covered companies are permitted to use under the risk-based capital rules. Should covered companies instead be required to use CEM? Should the single-counterparty credit limits rule ultimately require use of SA–CCR or a similar standardized approach to measure a covered company's credit exposure to derivatives counterparties?*

*Question 17: With respect to credit or equity derivative transactions between the covered company and a third party, where the covered company is the protection provider and the reference asset is an obligation or equity security of the counterparty, is it sufficiently clear how a covered company would calculate its ''maximum potential loss''? What additional guidance, if any, should the Board provide?*

*Question 18: With respect to credit derivatives, equity derivatives, guarantees, and letters of credit, are there cases in which ''maximum potential loss to the covered company'' arising from the transaction is indeterminate? How should single-counterparty credit limits apply in those instances?*

*Question 19: The Board invites comment on ways to apply the statutory attribution rule in a manner that would be consistent with the goal of preventing evasion of the single-counterparty credit limits without imposing undue burden on covered companies. Is additional regulatory clarity around the attribution rule necessary? What is the potential cost or burden of applying the attribution rule as proposed?*

Net Credit Exposure

As noted, the proposed rule would impose limits on a covered company's net credit exposure to a counterparty. ''Net credit exposure'' would be defined to mean, with respect to any credit transaction, the gross credit exposure of a covered company calculated under section 252.73, as adjusted in accordance with section 252.74.[49] Section 252.74 of the proposed rule explains how a covered company would convert gross credit exposure amounts to net credit exposure amounts by taking into account eligible collateral, eligible guarantees, eligible credit and equity derivatives, other eligible hedges (for example, a short position in the counterparty's debt or equity securities), and for securities financing transactions, the effect also of bilateral netting agreements.[50]

*Calculation of Net Credit Exposure for Securities Financing Transactions*

With respect to any repurchase transaction, reverse repurchase transaction, securities lending transaction, and securities borrowing transaction with a counterparty that is subject to a bilateral netting agreement with that counterparty and that meets the definition of ''repo-style transaction'' in section 217.2 of the Board's Regulation Q (12 CFR 217.2), a covered company's net credit exposure to a counterparty generally would be equal to the exposure at default amount calculated under section 217.37(c)(2) of the Board's Regulation Q (12 CFR 217.37(c)(2)), applying standardized supervisory haircuts as provided in 12 CFR 217.37(c)(3)(iii).[51] A covered company would not be permitted to apply its own internal estimates for haircuts. Further, in calculating its net credit exposure to a counterparty as a result of such transactions, a covered company would be required to disregard any collateral received from that counterparty that does not meet the definition of ''eligible collateral'' in § 252.71(k).

The proposal would also require a covered company to recognize a credit exposure to any issuer of eligible collateral that is used to reduce the covered company's gross credit exposure from a transaction described in the preceding paragraph. The amount of credit exposure that a covered company would be required to recognize to an issuer of such collateral would be equal to the market value of the collateral minus the standardized supervisory haircuts provided in 12 CFR 217.37(c)(2)(ii). However, in no event would the amount of credit exposure that a covered company is required to recognize to such a collateral issuer be in excess of its gross credit exposure to the counterparty on the original credit transaction.

Some commenters on the 2011 section 165(e) proposed rule objected to the

[46] See *http://www.bis.org/publ/bcbs279.htm.*

[47] *See* proposed rule § 252.73(a)(12). ''Credit derivative'' is defined in § 252.71(g) of the proposed rule, and ''equity derivative'' is defined in § 252.71(p) of the proposed rule. ''Derivative transaction'' is defined in § 252.71(j) of the proposed rule in the same manner as it is defined in the National Bank Act, as amended by section 610 of the Dodd-Frank Act. *See* 12 U.S.C. 84(b)(3).

[48] *See* proposed rule § 252.73(c); *see also* 12 U.S.C. 5365(e)(4).

[49] *See* proposed rule § 252.71(x).

[50] *See* proposed rule § 252.74.

[51] Pursuant to 12 CFR 217.37(c)(3)(iii), a bank that is engaged in a repo-style transaction may multiply the standardized supervisory haircuts that would otherwise apply pursuant to Table 1 to § 217.37 of the Board's Regulation Q by the square root of ½.

proposed methodology for netting securities financing transactions as overly conservative. The commenters generally argued that the proposed approach implied unrealistic assumptions about correlations among securities that a covered company transfers to its counterparty and received from that counterparty. For example, if a covered company loans equity securities to a counterparty and receives equity securities from the counterparty as collateral, the proposed methodology implied that, upon the counterparty's default, the value of the equities transferred to the counterparty would increase in value while the value of the equities received would decrease in value.

In developing this proposed rule, the Board considered several alternatives to address these concerns. First, the Board considered allowing covered firms only to apply valuation adjustments to one side of a securities financing transaction where the securities transferred and received from a counterparty are of the same asset class. For example, if a covered company loans equity securities to a counterparty and receives equity securities from the counterparty as collateral, the covered company could be permitted to apply valuation adjustments only to the value of the equity securities that have been transferred to the counterparty. This would be a relatively simple way of taking account of the fact that securities in the same asset class tend to be somewhat positively correlated.

Second, the Board considered a methodology similar to the one recently proposed by the BCBS in its second consultative document on potential revisions to the standardized approach to credit risk.[52] Under the formula proposed by the Basel Committee, an entity's exposure for repo-style transactions would be equal to 40 percent of its ''net exposure'' from the transaction plus 60 percent of its ''gross exposure'' divided by the square root of the number of security issues in the netting set. In this formula, the ''net exposure'' term is intended to reflect the effect of netting long positions and short positions because the volatility haircuts that would apply to long positions would be allowed to offset those that apply to short positions. Although volatility haircuts would not offset when calculating gross exposure, gross exposure would reflect the effect of diversification by dividing the gross exposure amount by the square root of the number of exposures.

Third, the Board considered allowing credit exposure from repo-style transactions to be measured using standardized correlation matrices. Under this approach, securities would be divided into a handful of asset classes (for example, sovereign securities, corporate and municipal debt, and equities). Based on distinctions between asset classes, specific assumptions about correlations within portfolios of securities transferred to or received from a counterparty, as well as assumptions about correlations across portfolios of securities transferred and received, would be provided. These standardized correlation assumptions, together with standardized volatility haircuts for the relevant securities, would serve as inputs into a formula that would yield an estimate of a covered company's credit exposure to its counterparty. Again, this could provide a more accurate way of taking into account correlations among securities.

The first alternative would permit a covered company to apply valuation adjustments to only one side of a securities financing transaction where the securities transferred and received from a counterparty are of the same asset class. While this approach is meant to reflect the fact that securities in the same asset class are generally positively correlated, some securities in the same asset class may also be negative correlated. In addition, assumptions about asset correlations based on observations during normal times may break down during periods of extreme market turbulence, when large credit exposures of financial institutions to their counterparties could pose the greatest risk to financial stability. The second and third alternatives would increase the complexity of the framework and potentially make the framework susceptible to arbitrage. For the foregoing reasons, the proposed rule does not include these alternatives.

*Question 20: Should the Board consider alternative approaches to measuring the net credit exposure from securities financing transactions? What are the advantages and disadvantages of such alternative measurement approaches relative to the proposed approach?*

*Collateral*

Section 252.74(c) of the proposed rule describes how eligible collateral would be taken into account in the calculation of net credit exposure.[53] ''Eligible collateral'' would be defined to include cash on deposit with a covered company (including cash held for the covered company by a third-party custodian or trustee); debt securities (other than mortgage- or asset-backed securities [54]) that are bank-eligible investments and that have an investment grade rating; equity securities that are publicly traded; or convertible bonds that are publicly traded.[55] For any of these asset types to count as eligible collateral for a credit transaction, the covered company generally would be required to have a perfected, first priority security interest in the collateral or the legal equivalent thereof, if outside of the United States. This list of eligible collateral would be similar to the list of eligible collateral in Regulation Q.[56]

In computing its net credit exposure to a counterparty with respect to a credit transaction, a covered company would be required to reduce its gross credit exposure on the transaction by the adjusted market value of any eligible collateral.[57] Other than in the context of repo-style transactions, the ''adjusted market value'' of eligible collateral would be defined in section 252.71(a) of the proposed rule to mean the fair market value of the eligible collateral after application of the applicable haircut specified in Table 1 to section 217.132 of the Board's Regulation Q for that type of eligible collateral.[58]

The net credit exposure of a covered company to a counterparty on a credit transaction is the gross credit exposure of the covered company on the transaction minus the adjusted market value of any eligible collateral related to the transaction.[59] In addition, under the

[52] *http://www.bis.org/bcbs/publ/d347.pdf.*

[53] *See* proposed rule § 252.74(c).

[54] The proposed rule generally would exclude mortgage-backed securities and other asset-backed securities from the definition of ''eligible collateral'' because of concerns that those securities may be more likely than other securities to become illiquid and lose value during periods of financial instability. However, asset-backed securities guaranteed by a U.S. government sponsored entity, such as Ginnie Mae, Fannie Mae, or Freddie Mac, would qualify as eligible collateral under the proposed rule.

[55] *See* proposed rule § 252.71(k); *see also* 12 CFR 252.2(p) (defining ''publicly traded'').

[56] *See* 12 CFR 217.2.

[57] *See* proposed rule § 252.74(c).

[58] Table 1 to section 217.132 of the Board's Regulation Q (12 CFR 217.132) provides haircuts for multiple collateral types, including some types that do not meet the proposed definition of ''eligible collateral.'' Notwithstanding the inclusion of those collateral types in the reference table, a company cannot reduce its gross credit exposure for a transaction with a counterparty based on the adjusted market value of collateral that does not meet the definition of ''eligible collateral.''

[59] The Board is proposing to treat eligible collateral as a gross credit exposure to the collateral issuer under the Board's authority under section 165(e) to determine that any other similar transaction is a credit exposure. *See* 12 U.S.C. 5365(e)(3)(F).

proposed rule, a covered company generally must recognize a credit exposure to the collateral issuer in an amount equal to the adjusted market value of the collateral. As such, the amount of credit exposure to the original counterparty and the issuer of the eligible collateral would fluctuate over time based on the adjusted market value of the eligible collateral. Collateral that previously met the definition of eligible collateral under the proposed rule but over time ceases to do so would no longer be eligible to reduce gross credit exposure.

In effect, the proposed treatment of eligible collateral would require a covered company to shift its credit exposure from the original counterparty to the issuer of such collateral. This approach would help to promote a covered company's careful monitoring of its direct and indirect credit exposures. So as not to discourage overcollateralization, however, a covered company's maximum credit exposure to the collateral issuer would be limited to the credit exposure to the original counterparty.[60]

A covered company would continue to have credit exposure to the original counterparty to the extent that the adjusted market value of the eligible collateral does not equal the full amount of the credit exposure to the original counterparty.

*Example:* A covered company (Company A) makes a $1,000 loan to a counterparty (Company B), creating $1,000 of gross credit exposure to that counterparty, and the counterparty provides eligible collateral issued by a third party (Company C) that has an adjusted market value of $700 on day 1. Company A would be required to reduce its credit exposure to Company B by the adjusted market value of the eligible collateral. As a result, on day 1, Company A would have gross credit exposure of $700 to Company C and $300 net credit exposure to Company B.

As noted, the amount of credit exposure to the original counterparty and the issuer of the eligible collateral will fluctuate over time based on movements in the adjusted market value of the eligible collateral. If the adjusted market value of the eligible collateral decreased to $400 on day 2 in the previous example, on day 2 Company A's net credit exposure to Company B would increase to $600, and its gross credit exposure to Company C would decrease to $400. By contrast, if on day 3 the adjusted market value of the eligible collateral increased to $800, on day 3 Company A's net credit exposure to Company B would decrease to $200, and its gross credit exposure to Company C would increase to $800. In each case, the covered company's total credit exposure would be capped at the original amount of the exposure created by the loan or $1,000—even if the adjusted market value of the eligible collateral exceeded $1,000.

Finally, in cases where eligible collateral is issued by an issuer covered by one of the exemptions in section 252.76 of the proposed rule or that is excluded from the proposed definition of a ''counterparty,'' the requirement to recognize an exposure to the collateral issuer would have no effect.

*Example:* A covered company makes a $1,000 loan to a counterparty and that counterparty has pledged as collateral U.S. government bonds with an adjusted market value of $1,000. In this case, the covered company would not have any net credit exposure to the original counterparty because the value of loan and the adjusted market value of the U.S. government bonds are equal. Although the covered company would have $1,000 of exposure to the U.S. government, single-counterparty credit limits would not apply to that exposure because U.S. government bonds are excluded from the single-counterparty credit limits of the proposed rule.

*Question 21: Should the list of eligible collateral be broadened or narrowed? What items should be added or deleted?*

*Question 22: Should covered companies have the option of whether to reduce their gross credit exposures by recognizing eligible collateral in some or all cases? If so, should covered companies nevertheless have to recognize gross credit exposures to the issuers of the eligible collateral? Are there situations in which full shifting of exposures would not be appropriate?*

*Question 23: Are the market volatility haircuts in Table 1 to section 217.132 of the Board's Regulation Q (12 CFR 217.132) appropriate for the valuation of eligible collateral for purposes of this rule? Should these haircuts be calibrated differently for purposes of this rule?*

*Eligible Guarantees*

Section 252.74(d) of the proposed rule describes how to reflect eligible guarantees in calculations of net credit exposure to a counterparty.[61] Eligible guarantees would be defined as guarantees that meet certain conditions, including having been written by an eligible protection provider.[62] The definition of ''eligible protection provider'' would be the same as the definition of ''eligible guarantor'' in section 217.2 of Regulation Q. As such, an eligible protection provider would include a sovereign, the Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, a Federal Home Loan Bank, the Federal Agricultural Mortgage Corporation (Farmer Mac), a multilateral development bank (MDB), a depository institution, a bank holding company, a savings and loan holding company, a credit union, a foreign bank, or a qualifying central counterparty. An eligible protection provider also would include any entity, other than a special purpose entity, (i) that at the time the guarantee is issued or anytime thereafter, has issued and maintains outstanding an unsecured debt security without credit enhancement that is investment grade, (ii) whose creditworthiness is not positively correlated with the credit risk of the exposures for which it has provided guarantees, and (iii) that is not an insurance company engaged predominantly in the business of providing credit protection (such as a monoline bond insurer or re-insurer).

In calculating its net credit exposure to the counterparty, a covered company would be required to reduce its gross credit exposure to the counterparty by the amount of any eligible guarantee from an eligible protection provider.[63] The covered company would then have to include the amount of the eligible guarantee when calculating its gross credit exposure to the eligible protection provider.[64] Also, as is the case with eligible collateral, a covered company's gross credit exposure to an eligible protection provider (with respect to an eligible guarantee) could not exceed its gross credit exposure to the original counterparty on the credit transaction prior to the recognition of the eligible guarantee.[65] Accordingly, the exposure to the eligible protection provider would be capped at the amount of the credit exposure to the original counterparty even if the amount of the eligible guarantee is larger than the original exposure. A covered company would continue to have credit exposure to the original counterparty to the extent that the eligible guarantee does not equal the full amount of the credit exposure to the original counterparty.

*Example:* A covered company makes a $1,000 loan to an unaffiliated counterparty and obtains a $700 eligible guarantee on the loan from an eligible protection provider.

[60] *See* proposed rule § 252.74(c)(2).

[61] *See* proposed rule § 252.74(d).

[62] *See* proposed rule § 252.71(n) for the definition of ''eligible guarantee'' and for a description of the requirements of an eligible guarantee.

[63] *See* proposed rule § 252.74(d).

[64] *See* proposed rule §§ 252.74(d)(1)–(2).

[65] *See* proposed rule § 252.74(d)(2).

The covered company would have gross credit exposure of $700 to the protection provider as a result of the eligible guarantee and $300 net credit exposure to the original counterparty.

*Example:* A covered company makes a $1,000 loan to an unaffiliated counterparty and obtains a $1,500 eligible guarantee from an eligible protection provider. The covered company would have $1,000 gross credit exposure to the protection provider (capped at the amount of the exposure to the unaffiliated counterparty), but the covered company would have no net credit exposure to the original counterparty as a result of the eligible guarantee.

As with eligible collateral, a covered company would be required to reduce its gross exposure to a counterparty by the amount of an eligible guarantee in order to ensure that concentrations in exposures to guarantors are captured by the risk-shifting approach. This requirement is meant to limit the ability of a covered company to extend loans or other forms of credit to a large number of high risk borrowers that are guaranteed by a single guarantor.

*Question 24: Should the definition of eligible guarantee or eligible protection provider be expanded or narrowed? Are there any additional or alternative requirements the Board should place on eligible protection providers to ensure their capacity to perform on their guarantee obligations?*

*Question 25: Under what circumstances, if any, should covered companies have the option of whether (1) to fully shift exposures to eligible protection providers in the case of eligible guarantees or (2) divide an exposure between the original counterparty and the eligible protection provider in some manner? If so, should covered companies nevertheless have to recognize gross credit exposures to the issuers of the eligible collateral? Are there situations in which full shifting of exposures would not be appropriate?*

*Eligible Credit and Equity Derivative Hedges*

Section 252.74(e) sets forth the proposed treatment of eligible credit and equity derivatives in the case where the covered company is the protection purchaser.[66] In the case where a covered company is a protection purchaser, such derivatives can be used to mitigate gross credit exposure. A covered company may only recognize credit and equity derivative hedges that qualify as eligible credit and equity derivative hedges for purposes of calculating net credit exposure under the proposed rule.[67] These derivatives would be required to meet certain criteria, including having been written by an eligible protection provider.[68] An eligible credit derivative hedge would need to be simple in form, meaning a single-name or standard, non-tranched index credit derivative. An eligible equity derivative hedge must be in the form of an equity-linked total return swap and would not include other, more complex forms of equity derivatives, such as purchased equity-linked options.

The proposed treatment of eligible credit and equity derivatives would be similar to the proposed treatment of eligible guarantees. A covered company would be required to reduce its gross credit exposure to a counterparty by the notional amount of any eligible credit or equity derivative hedge that references the counterparty if the covered company obtains the derivative from an eligible protection provider.[69] In these circumstances, the covered company generally would be required to include the notional amount of the eligible credit or equity derivative hedge in calculating its gross credit exposure to the eligible protection provider.[70] As is the case for eligible collateral and eligible guarantees, the gross exposure to the eligible protection provider would in no event be greater than it was to the original counterparty prior to recognition of the eligible credit or equity derivative.[71]

For eligible credit and equity derivatives that are used to hedge covered positions subject to the Board's market risk rule (12 CFR part 217, subpart F), the approach would be the same as that explained above, except in the case of credit derivatives where the counterparty on the hedged transaction is not a financial entity. In this case, a covered company would be required to reduce its gross credit exposure to the counterparty on the hedged transaction by the notional amount of the eligible credit derivative that references the counterparty if the covered company obtains the derivative from an eligible protection provider. In addition, the covered company would be required to recognize a credit exposure to the eligible protection provider that is measured using methodologies that the covered company is authorized to use under the Board's risk-based capital rules (12 CFR part 217, subparts D and E), rather than the notional amount.[72]

*Example:* A covered company holds a $1,000 bond issued by a non-financial entity (for example, a commercial firm or sovereign) that is a covered position subject to the Board's market risk rule, and the covered company purchases an eligible credit derivative in a notional amount of $800 from Protection Provider X, which is an eligible protection provider, to hedge its exposure to the non-financial entity. The covered company would continue to have $200 in net credit exposure to the non-financial entity. In addition, the covered company would treat Protection Provider X as a counterparty, and would measure its exposure to Protection Provider X using any methodology that the covered company is permitted to use under Regulation Q to calculate its risk-based capital requirements.

*Example:* A covered company holds as a covered position subject to the Board's market risk rule a $1,000 bond issued by a financial entity (for example, a banking organization), and the covered company purchases an eligible credit derivative in a notional amount of $800 from Protection Provider X, which is an eligible protection provider, to hedge its exposure to the financial entity. The covered company would continue to have credit exposure of $200 to the underlying financial entity. In addition, the covered company would now treat Protection Provider X as a counterparty, and would have an $800 credit exposure to Protection Provider X.

As with eligible collateral and eligible guarantees, a covered company would be required to reduce its gross exposure to a counterparty by the amount of an eligible equity or credit derivative, and to recognize an exposure to an eligible protection provider, in order to ensure that concentrations in exposures to eligible protection providers are captured in the regime. However, many commenters on the 2011 proposed rule argued that requiring a full notional shifting of risk in the context of credit derivatives was overly conservative, since a covered company would only experience losses in cases where both the original counterparty and the protection provider default. As such, these commenters recommended allowing covered companies to measure exposures from credit derivative hedges using the methodologies permitted for derivatives more generally.

[66] *See* proposed rule § 252.74(e).

[67] By contrast, in section 252.73(a)(12) of the proposed rule, where the covered company is the protection provider, *any* credit or equity derivative written by the covered company is included in the calculation of the covered company's gross credit exposure to the reference obligor.

[68] *See* proposed rule §§ 252.71(*l*) and (m) defining ''eligible credit derivative'' and ''eligible equity derivative,'' respectively. ''Eligible protection provider'' is defined in § 252.71(o) of the proposed rule. The same types of organizations that are eligible protection providers for the purposes of eligible guarantees are eligible protection providers for purposes of eligible credit and equity derivatives.

[69] *See* proposed rule § 252.74(e).

[70] *See* proposed rule §§ 252.74(e)(1)–(2).

[71] *See* proposed rule § 252.74(e)(2)(i).

[72] At such time as the Board may consider incorporation of SA–CCR into the U.S. risk-based capital rules, the Board may consider requiring SA–CCR to be used for this purpose as well.

The proposed rule includes this modification for credit derivatives that are used to hedge covered positions subject to the market risk rule, where the credit derivative is used to hedge an exposure to an entity that is not a financial entity. The proposed rule would require full notional risk-shifting for credit derivatives used to hedge exposures to financial entities because most protection providers are financial entities, and when both the protection provider and the reference entity are financial entities, the probability of correlated defaults generally is substantially greater than when protection is sold on non-financial reference entities.

In cases where a covered company is required to shift its credit exposure from the counterparty to an eligible protection provider pursuant to section 252.74(e), the covered company would be permitted to exclude the relevant equity or credit derivative when calculating its gross exposure to the eligible protection provider under sections 252.74(a)(10) and 252.94(a)(11). This is to avoid requiring covered companies to double count the same exposures.

*Question 26: Should the proposed definitions of eligible credit derivative or eligible equity derivative be expanded or narrowed? In particular, are there more complex forms of derivatives that should be eligible hedges?*

*Question 27: Under what circumstances, if any, should covered companies be permitted not to recognize an eligible credit or equity derivative hedge, or to apportion the exposure between the original counterparty and the eligible protection provider?*

*Question 28: To the extent that covered companies will be required to shift exposures to protection providers in the case of eligible credit or equity derivative hedges, would the proposed approach result in recognition of the proper amount of exposure by a covered company to an eligible protection provider? If not, what modifications should the Board consider?*

*Other Eligible Hedges*

Under the proposed rule, a covered company would be allowed to reduce its credit exposure to a counterparty by the face amount of a short sale of the counterparty's debt or equity securities, provided that the instrument in which the covered company has a short position is junior to, or *pari passu* with, the instrument in which the covered company has the long position.[73] This restriction on the set of short positions permitted to offset long positions would help to ensure that any loss arising from the covered company's long exposure is offset by a gain in the covered company's short exposure.

*Example:* A covered company holds $100 of bonds issued by Company X. If the covered company sells short $100 of equity shares issued by Company X, the covered company would not have any net credit exposure to Company X. Similarly, the covered company would not have any net credit exposure to Company X if it sells short $100 of Company X's debt obligations, provided that those obligations are junior to, or *pari passu* with, the Company X bonds that the covered company holds.

*Question 29: Should the Board permit short positions to offset long positions only if the short position is in an instrument that is junior to, or pari passu with, the instrument that gives rise to the firm's long exposure?*

*Question 30: Should the Board place any additional requirements, including maturity match requirements, on short positions that are eligible to offset long positions? To the extent that there is a maturity mismatch between the positions, should the value of the short position be subject to application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q?*

*Treatment of Maturity Mismatches*

The above discussion of credit risk mitigation techniques (collateral, guarantees, equity and credit derivatives, and offsetting short positions) assumes that the residual maturity of the credit risk mitigant is greater than or equal to that of the underlying exposure. If the residual maturity of the credit risk mitigant is less than that of the underlying exposure, the credit risk mitigant would only be recognized under the proposed rule if the credit risk mitigant's original maturity is equal to or greater than one year and its residual maturity is not less than three months from the current date. In that case, the reduction in the underlying exposure would be adjusted based on the same approach that is used in the Board's Regulation Q (12 CFR part 217) to address a maturity mismatch.[74]

With respect to the amount of exposure that a covered company would need to recognize to the issuer of eligible collateral or to an eligible protection provider in cases of maturity mismatch, such amount generally would be equal to the amount by which the relevant form of credit risk mitigation has reduced the exposure to the original counterparty. However, in the case of credit and equity derivatives used to hedge exposures subject to the Board's market risk rule (12 CFR 217, subpart F) that are to counterparties that are non-financial entities, the covered company would be permitted to recognize a credit exposure with regard to the eligible protection provider measured using methodologies that the covered company is authorized to use under the Board's risk-based capital rules, including CEM for all covered companies and approaches that rely on internal models for companies subject to the Board's advanced approaches risk-based capital rules (12 CFR 217, subparts D and E).

*Example:* A covered company makes a loan to a counterparty and hedges the resulting exposure by obtaining an eligible guarantee from an eligible protection provider. If the residual maturity of the guarantee is less than that of the loan, the covered company would adjust the value assigned to the guarantee using the formula in the Board's Regulation Q (12 CFR part 217). The covered company would then reduce its gross credit exposure to the underlying counterparty by the adjusted value of the guarantee and would set its exposure to the eligible guarantor equal to the adjusted value of the guarantee.

*Example:* A covered company holds bonds issued by a non-financial entity that are subject to the Board's market risk rule, and hedges the exposure using an eligible credit derivative obtained from an eligible protection provider. If the residual maturity of the eligible credit derivative is less than that of the bonds, the covered company would reduce its exposure to the issuer of the bonds by the adjusted value of the credit derivative using the formula in the Board's Regulation Q. The covered company would measure its exposure to the eligible protection provider using methodologies that the covered company is permitted to use under the Board's risk-based capital rules (12 CFR part 217, subparts D and E), without any specific adjustment to reflect the maturity mismatch between the bonds and the credit derivative.

*Question 31: The Board invites comment on the proposed treatment of maturity mismatches in the context of credit risk mitigation.*

*Unused Credit Lines*

Section 252.74(g) of the proposed rule addresses the treatment of any unused portion of certain extensions of credit. In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, a covered company would be permitted to reduce

[73] *See* proposed rule § 252.74(f).

[74] A credit risk mitigant would be adjusted using the formula $Pa = P \times (t - 0.25)/(T - 0.25)$, where Pa is the value of the credit protection adjusted for maturity mismatch; P is the credit protection adjusted for any haircuts; t is the lesser of (1) T or (2) the residual maturity of the credit protection, expressed in years; and T is the lesser of (1) 5 or (2) the residual maturity of the exposure, expressed in years. *See* 12 CFR 217.36(d).

its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the covered company does not have any legal obligation to advance additional funds under the facility until the counterparty provides collateral that qualifies under the credit line or revolving credit facility equal to or greater than the entire used portion of the facility.[75] To qualify for this reduction, the contract governing the extension of credit would be required to specify that any used portion of the credit extension must be fully secured at all times by collateral that is either (i) cash; (ii) obligations of the United States or its agencies; (iii) obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, but only while operating under the conservatorship or receivership of the Federal Housing Finance Agency; or (iv) any additional obligations issued by a U.S. government sponsored entity, as determined by the Board.[76]

*Question 32: What alternative approaches should the Board consider concerning the unused portion of certain credit facilities?*

*Credit Transactions Involving Exempt and Excluded Persons*

Section 252.74(h)[77] provides that, if a covered company has reduced its credit exposure to a counterparty that would be exempt under the proposed rule by obtaining eligible collateral from that entity, or by obtaining an eligible guarantee or an eligible credit or equity derivative from an eligible protection provider, the covered company must recognize an exposure to the collateral issuer or eligible protection provider to the same extent as if the underlying exposure were to an entity that is not exempt. Similarly, if a covered company has reduced its exposure to an entity that is excluded from the definition of a ''counterparty'' (*e.g.,* the U.S. government or a foreign sovereign entity that receives a zero percent risk weight under Regulation Q) by obtaining eligible collateral from that entity, or by obtaining an eligible guarantee or an eligible credit or equity derivative from an eligible protection provider, the covered company must recognize an exposure to the collateral issuer or eligible protection provider to the same extent as if the underlying exposure were to an entity that is not excluded from the definition of a counterparty.

*Example:* A covered company has purchased a credit derivative from an eligible protection provider to hedge the credit risk on a portfolio of U.S. government bonds. The covered company would need to recognize an exposure to the credit protection provider equal to the full notional of the credit derivative (if the bonds are subject to the Board's risk-based capital rules in 12 CFR part 217, subparts D and E) or to the counterparty credit risk measurements obtained by using methodologies that the covered company is permitted to use under the market risk capital rules (if the bonds are subject to the Board's market risk rule in 12 CFR part 217, subpart F).

*Question 33: If a covered company has an exempted credit exposure but either (1) receives non-exempt eligible collateral in support of the exempted transaction or (2) obtains a non-exempt eligible guarantee or eligible credit or equity derivative referencing the exempted credit exposure from an eligible protection provider, should the covered company be required to recognize an exposure to the issuer(s) of the collateral or eligible protection provider even though the original credit exposure was exempt? Should the Board consider any alternative treatment in such situations?*

Exposures to Funds and Securitizations

Special considerations arise in connection with measuring credit exposure of a covered company to a securitization fund, investment fund or other special purpose vehicle (collectively, SPVs). In some cases, a covered company's failure to recognize an exposure to the issuers of the underlying assets held by an SPV may understate the covered company's credit exposure to those issuers. In other cases, a covered company's credit exposure to the issuers of the underlying assets held by an SPV may be insignificant and, in such cases, requiring a covered company to recognize an exposure to each issuer of underlying assets for every SPV in which a covered company invests could be unduly burdensome.

Under the proposed rule, covered companies that have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be required to analyze their credit exposure to the issuers of the underlying assets in an SPV in which the covered company invests or to which the covered company otherwise has credit exposure. If a covered company cannot demonstrate that its exposure to the issuer of each underlying asset held by an SPV is less than 0.25 percent of the covered company's tier 1 capital (considering only exposures that arise from the SPV), the covered company would be required to apply a ''look-through approach'' and recognize an exposure to each issuer of the assets held by the SPV.[78] Conversely, if a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures can demonstrate that its exposure to each underlying asset in an SPV is less than 0.25 percent of the covered company's tier 1 capital (considering only exposures that arise from the SPV), the covered company would be allowed to recognize an exposure solely to the SPV and not to the underlying assets.[79] The proposed 0.25 percent threshold for requiring the use of the look-through approach is intended to strike a balance between the goals of limiting a covered company's exposures to underlying assets in an SPV and avoiding excessive burden. If a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be required to apply the look-through approach, but is unable to identify an issuer of assets underlying an SPV, the covered company would be required to attribute the exposure to a single ''unknown counterparty.'' The covered company would then be required to aggregate all exposures to an unknown counterparty as if they related to a single counterparty.

The application of the look-through approach would depend on the nature of the investment of the covered company in the SPV. Where all investors in an SPV are *pari passu,* the covered company would calculate its exposure to an issuer of assets held by the SPV as an amount equal to the covered company's pro rata share in the SPV multiplied by the value of the SPV's underlying assets issued by that issuer.

*Example:* An SPV holds $10 of bonds issued by Company A and $20 of bonds issued by Company B. Assuming that all investors in the SPV are *pari passu* and that a covered company's pro rata share in the SPV is 50 percent, a covered company (with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures) would need

[75] *See* proposed rule § 252.74(g).

[76] *Id.*

[77] *See* proposed rule § 252.74(h).

[78] *See* proposed rule § 252.75. The calculation of a covered company's exposure to an issuer of assets held by an SPV is discussed in more detail in the following paragraphs.

[79] A covered company's exposure to each underlying asset in an SPV necessarily would be less than 0.25 percent of the covered company's eligible capital base where the covered company's entire investment in the SPV is less than 0.25 percent of the covered company's eligible capital base.

to recognize a $5 exposure to Company A (*i.e.,* 50 percent of $10) and a $10 exposure to Company B (*i.e.,* 50 percent of $20) if the look-through approach is required.

If all investors in an SPV are not *pari passu,* a covered company that is required to use the look-through approach would measure its exposure to an issuer of assets held by the SPV for each tranche in the SPV in which the covered company invests. The covered company would do this using a two-step process. First, the covered company would assume that the total exposure to an issuer of assets held by the SPV among all investors in a given SPV tranche is equal to the lesser of the value of the tranche and the value of the assets issued by the issuer that are held by the SPV. Second, the covered company would multiply this exposure amount by the percentage of the SPV tranche that the covered company holds.

*Example:* An SPV holds $10 of bonds issued by Company A. The SPV has issued $4 of junior notes and $6 of senior notes to the SPV's investors. A covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures holds 50 percent of the junior notes and 50 percent of the senior notes. With respect to the junior tranche of the SPV, the lesser of the value of the tranche (*i.e.,* $4) and the value of the underlying assets issued by Company A (*i.e.,* $10) is $4. With respect to the senior tranche of the SPV, the lesser of the value of the tranche (*i.e.,* $6) and the value of the underlying assets issued by Company A (*i.e.,* $10) is $6. Because the covered company has $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures and its pro rata share of each tranche is 50 percent, it would need to recognize $2 of exposure to Company A because of its investment in the junior tranche (*i.e.,* 50 percent of $4), and $3 of exposure to Company A because of its investment in the senior tranche (*i.e.,* 50 percent of $6), assuming the look-through approach is required.

In addition, a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be required to identify third parties whose failure or distress would likely result in a loss in the value of the covered company's investment in the SPV. For example, the value of an investment by the covered company in an SPV might be reliant on various forms of credit support provided by a financial institution to the SPV. The failure or distress of the credit support provider would then lead to loss in the value of the investment of the covered company in the SPV. Other examples of third parties whose failure or distress could potentially lead to a loss in the value of the covered company's investment in the SPV are originators of assets held by the SPV, liquidity providers to the SPV, and (potentially) fund managers. In such cases, the covered company would be required to recognize an exposure to the relevant third party that is equal to the value of the covered company's investment in the SPV. This requirement would be in addition to the requirements described above to recognize an exposure to the SPV and, if needed, to the issuers of assets held by the SPV.

These proposed requirements for covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be appropriate in light of the larger systemic footprint of those firms, and is consistent with the direction in section 165(a)(1)(B) of the Dodd-Frank Act to tailor enhanced prudential standards based on factors such as the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company to which the standards apply.[80]

*Question 34: Is the proposed treatment of a covered company that has less than $250 billion or more in total consolidated assets and less than $10 billion or more in total on-balance-sheet foreign exposures with respect to its exposures related to SPVs appropriate? What alternatives should the Board consider?*

*Question 35: Is the proposed treatment of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures with respect to its exposures related to SPVs appropriate? Are there situations in which the proposed treatment would result in recognition of inappropriate amounts of credit exposure concerning an SPV? What alternative approaches should the Board consider?*

*Question 36: Is the proposed treatment of exposures related to SPVs sufficiently clear? Would further clarification or simplification be appropriate? What modifications should the Board consider? For example, should the Board modify the approach such that a covered company would only be required to use the look-through approach with respect to particular underlying exposures rather than all underlying exposures in the event that the covered company is able to demonstrate that its credit exposure to some of the underlying assets in an SPV is less than 0.25 percent of the covered company's tier 1 capital but not able to make this demonstration with respect to all the underlying assets?*

Exemptions

Under the proposal, single-counterparty credit limits would not apply to exposures to the U.S. government or a foreign sovereign entity that receives a zero percent risk weight under Regulation Q because such entities are not included in the definition of a ''counterparty.'' Section 252.77 of the proposed rule sets forth additional exemptions from the single-counterparty credit limits.[81] Section 165(e)(6) of the Dodd-Frank Act states that the Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term ''credit exposure'' for purposes of this subsection, if the Board finds that the exemption is in the public interest and is consistent with the purposes of this subsection.[82]

The first exemption from the proposed rule would be for direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, while these entities are operating under the conservatorship or receivership of the Federal Housing Finance Agency.[83] This proposed exemption reflects a policy decision that credit exposures to these government-sponsored entities should not be subject to a regulatory limit for so long as the entities are in the conservatorship or receivership of the U.S. government. This approach is consistent with the approach that the Board used in its risk retention rules.[84] As determined by the Board, obligations issued by another U.S. government sponsored entity would also be exempt. The Board requests comment on whether these exemptions are appropriate.

The second exemption from the proposed rule would be for intraday credit exposure to a counterparty.[85] This exemption would help minimize the impact of the rule on the payment and settlement of financial transactions.

The third exemption from the proposed rule would be for trade exposures to a central counterparty that meet the definition of a qualified central counterparty under Regulation Q (QCCPs).[86] These exposures would

[80] 12 U.S.C. 5365(a)(1)(B).

[81] *See* proposed rule § 252.77.

[82] *See* 12 U.S.C. 5365(e)(6).

[83] *See* proposed rule § 252.77(a)(1).

[84] *See* 12 CFR 244.8.

[85] *See* proposed rule § 252.77(a)(2).

[86] *See* proposed rule § 252.71(y); *see also* 12 CFR 217.2.

include potential future exposure arising from transactions cleared by a QCCP and pre-funded default fund contributions.[87] The proposed rule would exempt these exposures to QCCPs from single-counterparty credit limits because of the concern that application of single-counterparty credit limits to these exposures would require firms to spread activity across a greater number of CCPs, which could lead to a reduction in multilateral netting benefits.[88]

The fourth exemption category would implement section 165(e)(6) of the Dodd-Frank Act and provide a catch-all category to exempt any transaction which the Board determines to be in the public interest and consistent with the purposes of section 165(e).[89]

Section 252.77(b) of the proposed rule would implement section 165(e)(6) of the Dodd-Frank Act, which provides a statutory exemption for credit exposures to the Federal Home Loan Banks.

*Question 37: Should all trade exposures to QCCPs be exempt from the proposed rules? Is the definition of ''QCCP'' sufficiently clear? Should the Board consider exempting any different or additional exposures to QCCPs? Would additional clarification on these issues be appropriate?*

*Question 38: Should the Board exempt any additional credit exposures from the limitations of the proposed rule? If so, please explain why.*

Compliance

Under section 252.78(a) of the proposed rule, covered companies with less than $250 billion in total consolidated assets and less than $10 billion in total on-balance-sheet foreign exposures would be required to demonstrate compliance with the requirements of the proposed rule as of the end of each calendar quarter.[90] These companies would, however, need to have systems in place that would allow them to calculate compliance on a daily basis and would be required to calculate compliance on a more frequent basis than quarterly if directed to do so by the Board. A covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be required to comply with the requirements of the proposed rule on a daily basis as of the end of each business day. Such covered companies also would be required to submit a monthly compliance report to the Board.[91]

Section 252.78(c) of the proposed rule would address the consequences if a covered company fails to comply with the credit exposure limits.[92] This section states that if a covered company is not in compliance with respect to a counterparty due to a decrease in the covered company's capital, the merger of a covered company with another covered company, or the merger of two unaffiliated counterparties of the covered company, the covered company would not be subject to enforcement actions with respect to such noncompliance for a period of 90 days (or such shorter or longer period determined by the Board to be appropriate to maintain the safety and soundness of the covered company or financial stability), so long as the company uses reasonable efforts to return to compliance with the proposed rule during this period. The covered company would be prohibited from engaging in any additional credit transactions with such a counterparty in contravention of this rule during the non-compliance period, except in cases where the Board determines that such additional credit transactions are necessary or appropriate to preserve the safety and soundness of the covered company or financial stability.[93] In granting approval for any such special temporary exceptions, the Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the foregoing standards.[94]

The Board plans to develop reporting forms for covered companies to use to report credit exposures to their counterparties as those credit exposures would be measured under section 165(e). In addition, section 165(d)(2) of the Dodd-Frank Act directs the Board to require bank holding companies with $50 billion or more in total consolidated assets and nonbank financial companies that are supervised by the Board to prepare period exposure reports.[95] The Board anticipates that 165(d)(2) credit exposure reporting obligations will be informed by the requirements of the 165(e) framework and by any forms that are developed for covered companies to use in reporting their 165(e) exposures.

*Question 39: Should the rule provide a cure period for covered companies that fall out of compliance? Under what circumstances should such a cure period be provided, and how long should such a period be?*

*Question 40: If a cure period is provided, would it be appropriate to generally prohibit additional credit transactions with the affected counterparty during the cure period? Are there additional situations in which additional credit transactions with the affected counterparty would be appropriate? What additional modifications or clarifications should the Board consider with respect to any cure period?*

Timing

Under the proposed rule, covered companies with total consolidated assets of less than $250 billion in total consolidated assets and less than $10 billion or more in total on-balance-sheet foreign exposures would be required to comply initially with the proposed rules two years from the effective date of the proposed rules, unless that time is extended by the Board in writing.[96] Covered companies that have $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be required to comply initially with the proposed rules one year from the effective date of the rule, unless that time is extended by the Board in writing.[97]

Any company that becomes a covered company after the effective date of the rule would be required to comply with the requirements of the rule beginning on the first day of the fifth calendar quarter after it becomes a covered company, unless that time is accelerated or extended by the Board in writing.[98]

*Question 41: Should the Board consider a longer or shorter phase-in period for all or a subset of covered companies? Is a shorter phase-in period for covered companies with $250 billion or more in total consolidated exposures, or $10 billion or more in total on-balance-sheet foreign exposures, compared to firms below these thresholds, appropriate?*

**Proposed Rule for Foreign Banking Organizations**

*Background*

In February 2014, the Board adopted a final rule establishing enhanced

[87] As initial margin and excess variation margin posted to the QCCP and held in a segregated account by a third party custodian are not subject to counterparty risk, these amounts would not be considered credit exposures under the proposed rule.

[88] *See* proposed rule § 252.77(a)(3).

[89] *See* 12 U.S.C. 5365(e)(6); proposed rule § 252.76(a)(4).

[90] *See* proposed rule § 252.78(a).

[91] *See* proposed rule § 252.78(a).

[92] *See* proposed rule § 252.78(c).

[93] *Id.*

[94] *See* proposed rule § 252.78(d).

[95] 12 U.S.C. 5365(d)(2).

[96] *See* proposed rule § 252.70(g)(1).

[97] *See* proposed rule § 252.70(g)(2).

[98] *See* proposed rule § 252.70(h).

prudential standards for foreign banking organizations with U.S. banking operations and total consolidated assets of $50 billion or more.[99] Under that rule, a foreign banking organization with U.S. non-branch assets of $50 billion or more will be required to form an intermediate holding company (U.S. intermediate holding company) to hold its interests in U.S. bank and nonbank subsidiaries.[100] A foreign banking organization's U.S. intermediate holding company will be subject to enhanced prudential standards on a consolidated basis, including risk-based and leverage capital requirements, liquidity requirements, and risk management standards. Certain enhanced prudential standards also will apply to a foreign banking organization's ''combined U.S. operations,'' which would include a foreign banking organization's U.S. branches and agencies as well as U.S. subsidiaries.

Like the enhanced prudential standards for foreign banking organizations that the Board previously has adopted, the single-counterparty credit limits in this proposed rule would apply to a foreign banking organization with U.S. banking operations and $50 billion or more in total consolidated assets, and to the U.S. intermediate holding company of such a foreign banking organization.

*Overview of the Proposed Rule for Foreign Banking Organizations*

Similar to the proposed rule to implement section 165(e) of the Dodd-Frank Act for domestic companies, the aggregate net credit exposure of a foreign banking organization or U.S. intermediate holding company with total consolidated assets of $50 billion or more (each a covered entity) to a single counterparty would be subject to one of three increasingly stringent credit exposure limits. Credit exposure limits as applied to foreign banking organizations, as opposed to intermediate holding companies, would only apply with respect to credit exposures of that foreign banking organization's combined U.S. operations (*i.e.,* any U.S. intermediate holding company, including its subsidiaries, plus any U.S. branches or agencies of the foreign banking organization), although the foreign banking organization's total consolidated assets on a worldwide basis would determine whether the credit exposure limits apply.

The first category of limits would apply to covered entities that have less than $250 billion in total consolidated assets and less than $10 billion in on-balance-sheet foreign exposures. Covered entities that have less than $250 billion in total consolidated assets and less than $10 billion in on-balance sheet foreign exposures would be prohibited from having aggregate net credit exposure to an unaffiliated counterparty in excess of 25 percent of the covered entity's total capital stock and surplus, defined under the rule as (1) in the case of a U.S. intermediate holding company, the sum of the U.S. intermediate holding company's total regulatory capital, as calculated under the risk-based capital adequacy guidelines applicable to that U.S. intermediate holding company, plus the balance of the ALLL of the U.S. intermediate holding company not included in tier 2 capital under the capital adequacy guidelines, and (2) in the case of a foreign banking organization, the total regulatory capital of the foreign banking organization on a consolidated basis, as determined in accordance with section 252.171(d) of the proposed rule.[101] The different definition of ''capital stock and surplus'' with respect to a foreign banking organization reflects differences in international accounting standards.

The second category of exposure limits would prohibit any covered entity with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, but less than $500 billion in total consolidated assets, from having aggregate net credit exposure to an unaffiliated counterparty in excess of 25 percent of the covered entity's tier 1 capital. For the same reasons as described above with respect to the portion of the proposed rule applicable to covered companies, the proposed single-counterparty credit limits applicable to a covered entity, including both a foreign banking organization and any U.S. intermediate holding company, with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures would be based on tier 1 capital.

The third category of exposure limits would prohibit any covered entity with total consolidated assets of $500 billion or more (major foreign banking organization or major U.S. intermediate holding company) from having aggregate net credit exposure in excess of 15 percent of the tier 1 capital of the major foreign banking organization or major U.S. intermediate holding company to a major counterparty, and 25 percent of the tier 1 capital of the major foreign banking organization or major U.S. intermediate holding company to any other counterparty. A ''major counterparty'' would be defined as a global systemically important banking organization or a nonbank financial company supervised by the Board. This framework would be consistent with the requirement in section 165(a)(1)(B) of the Dodd-Frank Act that the enhanced standards established by the Board under section 165 increase in stringency based on factors such as the nature, scope, size, scale, concentration, interconnectedness, and mix of the activities of the company.[102] The credit exposure limits are summarized in Table 2.

TABLE 2—SINGLE-COUNTERPARTY CREDIT LIMITS APPLICABLE TO COVERED ENTITIES

| Category of covered entities | Applicable credit exposure limit |
|---|---|
| U.S. intermediate holding companies or foreign banking organizations with less than $250 billion in total consolidated assets and less than $10 billion in on-balance-sheet foreign exposures.. | Aggregate net credit exposure of a U.S. intermediate holding company cannot exceed 25 percent of the U.S. intermediate holding company's total regulatory capital plus the balance of its ALLL not included in tier 2 capital under the capital adequacy guidelines in 12 CFR part 252.<br>Aggregate net credit exposure of a foreign banking organization, with respect to its U.S. combined operations, to a counterparty cannot exceed 25 percent of the foreign banking organization's total regulatory capital on a consolidated basis. |

[99] *See* 79 FR 17240 (Mar. 27, 2014).

[100] A foreign banking organization's intermediate holding company is not required to hold the foreign banking organization's interest in any company held under section 2(h)(2) of the Bank Holding Company Act, 12 U.S.C. 1841(h)(2).

[101] *See* 12 CFR part 252, subpart L.

[102] 12 U.S.C. 5323, 5365(e).

TABLE 2—SINGLE-COUNTERPARTY CREDIT LIMITS APPLICABLE TO COVERED ENTITIES—Continued

| Category of covered entities | Applicable credit exposure limit |
| --- | --- |
| U.S. intermediate holding companies or foreign banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposures.. | Aggregate net credit exposure of a U.S. intermediate holding company to a counterparty cannot exceed 25 percent of the U.S. intermediate holding company's tier 1 capital.<br>Aggregate net credit exposure of a foreign banking organization, with respect to its U.S. combined operations, to a counterparty cannot exceed 25 percent of the foreign banking organization's worldwide tier 1 capital. |
| Major U.S. intermediate holding companies and major foreign banking organizations.. | Aggregate net credit exposure of a major U.S. intermediate holding company or, with respect to its combined U.S. operations, of a foreign banking organization to a *major counterparty* cannot exceed 15 percent of the covered entity's tier 1 capital.<br>Aggregate net credit exposure of a major U.S. intermediate holding company or, with respect to its combined U.S. operations, of a foreign banking organization to *other counterparties* cannot exceed 25 percent of the covered entity's tier 1 capital. |

*Question 42: Should the Board apply these single-counterparty credit limits to all foreign banking organizations that have $50 billion or more in total consolidated assets, regardless of the size of these organizations' combined operations in the United States? Is this application appropriate?*

The more stringent limit for major U.S. intermediate holding companies and, with respect to their combined U.S. operations, major foreign banking organizations would be consistent with the Board's discretion under the Dodd-Frank Act to impose such lower single-counterparty credit limits as the Board may determine by regulation to be necessary to mitigate risks to the financial stability of the United States, as well as with the standard in section 165(a)(1)(B) of the Dodd-Frank Act that the Board establish enhanced prudential standards that increase in stringency based on the systemic footprint of the firms to which they apply. The rationale for proposing to apply a 15 percent limit to such exposures is set out in more detail in the discussion in the **SUPPLEMENTARY INFORMATION** concerning the credit exposure limits of the domestic proposed rule.

The proposed approach to identifying a major U.S. intermediate holding company and major foreign banking organization is based only on size, and the Board recognizes that size is only a rough proxy for the systemic footprint of a company. By contrast, the domestic proposed rule would only subject a U.S. banking organization to a 15 percent limit on its exposures to major counterparties if that U.S. banking organization has been identified as a global systemically important banking organization under Method 1 of the Board's G–SIB surcharge rule.[103] These determinations are based on multiple factors, including size, complexity, interconnectedness, cross-border exposure, and substitutability. Imposing stricter limits on exposures of the combined U.S. operations of major foreign banking organizations or major U.S. intermediate holding companies to their respective major counterparties based on a simple asset threshold may not take into account nuances that might be captured by other approaches.

*Question 43: Should the Board adopt a different approach in determining which foreign banking organizations, with respect to their combined U.S. operations, and U.S. intermediate holding companies should be treated as major foreign banking organizations or major U.S. intermediate holding companies?*

*Question 44: Should the Board adopt a different approach to the definition of a ''major counterparty''?*

In determining whether a U.S. intermediate holding company complies with these limits, exposures of the U.S. intermediate holding company itself and its subsidiaries would need to be taken into account. Exposures of a foreign banking organization's combined U.S. operations would include exposures of any branch or agency of the foreign banking organization; exposures of the U.S. subsidiaries of the foreign banking organization, including any U.S. intermediate holding company; and any subsidiaries of such subsidiaries (other than any companies held under section 2(h)(2) of the Bank Holding Company Act of 1956).[104] ''Subsidiary'' would be defined in the same manner as under the proposed requirements for domestic covered companies: any company that a parent company directly or indirectly controls for purposes of the Bank Holding Company Act of 1956.[105] For purposes of the proposed rule applicable to covered entities, the definitions of subsidiary, counterparty, and related terms and the economic interdependence, control relationship, and attribution requirements would be the same as under the portions of the proposed rule applicable to covered companies.

Although the major components of the proposed single-counterparty credit limits for foreign banking organizations would be the same as the proposed requirements for domestic covered companies, there are also some differences between the proposed rules. For example, as discussed in more detail below, the proposed single-counterparty credit limits would not apply to exposures of a U.S. intermediate holding company or a foreign banking organization's combined U.S. operations to the foreign banking organization's home country sovereign, regardless of the risk weight assigned to that sovereign under the Board's Regulation Q (12 CFR part 217).

*Question 45: As noted, the proposed rule would apply the single-counterparty credit limits to covered entities on a consolidated basis and could, therefore, impact the level of credit exposures of subsidiaries of these covered entities, including depository institutions. Is application on a consolidated basis appropriate?*

*Question 46: What challenges, if any, would a foreign banking organization face in implementing the requirement that all subsidiaries of the U.S. intermediate holding company and the combined U.S. operations be subject to the proposed single-counterparty credit limit?*

[103] 12 CFR 217.402.

[104] 12 U.S.C. 1841(h)(2).

[105] 12 U.S.C. 1841 *et seq.; see* proposed rule § 252.171(dd).

*Question 47: What other alternatives to the proposed capital bases should the Board consider in applying single-counterparty credit limits to U.S. intermediate holding companies and the combined U.S. operations of foreign banking organizations?*

*Question 48: Should tier 1 capital be used as the capital base in applying single-counterparty credit limits to U.S. intermediate holding companies and the combined U.S. operations of foreign banking organizations with $250 billion or more in total consolidated assets, or $10 billion or more in total on-balance-sheet foreign exposures?*

*Question 49: Should single-counterparty credit limits apply to a foreign banking organization's combined U.S. operations, or is application of single-counterparty credit limits to a foreign banking organization's combined U.S. operations unnecessary in light of the Basel Committee's adoption of a Large Exposures standard?*

Gross Credit Exposure

The proposed valuation rules for measuring gross credit exposure to a counterparty would be the same as those set forth in the proposed rule for domestic bank holding companies, other than the proposed valuation rules for derivatives exposures of U.S. branches and agencies that are subject to a qualifying master netting agreement. When calculating a U.S. branch or agency's gross credit exposure to a counterparty for a derivative contract that is subject to a qualifying master netting agreement, a foreign banking organization could choose either to use the exposure at default calculation set forth in the Board's advanced approaches capital rules (12 CFR 217.132(c)) provided that the collateral recognition rules of the proposed rule would apply, or use the gross valuation methodology for derivatives not subject to a qualified master netting agreements.[106] Under this approach, a foreign banking organization would be able to rely on a qualified master netting agreement to which the U.S. branch or agency is subject that covers exposures of the foreign banking organization outside of the U.S. branch and agency network.

*Question 50: Is the proposed treatment of derivatives exposures of U.S. branches and agencies that are subject to a qualifying master netting agreement appropriate? What alternatives should the Board consider?*

*Question 51: Should there be any other differences between the treatment of derivative exposures of a foreign banking organization's combined U.S. operations or U.S. intermediate holding company and the treatment derivative exposures of U.S. covered companies?*

*Question 52: Should the rule provide a separate process that allows foreign banking organizations to receive Board approval to use internal models to value derivative transactions solely for the purpose of complying with this rule?*

Net Credit Exposure

The proposed rule describes how a covered entity would convert gross credit exposure amounts to net credit exposure amounts by taking into account eligible collateral, eligible guarantees, eligible credit and equity derivatives, other eligible hedges (that is, a short position in the counterparty's debt or equity securities), and for securities financing transactions, the effect also of bilateral netting agreements. The proposed treatment described below is generally consistent with the proposed treatment for domestic bank holding companies. However, the definition of ''eligible collateral'' for covered entities would exclude debt or equity securities (including convertible bonds) issued by an affiliate of the U.S. intermediate holding company or the combined U.S. operations of a foreign banking organization, and the definition of ''eligible protection provider'' would exclude the foreign banking organization or any affiliate thereof.[107]

*Question 53: Does the proposed approach to the calculation of net credit exposure pose particular concerns for U.S. intermediate holding companies or foreign banking organizations, with respect to their U.S. operations?*

Exposures to Funds and Securitizations

The proposed rule's treatment for a covered entity's exposures to funds and securitizations would be the same as the proposed treatment for a domestic covered company's exposures to such entities.[108]

*Question 54: Does the proposed treatment of exposures related to SPVs pose particular concerns for foreign banking organizations, with respect to its combined U.S. operations, or U.S. intermediate holding companies?*

Exemptions

As noted, section 165(e)(6) of the Dodd-Frank Act permits the Board to exempt transactions from the definition of the term ''credit exposure'' for purposes of this subsection, if the Board finds that the exemption is in the public interest and is consistent with the purposes of this subsection. The proposed rule would provide the same exemptions for the credit exposures of covered entities as the proposed rule provides for credit exposures of domestic covered companies.[109] In addition, the proposed rule would include an additional exemption for a foreign banking organization's exposures to its home country sovereign, notwithstanding the risk weight assigned to that sovereign entity under the Board's Regulation Q (12 CFR part 217).[110] This exemption would recognize that a foreign banking organization's U.S. operations may have exposures to its home country sovereign entity that are required by home country laws or are necessary to facilitate the normal course of business for the consolidated company. This proposed exemption would be in the public interest and consistent with the treatment of credit exposures of covered companies to the U.S. government.

*Question 55: Would additional exemptions for foreign banking organizations or the U.S. intermediate holding companies of foreign banking organizations be appropriate? Why or why not?*

Compliance

Under the proposed rule, an U.S. intermediate holding company or the combined U.S. operations of a foreign banking organization with less than $250 billion in total consolidated assets, and less than $10 billion in total on-balance-sheet foreign exposures, would be required to comply with the requirements of the proposed rule as of the end of each quarter.[111] Other intermediate holding companies and foreign banking organizations would be required to comply with the proposed rule on a daily basis as of the end of each business day and submit a monthly compliance report demonstrating its daily compliance.[112] A foreign banking organization would be required to ensure the compliance of its U.S. intermediate holding company and its combined U.S. operations. If either the U.S. intermediate holding company or the combined U.S. operations were not in compliance with respect to a counterparty, both of the U.S. intermediate holding company and the combined U.S. operations would be prohibited from engaging in any additional credit transactions with such

[106] *See* proposed rule § 252.173(a)(11).

[107] *See* proposed rule § 252.171(k).

[108] *See* proposed rule § 252.175.

[109] *See* proposed rule § 252.177(a).

[110] *See* proposed rule § 252.177(a)(4).

[111] *See* proposed rule § 252.178(a).

[112] *Id.*

a counterparty, except in cases when the Board determines that such additional credit transactions are necessary or appropriate to preserve the safety and soundness of the foreign banking organization or financial stability.[113] In considering special temporary exceptions, the Board could impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with the foregoing standards.[114]

*Question 56: Should the rule provide a cure period for covered entities that are not compliant? Under what circumstances should such a cure period be provided, and how long should such a period be?*

*Question 57: If a cure period is provided, would it be appropriate to generally prohibit additional credit transactions with the affected counterparty during the cure period? Are there additional situations in which additional credit transactions with the affected counterparty would be appropriate? What additional modifications or clarifications should the Board consider with respect to any cure period?*

*Question 58: Should the Board consider any temporary exceptions particularly for foreign banking organizations or the U.S. intermediate holding companies of foreign banking organizations? In what situations would a temporary exception be appropriate?*

Timing

The proposed rule is designed to be less stringent for those foreign banking organizations and U.S. intermediate holding companies whose failure or distress would be less likely to pose a risk to U.S. financial stability. Foreign banking organizations and U.S. intermediate holding companies with less than $250 billion in total consolidated assets and less than $10 billion in total on-balance-sheet foreign assets would be required to comply initially with the proposed rule two years from the effective date of the proposed rule, unless that time is extended by the Board in writing.[115] Foreign banking organizations and U.S. intermediate holding companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign assets would be required to comply initially with the proposed rule one year from the effective date of the rule, unless that time is extended by the Board in writing.[116] Any company that becomes a covered company after the effective date of the rule would be required to comply with the requirements of the rule beginning on the first day of the fifth calendar quarter after it becomes a covered entity, unless that time is accelerated or extended by the Board in writing.[117]

**Regulatory Analysis**

*Paperwork Reduction Act*

Certain provisions of the proposed rules contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 through 3521). The Board has reviewed the reporting requirements in sections 252.78(a) and 252.178(a) of the proposed rules under the authority delegated to the Board by Office of Management and Budget (OMB). The Board will address these requirements in a separate notice, such as when the Board proposes reporting forms for companies subject to these rules to use to report credit exposures to their counterparties as those credit exposures would be measured under the proposed rules.

*Solicitation of Comments on the Use of Plain Language*

Section 722 of the Gramm-Leach Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rules in a simple and straightforward manner, and invites comment on the use of plain language. For example:

- Have the agencies organized the material to suit your needs? If not, how could they present the proposed rules more clearly?
- Are the requirements in the proposed rules clearly stated? If not, how could the proposed rules be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is the section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Board incorporate to make the regulation easier to understand?

*Regulatory Flexibility Act Analysis*

In accordance with section 3(a) of the Regulatory Flexibility Act[118] (RFA), the Board is publishing an initial regulatory flexibility analysis of the proposed rules. The RFA requires an agency either to provide an initial regulatory flexibility analysis with a proposed rule for which a general notice of proposed rulemaking is required or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that these proposed rules will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

In accordance with section 165 of the Dodd-Frank Act, the Board is proposing to amend Regulation YY to establish single-counterparty credit limits for bank holding companies, foreign banking organizations, and U.S. intermediate holding companies with total consolidated assets of $50 billion or more in order to limit the risks that the failure of any individual firm could pose to those organizations.[119]

Under regulations issued by the Small Business Administration (SBA), a ''small entity'' includes a depository institution, bank holding company, or savings and loan holding company with assets of $550 million or less (small banking organizations).[120] As discussed in the **SUPPLEMENTARY INFORMATION**, the proposed rules generally would apply to bank holding companies, foreign banking organizations, and U.S. intermediate holding companies with total consolidated assets of $50 billion or more. Companies that are subject to the proposed rule have consolidated assets that substantially exceed the $550 million asset threshold at which a banking entity is considered a ''small entity'' under SBA regulations. Because the proposed rules would not apply to any company with assets of $550 million or less, if adopted in final form, the proposed rules would not apply to any ''small entity'' for purposes of the RFA. The Board does not believe that the proposed rules duplicate, overlap, or

[113] *See* proposed rule § 252.178(c).

[114] *See* proposed rule § 252.178(d).

[115] *See* proposed rule §§ 252.170(c)(1)(i) and 252.170(c)(2)(i).

[116] *See* proposed rule §§ 252.170(c)(1)(ii) and 252.170(c)(2)(ii).

[117] *See* proposed rule § 252.170(d).

[118] 5 U.S.C. 601 *et seq.*

[119] *See* 12 U.S.C. 5365(e).

[120] *See* 13 CFR 121.201.

conflict with any other Federal rules. In light of the foregoing, the Board does not believe that the proposed rules, if adopted in final form, would have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the Board seeks comment on whether the proposed rules would impose undue burdens on, or have unintended consequences for, small organizations, and whether there are ways such potential burdens or consequences could be minimized in a manner consistent with section 165(e) of the Dodd-Frank Act.

**List of Subjects in 12 CFR Part 252**

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

**Authority and Issuance**

For the reasons stated in the preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 252 as follows:

## PART 252—ENHANCED PRUDENTIAL STANDARDS (REGULATION YY)

■ 1. The authority citation for part 252 continues to read as follows:

**Authority:** 12 U.S.C. 321–338a, 1467a(g), 1818, 1831p–1, 1844(b), 1844(c), 5361, 5365, 5366.

■ 2. Add subpart H to read as follows:

## Subpart H—Single-Counterparty Credit Limits

Sec.
252.70 Applicability.
252.71 Definitions.
252.72 Credit exposure limits.
252.73 Gross credit exposure.
252.74 Net credit exposure.
252.75 Investments in and exposures to securitization vehicles, investment funds, and other special purpose vehicles.
252.76 Aggregation of exposures to more than one counterparty due to economic interdependence or control relationships.
252.77 Exemptions.
252.78 Compliance.

### § 252.70 Applicability.

(a) *In general.* A covered company is subject to the general credit exposure limit set forth in § 252.72(a).

(b) *Covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures.* A covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures is subject to the credit exposure limit set forth in § 252.72(b).

(c) *Major covered companies.* A major covered company is subject to the credit exposure limit set forth in § 252.72(c).

(d) *Total consolidated assets.* For purposes of this section, total consolidated assets are determined based on:

(1) The average of the bank holding company's total consolidated assets in the four most recent consecutive quarters as reported quarterly on the FR Y–9C; or

(2) If the bank holding company has not filed an FR Y–9C for each of the most recent four quarters, the average of the bank holding company's total consolidated assets in the most recent consecutive quarters as reported quarterly on the bank holding company's FR Y–9Cs.

(e) *Cessation of requirements.* Once a covered company meets the requirements described in paragraphs (a) or (b) of this section, the company shall remain a covered company for purposes of this subpart unless and until the company has less than $50 billion in total consolidated assets as determined based on each of the bank holding company's four most recent FR Y–9Cs.

(1) A bank holding company that has ceased to be a major covered company for purposes of paragraph (c) of this section shall no longer be subject to the requirements of § 252.70(c) beginning on the first day of the calendar quarter following the reporting date on which it ceased to be a major covered company.

(2) Nothing in paragraph (c) of this section shall preclude a company from becoming a covered company pursuant to paragraphs (a) or (b) of this section.

(f) *Measurement date.* For purposes of this section, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(g) *Initial applicability.*

(1) A covered company that is subject to this subpart under paragraph (a) of this section as of [INSERT EFFECTIVE DATE], must comply with the requirements of this subpart, including § 252.72(a), beginning on [INSERT DATE TWO YEARS FROM EFFECTIVE DATE], unless that time is extended by the Board in writing.

(2) A covered company that is subject to this subpart under paragraph (b) of this section as of [INSERT EFFECTIVE DATE], must comply with the requirements of this subpart, including §§ 252.72(b)–(c), as applicable, beginning on [INSERT DATE ONE YEAR FROM EFFECTIVE DATE], unless that time is extended by the Board in writing.

(3) A company that becomes a covered company subject to this subpart under paragraphs (a), (b), or (c) of this section after the effective date of this part will be subject to the requirements of this subpart in accordance with paragraph (h) of this section.

(h) *Ongoing applicability.* Except as provided in paragraph (g)(1) or (g)(2) of this section, a covered company that is subject to this subpart under paragraphs (a), (b), or (c) of this section must comply with the requirements of §§ 252.72(a)–(c), as applicable, beginning on the first day of the fifth calendar quarter after it becomes a covered company, unless that time is accelerated or extended by the Board in writing.

### § 252.71 Definitions.

For purposes of this subpart:

(a) *Adjusted market value* means:

(1) With respect to the value of securities transferred by the covered company to a counterparty, the sum of:

(i) The market value of the securities; and

(ii) The product of the market value of the securities multiplied by the applicable collateral haircut in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132); and

(2) With respect to eligible collateral received by the covered company from a counterparty:

(i) The market value of the securities; minus

(ii) The market value of the securities multiplied by the applicable collateral haircut in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132).

(3) Prior to calculating the adjusted market value pursuant to paragraphs (1) and (2) of this section, with regard to a transaction that meets the definition of ''repo-style transaction'' in § 217.2 the Board's Regulation Q (12 CFR 217.2), the covered company would first multiply the applicable collateral haircuts in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132) by the square root of ½.

(b) *Aggregate net credit exposure* means the sum of all net credit exposures of a covered company to a single counterparty.

(c) *Bank-eligible investments* means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(d) *Capital stock and surplus* means, with respect to a bank holding company, the sum of the following amounts in each case as reported by the bank holding company on the most recent FR Y–9C report:

(1) The company's tier 1 and tier 2 capital, as calculated under the capital

adequacy guidelines applicable to that bank holding company under the Board's Regulation Q (12 CFR part 217); and

(2) The balance of the allowance for loan and lease losses of the bank holding company not included in its tier 2 capital under the capital adequacy guidelines applicable to that bank holding company under the Board's Regulation Q (12 CFR part 217).

(e) *Counterparty* means:

(1) With respect to a natural person, the person, and members of the person's immediate family;

(2) With respect to a company, the company and all persons that that counterparty

(i) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the person;

(ii) Owns or controls 25 percent or more of the total equity of the person; or

(iii) Consolidates for financial reporting purposes, as described in § 252.72(d), collectively;

(3) With respect to a State, the State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively;

(4) With respect to a foreign sovereign entity that is not assigned a zero percent risk weight under the standardized approach in the Board's Regulation Q (12 CFR part 217, subpart D), the foreign sovereign entity and all of its agencies and instrumentalities (but not including any political subdivision), collectively; and

(5) With respect to a political subdivision of a foreign sovereign entity such as states, provinces, and municipalities, any political subdivision of a foreign sovereign entity and all of such political subdivision's agencies and instrumentalities, collectively.

(f) *Covered company* means any bank holding company (other than a foreign banking organization that is subject to subpart Q of the Board's Regulation YY), that has $50 billion or more in total consolidated assets, calculated pursuant to § 252.70(d), and all of its subsidiaries.

(g) *Credit derivative* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(h) *Credit transaction* means, with respect to a counterparty:

(1) Any extension of credit to the counterparty, including loans, deposits, and lines of credit, but excluding uncommitted lines of credit;

(2) Any repurchase transaction or reverse repurchase transaction with the counterparty;

(3) Any securities lending or securities borrowing transaction with the counterparty;

(4) Any guarantee, acceptance, or letter of credit (including any endorsement, confirmed letter of credit, or standby letter of credit) issued on behalf of the counterparty;

(5) Any purchase of, or investment in, securities issued by the counterparty;

(6) Any credit exposure to the counterparty in connection with a derivative transaction between the covered company and the counterparty;

(7) Any credit exposure to the counterparty in connection with a credit derivative or equity derivative transaction between the covered company and a third party, the reference asset of which is an obligation or equity security of the counterparty; and

(8) Any transaction that is the functional equivalent of the above, and any other similar transaction that the Board, by regulation, determines to be a credit transaction for purposes of this subpart.

(i) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(j) *Derivative transaction* means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(k) *Eligible collateral* means collateral in which the covered company has a perfected, first priority security interest or the legal equivalent thereof, if outside of the United States (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent) and is in the form of:

(1) Cash on deposit with the covered company (including cash held for the covered company by a third-party custodian or trustee);

(2) Debt securities (other than mortgage- or asset-backed securities and resecuritization securities, unless those securities are issued by a U.S. government-sponsored enterprise) that are bank-eligible investments and that are investment grade;

(3) Equity securities that are publicly traded; or

(4) Convertible bonds that are publicly traded.

(l) *Eligible credit derivative* means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is subject to an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period, if any, that is in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship, or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(m) *Eligible equity derivative* means an equity derivative, provided that:

(1) The derivative contract has been confirmed by the counterparties;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties; and

(3) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract.

(n) *Eligible guarantee* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2) that is provided by an eligible protection provider.

(o) *Eligible protection provider* has the same meaning as ''eligible guarantor'' in

§ 217.2 of the Board's Regulation Q (12 CFR 217.2).

(p) *Equity derivative* has the same meaning as ''equity derivative contract'' in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(q) *Financial entity* means:

(1) A depository institution;

(2) A bank holding company;

(3) A savings and loan holding company (as defined in 12 U.S.C. 1467a);

(4) A securities broker or dealer registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78o *et seq.*);

(5) An insurance company that is subject to the supervision by a State insurance regulator;

(6) A foreign banking organization;

(7) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that applicable to U.S. depository institutions, securities broker-dealers, or insurance companies;

(8) A central counterparty; and

(9) A legal entity whose main business includes the management of financial assets, lending, factoring, leasing, provision of credit enhancements, securitization, investments, financial custody, proprietary trading, and other financial services.

(r) *Gross credit exposure* means, with respect to any credit transaction, the credit exposure of the covered company before adjusting, pursuant to section 252.74, for the effect of any qualifying master netting agreement, eligible collateral, eligible guarantee, eligible credit derivative, eligible equity derivative, other eligible hedge, and any unused portion of certain extensions of credit.

(s) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(t) *Intraday credit exposure* means credit exposure of a covered company to a counterparty that by its terms is to be repaid, sold, or terminated by the end of its business day in the United States.

(u) *Investment grade* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(v) *Major counterparty* means any:

(1) Major covered company and all of its subsidiaries, collectively;

(2) Any foreign banking organization (and all of its subsidiaries, collectively) that meets one of the following conditions:

(i) The foreign banking organization has the characteristics of a global systemically important banking organization under the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time; or

(ii) The Board, using information reported by the foreign banking organization or its U.S. subsidiaries, information that is publicly available, and confidential supervisory information, determines:

(A) That the foreign banking organization would be a global systemically important banking organization under the global methodology;

(B) That the foreign banking organization, if it were subject to the Board's Regulation Q, would be identified as a global systemically important bank holding company under § 217.402 of the Board's Regulation Q; or

(C) That the U.S. intermediate holding company, if it were subject to the Board's Regulation Q, would be identified as a global systemically important bank holding company.

(iii) A foreign banking organization that prepares or reports for any purpose the indicator amounts necessary to determine whether the foreign banking organization is a global systemically important banking organization under the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time, must use the data to determine whether the foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; and

(3) Any nonbank financial company supervised by the Board.

(w) *Major covered company* means any U.S. bank holding company identified as a global systemically important bank holding company pursuant to 12 CFR 217.402, and all of its subsidiaries.

(x) *Net credit exposure* means, with respect to any credit transaction, the gross credit exposure of a covered company calculated under § 252.73, as adjusted in accordance with § 252.74.

(y) *Qualifying central counterparty* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(z) *Qualifying master netting agreement* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(aa) *Short sale* means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(bb) *Sovereign entity* means a central national government (including the U.S. government) or an agency, department, ministry, or central bank, but not including any political governmental subdivision such as a state, province, or municipality.

(cc) *Subsidiary* of a specified company means a company that is directly or indirectly controlled by the specified company.

(dd) *Tier 1 capital* means common equity tier 1 capital and additional tier 1 capital, as defined in the Board's Regulation Q (12 CFR part 217).

**§ 252.72 Credit exposure limits.**

(a) *General limit on aggregate net credit exposure.* No covered company shall have an aggregate net credit exposure to any unaffiliated counterparty that exceeds 25 percent of the consolidated capital stock and surplus of the covered company.

(b) *Limit on aggregate net credit exposure for covered companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures.* No covered company that has $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures shall have an aggregate net credit exposure to any unaffiliated counterparty that exceeds 25 percent of the covered company's tier 1 capital.

(c) *Limit on aggregate net credit exposure of major covered companies to major counterparties.* No major covered company shall have aggregate net credit exposure to any unaffiliated major counterparty that exceeds 15 percent of the tier 1 capital of the major covered company.

(d) For purposes of this subpart, a counterparty and major counterparty shall include any person that the counterparty or major counterparty

(1) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the person;

(2) Owns or controls 25 percent or more of the total equity of the person; or

(3) Consolidates for financial reporting purposes.

**§ 252.73 Gross credit exposure.**

(a) *Calculation of gross credit exposure.* Except as provided in paragraph (b), the amount of gross credit exposure of a covered company to a counterparty with respect to a credit transactions is, in the case of:

(1) Loans by a covered company to the counterparty and leases in which the covered company is the lessor and the counterparty is the lessee, equal to the amount owed by the counterparty to the covered company under the transaction.

(2) Debt securities held by the covered company that are issued by the counterparty, equal to:

(i) The market value of the securities, for trading and available-for-sale securities; and

(ii) The amortized purchase price of the securities, for securities held to maturity.

(3) Equity securities held by the covered company that are issued by the counterparty, equal to the market value.

(4) Repurchase transactions, equal to the adjusted market value of securities transferred by the covered company to the counterparty.

(5) Reverse repurchase transactions, equal to the amount of cash transferred by the covered company to the counterparty.

(6) Securities borrowing transactions, equal to:

(i) The amount of cash collateral transferred by the covered company to the counterparty; plus

(ii) The adjusted market value of securities collateral transferred by the covered company to the counterparty.

(7) Securities lending transactions, equal to the adjusted market value of securities lent by the covered company to the counterparty.

(8) Committed credit lines extended by a covered company to a counterparty, equal to the face amount of the credit line.

(9) Guarantees and letters of credit issued by a covered company on behalf of a counterparty, equal to the maximum potential loss to the covered company on the transaction.

(10) Derivative transactions between the covered company and the counterparty not subject to a qualifying master netting agreement:

(i) Valued at an amount equal to the sum of

(A) The current exposure of the derivatives contract equal to the greater of the mark-to-market value of the derivative contract or zero; and

(B) The potential future exposure of the derivatives contract, calculated by multiplying the notional principal amount of the derivative contract by the applicable conversion factor in Table 2 to § 217.132 of the Board's Regulation Q (12 CFR 217.132); and

(ii) In cases where a covered company is required to recognize an exposure to an eligible protection provider pursuant to § 252.74(e), the covered company must exclude the relevant derivative transaction when calculating its gross exposure to the original counterparty under this section.

(11) Derivative transactions between the covered company and the counterparty subject to a qualifying master netting agreement:

(i) The derivative transaction shall be valued using any of the methods that the covered company is authorized to use under the Board's Regulation Q (12 CFR part 217, subparts D and E) to value such transactions; and

(ii) In cases where a covered company is required to recognize an exposure to an eligible protection provider pursuant to § 252.74(e), the covered company must exclude the relevant derivative transaction when calculating its gross exposure to the original counterparty under this section.

(12) Credit or equity derivative transactions between the covered company and a third party where the covered company is the protection provider and the reference asset is an obligation or equity security of the counterparty, equal to the maximum potential loss to the covered company on the transaction.

(b) *Investments in and Exposures to Securitization Vehicles, Investment Funds, and Other Special Purpose Vehicles.* A covered company that has $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures shall calculate its gross credit exposure for investments in and exposures to a securitization vehicle, investment fund, and other special purpose vehicle pursuant to § 252.75.

(c) *Attribution rule.* A covered company must treat any credit transaction with any person as a credit transaction with a counterparty, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty.

**§ 252.74 Net Credit Exposure.**

(a) *In general.* For purposes of this subpart, a covered company shall calculate its net credit exposure to a counterparty by adjusting its gross credit exposure to that counterparty in accordance with the rules set forth in this section.

(b) *Calculation of net credit exposure for repurchase transactions, reverse repurchase transactions, securities lending transactions, and securities borrowing transactions.* With respect to any repurchase transaction, reverse repurchase transaction, securities lending transaction, and securities borrowing transaction with a counterparty that is subject to a bilateral netting agreement with that counterparty and that meets the definition of ''repo-style transaction'' in § 217.2 of the Board's Regulation Q (12 CFR 217.2), a covered company's net credit exposure to a counterparty shall be equal to the exposure at default amount calculated under § 217.37(c)(2) of the Board's Regulation Q (12 CFR 217.37(c)(2)); provided that:

(1) The covered company shall apply the standardized supervisory haircuts as provided in 12 CFR 217.37(c)(3)(iii) of the Board's Regulation (12 CFR 217.37(c)(3)(iii), and is not permitted to use its own internal estimates for haircuts;

(2) The covered company shall, in calculating its net credit exposure to a counterparty as a result of the transactions described in paragraph (b) of this section, disregard any collateral received from that counterparty that does not meet the definition of ''eligible collateral'' in § 252.71(k); and

(3) The covered company shall include the adjusted market value of any eligible collateral, as further adjusted by the application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if applicable, when calculating its gross credit exposure to the collateral issuer, including in instances where the underlying repurchase transaction, reverse repurchase transaction, securities lending transaction, or securities borrowing transaction would not be subject to the credit limits of § 272.72.

(c) *Eligible collateral.*

(1) In computing its net credit exposure to a counterparty for any credit transaction other than transactions described in paragraph (b) of this section, a covered company must reduce its gross credit exposure on the transaction by:

(i) The adjusted market value of any eligible collateral, in cases where the eligible collateral has the same or greater maturity as the credit transactions; or

(ii) The adjusted market value of any eligible collateral, as further adjusted by application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if the eligible collateral has an original maturity equal to or greater than one year and a residual maturity of not less than three months, in cases where the eligible collateral has a shorter maturity than the credit transaction.

(2) A covered company that reduces its gross credit exposure to a counterparty as required under paragraph (c)(1) of this section must

include the adjusted market value of the eligible collateral, as further adjusted by the application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if applicable, when calculating its gross credit exposure to the collateral issuer, including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.72. Notwithstanding the foregoing, in no event will the covered company's gross credit exposure to the issuer of collateral be in excess of its gross credit exposure to the counterparty on the credit transaction.

(d) *Eligible guarantees.*

(1) In calculating net credit exposure to a counterparty for any credit transaction, a covered company must reduce its gross credit exposure to the counterparty by any eligible guarantees from an eligible protection provider that covers the transaction by:

(i) The amount of any eligible guarantees from an eligible protection provider that covers the transaction, in cases where the eligible guarantee has the same or greater maturity as the credit transaction; or

(ii) The amount of any eligible guarantees from an eligible protection provider that covers the transaction as further adjusted by application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if the eligible guarantees have an original maturity equal to or greater than one year and a residual maturity of not less than three months, in cases where the eligible guarantee has a shorter maturity than the credit transaction.

(2) A covered company that reduces its gross credit exposure to a counterparty as required under paragraph (d)(1) must include the amount of eligible guarantees when calculating its gross credit exposure to the eligible protection provider, including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.72. Notwithstanding the foregoing, in no event will the covered company's gross credit exposure to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible guarantee.

(e) *Eligible credit and equity derivatives.* (1) In calculating net credit exposure to a counterparty for a credit transaction, a covered company must reduce its gross credit exposure to the counterparty by:

(i) The notional amount of any eligible credit or equity derivative from an eligible protection provider, in cases where the eligible credit or equity derivative has a maturity that is the same or greater than the maturity of the credit transaction; or

(ii) The notional amount of any eligible credit or equity derivative from an eligible protection provider, as further adjusted by application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if the eligible credit or equity derivative has an original maturity equal to or greater than one year and a residual maturity of not less than three months, in cases where the eligible credit or equity derivative has a shorter maturity than the credit transaction.

(2)(i) In general, a covered company that reduces its gross credit exposure to a counterparty as provided under paragraph (e)(1) must include the notional amount of the eligible credit or equity derivative from an eligible protection provider, as further adjusted by the application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), as applicable, when calculating its gross credit exposure to the eligible protection provider, including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.72. Notwithstanding the foregoing, in no event will the covered company's gross credit exposure to an eligible protection provider with respect to an eligible credit or equity derivative be in excess of its gross credit exposure to that counterparty on the credit transaction prior to recognition of the eligible credit or equity derivative; and

(ii) In cases where the eligible credit or equity derivative is used to hedge covered positions and available-for-sale exposures that are subject to the Board's market risk rule (12 CFR part 217, subpart F) and the counterparty on the hedged transaction is not a financial entity, the amount of credit exposure that a company must recognize to the eligible protection provider is the amount that would be calculated pursuant to § 252.73(a), including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.72.

(f) *Other eligible hedges.* In calculating net credit exposure to a counterparty for a credit transaction, a covered company may reduce its gross credit exposure to the counterparty by the face amount of a short sale of the counterparty's debt or equity security, provided that:

(1) The instrument in which the covered company has a short position is junior to, or *pari passu* with, the instrument in which the covered company has the long position; and

(2) The instrument in which the covered company has a short position and the instrument in which the covered company has the long position are either both treated as trading or available-for-sale exposures or both treated as held-to-maturity exposures.

(g) *Unused portion of certain extensions of credit.* (1) In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, a covered company may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the covered company does not have any legal obligation to advance additional funds under the extension of credit, until the counterparty provides the amount of adjusted market value of collateral required with respect to the entire used portion of the extension of credit.

(2) To qualify for this reduction, the credit contract must specify that any used portion of the credit extension must be fully secured by collateral that is:

(i) Cash;

(ii) Obligations of the United States or its agencies; or

(iii) Obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government-sponsored enterprise as determined by the Board.

(h) *Credit transactions involving exempt and excluded persons.* If a covered company has a credit transaction with any person that is exempt from this subpart under § 252.75, or is otherwise excluded from this subpart, and the covered company has reduced its credit exposure on the credit transaction with that person by obtaining collateral from that person or a guarantee or credit or equity derivative from an eligible protection provider, the covered company shall calculate its credit exposure to the issuer of the collateral or protection provider, as applicable, in accordance with the rules set forth in this section to the same extent as if the credit transaction with the person were subject to the requirements in this subpart, including § 252.72.

**§ 252.75 Investments in and exposures to securitization vehicles, investment funds, and other special purpose vehicles.**

(a) *In general.* (1) This section applies only to covered companies with $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposures, subject to paragraph (d) of this section.

(2)(i) If a covered company can satisfy the requirements of paragraph (a)(3) of this section, a covered company must calculate its gross credit exposure to each securitization vehicle, investment fund, and other special purpose vehicle in which it invests pursuant to § 252.73(a), and the covered company is not required to calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle.

(ii) If a covered company cannot satisfy the requirements of paragraph (a)(3), the covered company must calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle using the look-through approach in paragraph (b) of this section.

(3) A covered company is not required to calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle, as applicable, if the covered company can demonstrate that its gross credit exposure to each issuer, considering only the credit exposures to that issuer arising from the covered company's investment in a particular securitization vehicle, investment fund, or other special purpose vehicle, is less than 0.25 percent of the covered company's:

(i) Capital stock and surplus in the case of a covered company subject to the credit exposure limit of § 252.72(a); or

(ii) Tier 1 capital in the case of a covered company subject to the credit exposure limit of § 252.72(b).

(b) *Look-through Approach.* (1) A covered company that cannot satisfy the requirements of paragraph (a)(3) must calculate its gross credit exposure, for purposes of § 252.73(a), to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle pursuant to paragraph (b)(3).

(2) If a covered company that cannot satisfy the requirements of paragraph (a)(3) of this section is unable to identify each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle, the covered company, for purposes of paragraph (b)(3) of this section, must attribute the gross credit exposure to a single unknown counterparty, and the limits of § 252.72 shall apply to that counterparty as a single counterparty.

(3) A covered company that is required to calculate its gross credit exposure to an issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle pursuant to paragraph (b)(1) of this section, or to an unknown counterparty pursuant to paragraph (b)(2) of this section, must calculate the gross credit exposure as follows:

(i) Where all investors in the securitization vehicle, investment fund, or other special purpose vehicle rank *pari passu,* the gross credit exposure is equal to the covered company's pro rata share multiplied by the value of the assets attributed to the issuer or the unknown counterparty, as applicable, that are held within the structure; and

(ii) Where all investors in the securitization vehicle, investment fund, or other special purpose vehicle do not rank *pari passu,* the gross credit exposure is equal to:

(A) The lower of the value of the tranche in which the covered company has invested, calculated pursuant to § 252.73(a), and the value of each asset attributed to the issuer or the unknown counterparty, as applicable, that are held by the securitization vehicle, investment fund, or other special purpose vehicle; multiplied by

(B) The pro rata share of the covered company's investment in the tranche.

(c) *Exposures to Third Parties.* (1) Notwithstanding any other requirement in this section, a covered company must recognize, for purposes of this subpart, a gross credit exposure to each third party that has a contractual or other business relationship with a securitization vehicle, investment fund, or other special purpose vehicle, such as a fund manager or protection provider to such securitization vehicle, investment fund, or other special purpose vehicle, whose failure or material financial distress would cause a loss in the value of the covered company's investment in or exposure to the securitization vehicle, investment fund, or other special purpose vehicle.

(2) For purposes of § 252.72, with respect to a covered company's gross credit exposure to a third party that a covered company must recognize pursuant to paragraph (c)(1) of this section, the covered company shall recognize an exposure to the third party in an amount equal to the covered company's gross credit exposure to the associated securitization vehicle, investment fund, or other special purpose vehicle, in addition to the covered company's gross credit exposure to the associated securitization vehicle, investment fund, or other special purpose vehicle.

(d) Notwithstanding paragraph (a)(1) of this section, in order to avoid evasion of this subpart, the Board may determine, after notice to the covered company and opportunity for hearing, that a covered company with less than $250 billion in total consolidated assets and less than $10 billion in total on-balance-sheet foreign exposures must apply the look-through approach or recognize exposures to third parties that have a contractual or other business relationship for purposes of this subpart.

**§ 252.76 Aggregation of exposures to more than one counterparty due to economic interdependence or control relationships.**

(a) *Aggregation of Exposures to More than One Counterparty due to Economic Interdependence.* (1)(i) If a covered company has an aggregate net credit exposure to any unaffiliated counterparty that exceeds 5 percent of the consolidated capital stock and surplus of the covered company, or 5 percent of its tier 1 capital in the case of a covered company with $250 billion or more in total consolidated assets or $10 billion or more in total foreign exposures, the covered company shall analyze its relationship with the unaffiliated counterparty under paragraph (a)(2) of this section to determine whether the unaffiliated counterparty is economically interdependent with one or more other unaffiliated counterparties of the covered company.

(ii) For purposes of this paragraph, two counterparties are economically interdependent if the failure, default, insolvency, or material financial distress of one counterparty would cause the failure, default, insolvency, or material financial distress of the other counterparty, taking into account the factors in paragraph (a)(2) of this section.

(iii) If a covered company or the Board determines pursuant to paragraph (a)(2) or (a)(3) of this section, as applicable, that one or more other unaffiliated counterparties of a covered company are economically dependent, the covered company shall aggregate its net credit exposure to the unaffiliated counterparties for all purposes under this subpart, including but not limited to, § 252.72.

(2) In making a determination as to whether any two counterparties are economically interdependent, a covered company shall consider the following factors:

(i) Whether 50 percent or more of one counterparty's gross revenue or gross expenditures are derived from transactions with the other counterparty;

(ii) Whether one counterparty (counterparty A) has fully or partly guaranteed the credit exposure of the other counterparty (counterparty B), or is liable by other means, and the credit exposure is significant enough that counterparty B is likely to default if presented with a claim relating to the guarantee or liability;

(iii) Whether 25 percent or more of one counterparty's production or output is sold to the other counterparty, which cannot easily be replaced by other customers;

(iv) Whether the expected source of funds to repay any credit exposure between the counterparties is the same and at least one of the counterparties does not have another source of income from which the extension of credit may be fully repaid;

(v) Whether the financial distress of one counterparty (counterparty A) is likely to impair the ability of the other counterparty (counterparty B) to fully and timely repay counterparty B's liabilities;

(vi) Whether one counterparty (counterparty A) has made a loan to the other counterparty (counterparty B) and is relying on repayment of that loan in order to satisfy its obligations to the covered company, and counterparty A does not have another source of income that it can use to satisfy its obligations to the covered company; and

(vii) Any other indicia of interdependence that the covered company determines to be relevant to this analysis.

(3) In order to avoid evasion of this subpart, the Board may determine, after notice to the covered company and opportunity for hearing, that one or more unaffiliated counterparties of a covered company are economically dependent for purposes of this subpart. In making any such determination, the Board shall consider the factors in paragraph (a)(2) of this section as well as any other indicia of economic interdependence that the Board determines to be relevant.

(b) *Aggregation of exposures to more than one counterparty due to certain control relationships.* (1) A covered company shall assess whether counterparties are connected by control relationships due to the following factors:

(i) The presence of voting agreements;

(ii) Ability of one counterparty to significantly influence the appointment or dismissal of another counterparty's administrative, management or governing body, or the fact that a majority of members of such body have been appointed solely as a result of the exercise of the first counterparty's voting rights; and

(iii) Ability of one counterparty to exercise a controlling influence over the management or policies of another counterparty.

(2) If a covered company or the Board determines pursuant to paragraph (b)(1) or (b)(3) of this section that one or more other unaffiliated counterparties of a covered company are connected by control relationships, the covered company shall aggregate its net credit exposure to the unaffiliated counterparties for all purposes under this subpart, including but not limited to, § 252.72.

(3) In order to avoid evasion of this subpart, the Board may determine, after notice to the covered company and opportunity for hearing, that one or more unaffiliated counterparties of a covered company are connected by control relationships for purposes of this subpart. In making any such determination, the Board shall consider the factors in paragraph (b)(1) of this section as well as any other control relationships that the Board determines to be relevant.

**§ 252.77 Exemptions.**

(a) *Exempted exposure categories.* The following categories of credit transactions are exempt from the limits on credit exposure under this subpart:

(1) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government-sponsored entity as determined by the Board.

(2) Intraday credit exposure to a counterparty.

(3) Trade exposures to a qualifying central counterparty related to the covered company's clearing activity, including potential future exposure arising from transactions cleared by the qualifying central counterparty and pre-funded default fund contributions.

(4) Any transaction that the Board exempts if the Board finds that such exemption is in the public interest and is consistent with the purpose of this section.

(b) *Exemption for Federal Home Loan Banks.* For purposes of this subpart, a covered company does not include any Federal Home Loan Bank.

(c) *Additional Exemptions by the Board.* The Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term ''credit exposure,'' if the Board finds that the exemption is in the public interest and is consistent with the purpose of § 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(e)).

**§ 252.78 Compliance.**

(a) *Scope of compliance.* A covered company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures must comply with the requirements of this section on a daily basis at the end of each business day and submit on a monthly basis a report demonstrating its daily compliance. A covered company with less than $250 billion in total consolidated assets and less than $10 billion in total on-balance-sheet foreign exposures must comply with the requirements of this section on a quarterly basis and submit on a quarterly basis a report demonstrating its quarterly compliance, unless the Board determines and notifies that company that more frequent compliance and reporting is required.

(b) *Qualifying Master Netting Agreement.* A covered company must establish and maintain procedures that meet or exceed the requirements of § 217.3(d) of the Board's Regulation Q (12 CFR 217.3(d)) to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of a qualifying master netting agreement.

(c) *Noncompliance.* Except as otherwise provided in this section, if a covered company is not in compliance with this subpart with respect to a counterparty solely due to the circumstances listed in paragraphs (c)(1)–(4) of this section, the covered company will not be subject to enforcement actions for a period of 90 days (or such other period determined by the Board to be appropriate to preserve the safety and soundness of the covered company or U.S. financial stability) if the company uses reasonable efforts to return to compliance with this subpart during this period. The covered company may not engage in any additional credit transactions with such a counterparty in contravention of this rule during the compliance period, except in cases where the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the covered company or U.S. financial stability. In

granting approval for such a special temporary credit exposure limit, the Board will consider the following:

(1) A decrease in the covered company's capital stock and surplus;

(2) The merger of the covered company with another covered company;

(3) A merger of two unaffiliated counterparties; or

(4) Any other circumstance the Board determines is appropriate.

(d) *Other measures.* The Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with this subpart.

■ 3. Add subpart Q to read as follows:

## Subpart Q—Single-Counterparty Credit Limits

Sec.



### § 252.170 Applicability.

(a) *Foreign banking organizations with total consolidated assets of $50 billion or more.*

(1) *In general.* A foreign banking organization with total consolidated assets of $50 billion or more is subject to the general credit exposure limit set forth in § 252.173(a).

(2) *Foreign banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures.* A foreign banking organization with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures is subject to the credit exposure limit set forth in § 252.172(b).

(3) *Major foreign banking organizations.* A foreign banking organization with total consolidated assets of $500 billion or more is subject to the credit exposure limit set forth in § 252.172(c).

(4) *Total consolidated assets.* For purposes of this section, total consolidated assets are determined based on:

(i) The average of the foreign banking organization's total consolidated assets in the four most recent consecutive quarters as reported quarterly on the FR Y–7Q; or

(ii) If the foreign banking organization has not filed the FR Y–7Q for each of the four most recent consecutive quarters, the average of the foreign banking organization's total consolidated assets in the most recent consecutive quarters as reported quarterly on the foreign banking organization's FR Y–7Qs; or

(iii) If the foreign banking organization has not yet filed an FR Y–7Q, as determined under applicable accounting standards.

(5) *Cessation of requirements.* A foreign banking organization will remain subject to the requirements of this subpart, including § 252.172(a) and, as applicable, the credit exposure limits of §§ 252.172(b) and (c), unless and until total assets are less than $50 billion (with respect to the requirements in paragraphs (a) and (b)) or $500 billion (with respect to the requirement in paragraph (c)) for each of the four most recent consecutive calendar quarters, either as reported on the foreign banking organization's FR Y–7Q or as determined under applicable accounting standards, to the extent the foreign banking organization has not yet filed an FR Y–7Q.

(i) Nothing in paragraph (a)(3) shall preclude a company from becoming a covered company pursuant to paragraphs (a)(1) or (a)(2) of this section.

(6) *Measurement date.* For purposes of this section, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(b) *U.S. intermediate holding companies.*

(1) *In general.* A U.S. intermediate holding company is subject to the general credit exposure limit set forth in § 252.172(a).

(2) *U.S. intermediate holding companies with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures.* A U.S intermediate holding company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures is subject to the credit exposure limit set forth in § 252.172(b).

(3) *Major U.S. intermediate holding companies.* A U.S. intermediate holding company that has total consolidated assets of $500 billion or more is subject to the credit exposure limit set forth in § 252.172(c)..

(4) *Total consolidated assets.* For purposes of this paragraph, total consolidated assets are determined based on:

(i) The average of the total consolidated assets for the four most recent consecutive quarters as reported by the U.S. intermediate holding company on its FR Y–9C, or

(ii) If the U.S. intermediate holding company has not filed the FR Y–9C for each of the four most recent consecutive quarters, for the most recent quarter or consecutive quarters as reported on the FR Y–9C, or

(iii) If the U.S. intermediate holding company has not yet filed an FR Y–9C, as determined under applicable accounting standards.

(5) *Cessation of requirements.* A major U.S. intermediate holding company will remain subject to the requirements of this subpart, including § 252.172(a) and, as applicable, the credit exposure limits set forth in §§ 252.172(b) and (c), unless and until total assets are less than $50 billion (with respect to the requirements in paragraphs (a) or (b) of this section) or $500 billion (with respect to the requirement in paragraph (c) of this section) for each of the four most recent consecutive calendar quarters either as reported on its FR Y–9C or as determined under applicable accounting standards, to the extent the foreign banking organization has not yet filed an FR Y–9C.

(i) Nothing in paragraph (b)(3) shall preclude a company from becoming a covered company pursuant to paragraphs (b)(1) or (b)(2) of this section.

(5) *Measurement date.* For purposes of this section, total consolidated assets are measured on the last day of the quarter used in calculation of the average.

(c) *Initial applicability.*

(1) *Foreign banking organizations.* (i) A foreign banking organization that is subject to this subpart under paragraph (a)(1) of this section as of [INSERT EFFECTIVE DATE], must comply with the requirements of this subpart beginning on [INSERT DATE TWO YEARS FROM EFFECTIVE DATE], unless that time is extended by the Board in writing.

(ii) A foreign banking organization that is subject to this subpart under paragraphs (a)(2) or (3) of this section as of [INSERT EFFECTIVE DATE], must comply with the requirements of this subpart, as applicable, beginning on [INSERT DATE ONE YEAR FROM EFFECTIVE DATE].

(2) *U.S. intermediate holding companies.* (i) A U.S. intermediate holding company that is subject to the requirements of this subpart under paragraph (b)(1) of this section as of [INSERT EFFECTIVE DATE], must comply with the requirements of this

subpart beginning on [INSERT DATE TWO YEARS FROM EFFECTIVE DATE], unless that time is extended by the Board in writing.

(ii) A U.S. intermediate holding company that is subject to this subpart under paragraphs (b)(2) or (3) of this section as of [INSERT EFFECTIVE DATE], must comply with the requirements of this subpart, including §§ 252.172(b)–(c), beginning on [INSERT DATE ONE YEAR FROM EFFECTIVE DATE].

(3) A foreign banking organization or U.S. intermediate holding company that becomes subject to the requirements of this subpart after the effective date of the subpart will be subject to the requirements of this subpart in accordance with paragraph (d) of this section.

(d) *Ongoing applicability.*

(1) *Foreign banking organizations.* Except as provided in paragraphs (c)(1) or (c)(2) of this section, a foreign banking organization that becomes subject to the requirements of this subpart after [INSERT EFFECTIVE DATE], must comply with the requirements of this subpart, as applicable, beginning on the first day of the fifth calendar quarter after it becomes subject to those requirements, unless that time is accelerated or extended by the Board in writing.

(2) *U.S. intermediate holding companies.* Except as provided in paragraph (c)(2) of this section, a U.S. intermediate holding company that becomes subject to the requirements of this subpart after [INSERT EFFECTIVE DATE], must comply with the requirements of this subpart, as applicable, on the later of:

(i) The first day of the fifth calendar quarter after it becomes subject to those requirements, or

(ii) The date on which the U.S. intermediate holding company is required to be established, unless that time is accelerated or extended by the Board in writing.

**§ 252.171 Definitions.**

For purposes of this subpart:

(a) *Adjusted market value* means:

(1) With respect to the value of securities transferred by the covered company to a counterparty, the sum of:

(i) Market value of the securities and

(ii) The product of the market value of the securities multiplied by the applicable collateral haircut in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132); and

(2) With respect to eligible collateral received by the covered company from a counterparty:

(i) The market value of the securities minus

(ii) The market value of the securities multiplied by the applicable collateral haircut in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132).

(3) Prior to calculating the adjusted market value pursuant to paragraphs (1) and (2) of this section, with regard to a transaction that meets the definition of ''repo-style transaction'' in § 217.2 the Board's Regulation Q (12 CFR 217.2), the covered company would first multiply the applicable collateral haircuts in Table 1 to § 217.132 of the Board's Regulation Q (12 CFR 217.132) by the square root of ½.

(b) *Aggregate net credit exposure* means the sum of all net credit exposures of a covered entity to a single counterparty.

(c) *Bank-eligible investments* means investment securities that a national bank is permitted to purchase, sell, deal in, underwrite, and hold under 12 U.S.C. 24 (Seventh) and 12 CFR part 1.

(d) *Capital stock and surplus* means:

(1) With respect to a U.S. intermediate holding company, the sum of the following amounts in each case as reported by a U.S. intermediate holding company on the most recent FR Y–9C:

(i) The tier 1 and tier 2 capital of the U.S. intermediate holding company, as calculated under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart O of the Board's Regulation YY (12 CFR part 252); and

(ii) The excess allowance for loan and lease losses of the U.S. intermediate holding company not included in tier 2 capital under the capital adequacy guidelines applicable to that U.S. intermediate holding company under subpart O of the Board's Regulation YY (12 CFR part 252); and

(2) With respect to a foreign banking organization, the total regulatory capital as reported on the foreign banking organization's most recent FR Y–7Q or other reporting form specified by the Board.

(e) *Counterparty* means:

(1) With respect to a natural person, the person, and members of the person's immediate family;

(2) With respect to a company, the company and all persons that that counterparty

(i) Owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the person;

(ii) Owns or controls 25 percent or more of the total equity of the person; or

(iii) Consolidates for financial reporting purposes, as described in § 252.172(d), collectively;

(3) With respect to a State, the State and all of its agencies, instrumentalities, and political subdivisions (including any municipalities) collectively;

(4) With respect to a foreign sovereign entity that is not assigned a zero percent risk weight under the standardized approach in the Board's Regulation Q (12 CFR part 217, subpart D), the foreign sovereign entity and all of its agencies and instrumentalities (but not including any political subdivision), collectively; and

(5) With respect to a political subdivision of a foreign sovereign entity such as states, provinces, and municipalities, any political subdivisions of a foreign sovereign entity and all such political subdivision's agencies and instrumentalities, collectively.

(f) *Covered entity* means:

(1) Any entity that is part of the combined U.S. operations of a foreign banking organization with total consolidated assets of $50 billion or more, calculated pursuant to § 252.170(a), and all of its subsidiaries; and

(2) Any U.S. intermediate holding company of a foreign banking organization with total consolidated assets of $50 billion or more, calculated pursuant to § 252.170(b), and all of its subsidiaries.

(g) *Credit derivative* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(h) *Credit transaction* means:

(1) Any extension of credit, including loans, deposits, and lines of credit, but excluding uncommitted lines of credit;

(2) Any repurchase transaction or reverse repurchase transaction;

(3) Any securities lending or securities borrowing transaction;

(4) Any guarantee, acceptance, or letter of credit (including any endorsement, confirmed letter of credit, or standby letter of credit) issued on behalf of a counterparty;

(5) Any purchase of, or investment in, securities issued by a counterparty;

(6) Any credit exposure to the counterparty in connection with a derivative transaction between the covered company and the counterparty;

(7) Any credit exposure to the counterparty in connection with a credit derivative or equity derivative transaction between the covered company and a third party, the reference asset of which is an obligation or equity security of the counterparty; and

(8) Any transaction that is the functional equivalent of the above, and any other similar transaction that the Board, by regulation, determines to be a credit transaction for purposes of this subpart.

(i) *Depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

(j) *Derivative transaction* means any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

(k) *Eligible collateral* means collateral in which a U.S. intermediate holding company or any part of the foreign banking organization's combined U.S. operations has a perfected, first priority security interest or the legal equivalent thereof, if outside of the United States (with the exception of cash on deposit and notwithstanding the prior security interest of any custodial agent) and is in the form of:

(1) Cash on deposit with the U.S. intermediate holding company or any part of the U.S. operations, the U.S. branch, or the U.S. agency (including cash held for the foreign banking organization or U.S. intermediate holding company by a third-party custodian or trustee);

(2) Debt securities (other than mortgage- or asset-backed securities and resecuritization securities, unless those securities are issued by a U.S. government-sponsored enterprise) that are bank-eligible investments and that are investment grade;

(3) Equity securities that are publicly traded; or

(4) Convertible bonds that are publicly traded; and

(5) Does not include any debt or equity securities (including convertible bonds), issued by an affiliate of the U.S. intermediate holding company or by any part of the foreign banking organization's combined U.S. operations.

(l) *Eligible credit derivative* means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is subject to an eligible guarantee and has been confirmed by the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Receivership, insolvency, liquidation, conservatorship, or inability of the reference exposure issuer to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract;

(5) If the contract allows for cash settlement, the contract incorporates a robust valuation process to estimate loss reliably and specifies a reasonable period for obtaining post-credit event valuations of the reference exposure;

(6) If the contract requires the protection purchaser to transfer an exposure to the protection provider at settlement, the terms of at least one of the exposures that is permitted to be transferred under the contract provides that any required consent to transfer may not be unreasonably withheld; and

(7) If the credit derivative is a credit default swap, the contract clearly identifies the parties responsible for determining whether a credit event has occurred, specifies that this determination is not the sole responsibility of the protection provider, and gives the protection purchaser the right to notify the protection provider of the occurrence of a credit event.

(m) *Eligible equity derivative* means an equity-linked total return swap, provided that:

(1) The derivative contract has been confirmed by the counterparties;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties; and

(3) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract.

(n) *Eligible guarantee* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2) that is provided by an eligible protection provider.

(o) *Eligible protection provider* has the same meaning as ''eligible guarantor'' in § 217.2 of the Board's Regulation Q (12 CFR 217.2), but does not include the foreign banking organization or any entity that is an affiliate of either the U.S. intermediate holding company or of any part of the foreign banking organization's combined U.S. operations.

(p) *Equity derivative* has the same meaning as ''equity derivative contract'' in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(q) *Financial entity* means:

(1) A depository institution;

(2) A bank holding company;

(3) A savings and loan holding company (as defined in 12 U.S.C. 1467a);

(4) A securities broker or dealer registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78o *et seq.*);

(5) An insurance company that is subject to the supervision by a State insurance regulator;

(6) A foreign banking organization;

(7) A non-U.S.-based securities firm or a non-U.S.-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(8) A central counterparty; and

(9) A legal entity whose main business includes the management of financial assets, lending, factoring, leasing, provision of credit enhancements, securitization, investments, financial custody, proprietary trading, and other financial services.

(r) *Gross credit exposure* means, with respect to any credit transaction, the credit exposure of the covered company before adjusting, pursuant to section 252.174, for the effect of any qualifying master netting agreement, eligible collateral, eligible guarantee, eligible credit derivative, eligible equity derivative, other eligible hedge, and any unused portion of certain extensions of credit.

(s) *Immediate family* means the spouse of an individual, the individual's minor children, and any of the individual's children (including adults) residing in the individual's home.

(t) *Intraday credit exposure* means credit exposure of the U.S. intermediate holding company or any part of the combined U.S. operations to a counterparty that by its terms is to be repaid, sold, or terminated by the end of its business day in the United States.

(u) *Investment grade* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(v) *Major counterparty* means:

(1) A U.S. company identified as a global systemically important bank holding company pursuant to 12 CFR 217.402;

(2) Any foreign banking organization (and all of its subsidiaries, collectively) that meets one of the following conditions:

(i) The foreign banking organization has the characteristics of a global

systemically important banking organization under the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time; or

(ii) The Board, using information reported by the foreign banking organization or its U.S. subsidiaries, information that is publicly available, and confidential supervisory information, determines:

(A) That the foreign banking organization would be a global systemically important banking organization under the global methodology;

(B) That the foreign banking organization, if it were subject to the Board's Regulation Q, would be identified as a global systemically important bank holding company under § 217.402 of the Board's Regulation Q; or

(C) That the U.S. intermediate holding company, if it were subject to the Board's Regulation Q, would be identified as a global systemically important bank holding company.

(iii) A foreign banking organization that prepares or reports for any purpose the indicator amounts necessary to determine whether the foreign banking organization is a global systemically important banking organization under the assessment methodology and the higher loss absorbency requirement for global systemically important banks issued by the Basel Committee on Banking Supervision, as updated from time to time, must use the data to determine whether the foreign banking organization has the characteristics of a global systemically important banking organization under the global methodology; and

(3) Any nonbank financial company supervised by the Board.

(w) *Major foreign banking organization* means any foreign banking organization that has total consolidated assets of $500 billion or more, calculated pursuant to § 252.170(a)(4).

(x) *Major U.S. intermediate holding company* means a U.S. intermediate holding company that has total consolidated assets of $500 billion or more, calculated pursuant to § 252.170(b)(3).

(y) *Net credit exposure* means, with respect to any credit transaction, the gross credit exposure of a covered company calculated under § 252.173, as adjusted in accordance with § 252.174.

(z) *Qualifying central counterparty* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(aa) *Qualifying master netting agreement* has the same meaning as in § 217.2 of the Board's Regulation Q (12 CFR 217.2).

(bb) *Short sale* means any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.

(cc) *Sovereign entity* means a central national government (including the U.S. government) or an agency, department, ministry, or central bank, but not including any political governmental subdivision such as a state, province, or municipality.

(dd) *Subsidiary* of a specified company means a company that is directly or indirectly controlled by the specified company.

(ee) *Tier 1 capital* means common equity tier 1 capital and additional tier 1 capital, as defined in subpart O of the Board's Regulation YY (12 CFR part 252).

**§ 252.172 Credit exposure limits.**

(a) *General limit on aggregate net credit exposure.*

(1) No U.S. intermediate holding company shall have an aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the U.S. intermediate holding company.

(2) No foreign banking organization may permit its combined U.S. operations, including, but not limited to, any U.S. intermediate holding company and any subsidiary of any U.S. intermediate holding company, to have an aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the consolidated capital stock and surplus of the foreign banking organization.

(b) *Limit on aggregate net credit exposure for U.S. intermediate holding companies and foreign banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures.*

(1) No U.S. intermediate holding company that has $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures shall have an aggregate net credit exposure to any unaffiliated counterparty that exceeds 25 percent of the tier 1 capital of the U.S. intermediate holding company.

(2) No foreign banking organization that has $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures shall permit its combined U.S. operations, including, but not limited to, any U.S. intermediate holding company and any subsidiary of any U.S. intermediate holding company, to have an aggregate net credit exposure to any unaffiliated counterparty in excess of 25 percent of the tier 1 capital of the foreign banking organization.

(c) *Major U.S. intermediate holding company and major foreign banking organization limits on aggregate net credit exposure to each other.*

(1) No U.S. intermediate holding company shall have an aggregate net credit exposure to any unaffiliated major counterparty in excess of 15 percent of the tier 1 capital of the U.S. intermediate holding company.

(2) No major foreign banking organization may permit its combined U.S. operations to have an aggregate net credit exposure to any unaffiliated major counterparty in excess of 15 percent of the tier 1 capital of the major foreign banking organization.

(d) For purposes of this subpart, a counterparty and major counterparty shall include any person that the counterparty or major counterparty:

(1) owns, controls, or holds with power to vote 25 percent or more of a class of voting securities of the person;

(2) owns or controls 25 percent or more of the total equity of the person; or

(3) consolidates for financial reporting purposes.

**§ 252.173 Gross credit exposure.**

(a) *Calculation of gross credit exposure for U.S. intermediate holding companies and foreign banking organizations.* Except as provided in paragraph (b) of this section, the amount of gross credit exposure of a U.S. intermediate holding company or, with respect to any part of its combined U.S. operations, a foreign banking organization (each a covered entity), to a counterparty is, in the case of:

(1) Loans by a covered entity to a counterparty and leases in which a covered entity is the lessor and a counterparty is the lessee, an amount equal to the amount owed by the counterparty to the covered entity under the transaction.

(2) Debt securities held by a covered entity that is issued by the counterparty, equal to:

(i) The market value, for trading and available-for-sale securities; and

(ii) The amortized purchase price, for securities held to maturity.

(3) Equity securities held by a covered entity that is issued by the counterparty, equal to the market value.

(4) Repurchase transactions, equal to the adjusted market value of securities

transferred by a covered entity to the counterparty.

(5) Reverse repurchase transactions, equal to the amount of cash transferred by the covered company to the counterparty.

(6) Securities borrowing transactions, equal to:

(i) The amount of cash collateral transferred by the covered entity to the counterparty; plus

(ii) The adjusted market value of securities collateral transferred by the covered entity to the counterparty.

(7) Securities lending transactions, equal to the adjusted market value of securities lent by the covered entity to the counterparty.

(8) Committed credit lines extended by a covered entity to a counterparty, equal to the face amount of the credit line.

(9) Guarantees and letters of credit issued by a covered entity on behalf of a counterparty, equal to the maximum potential loss to the covered entity on the transaction.

(10) Derivative transactions between the covered entity and the counterparty that is not subject to a qualifying master netting agreement:

(i) The derivative transaction shall be valued at an amount equal to the sum of:

(A) The current exposure of the derivatives contract equal to the greater of the mark-to-market value of the derivative contract or zero; and

(B) The potential future exposure of the derivatives contract, calculated by multiplying the notional principal amount of the derivative contract by the applicable conversion factor in Table 2 to § 217.132 of the Board's Regulation Q (12 CFR 217.132).

(ii) In cases where a covered entity is required to recognize an exposure to an eligible protection provider pursuant to section 252.174(e), the covered entity must exclude the relevant derivative transaction when calculating its gross exposure to the original counterparty under this section.

(11) Derivative transactions:

(i) Between a U.S. intermediate holding company and a counterparty that is subject to a qualifying master netting agreement:

(A) The derivative transaction shall be valued using any of the methods that the U.S. intermediate holding company is authorized to use under the Board's Regulation Q (12 CFR part 217, subparts D and E) to value such transactions (provided that the rules governing the recognition of collateral set forth in this subpart shall apply).

(B) In cases where the U.S. intermediate holding company is required to recognize an exposure to an eligible protection provider pursuant to section 252.174(e), the U.S. intermediate holding company must exclude the relevant derivative transaction when calculating its gross exposure to the original counterparty under this section.

(ii) Between an entity within the combined U.S. operations of a foreign banking organization and a counterparty that is subject to a qualifying master netting agreement between an entity within the combined U.S. operations and the counterparty:

(A) The derivative transaction shall be valued at an amount equal to either (1) the exposure at default amount calculated under any of the methods that the covered company is authorized to use under the Board's Regulation Q (12 CFR part 217, subparts D and E) to value such transactions (provided that the rules governing the recognition of collateral set forth in this subpart shall apply); or (2) the gross credit exposure amount calculated under § 252.173(a)(10) of this subpart.

(B) In cases where, the foreign banking organization is required to recognize an exposure to an eligible protection provider pursuant to § 252.174(e), the foreign banking organization must exclude the relevant derivative transaction when calculating its gross exposure to the original counterparty under this section.

(12) Credit or equity derivative transactions between the covered entity and a third party where the covered entity is the protection provider and the reference asset is an obligation or equity security of the counterparty, equal to the maximum potential loss to the covered entity on the transaction.

(b) *Investments in and Exposures to Securitization Vehicles, Investment Funds, and Other Special Purpose Vehicles.* A U.S. intermediate holding company or a foreign banking organization that has $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures shall calculate its gross credit exposure for investments in and exposures to a securitization vehicle, investment fund, and other special purpose vehicle pursuant to § 252.175.

(c) *Attribution rule.* A U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization must treat any credit transaction with any person as a credit transaction with a counterparty, to the extent that the proceeds of the transaction are used for the benefit of, or transferred to, that counterparty.

**§ 252.174 Net credit exposure.**

(a) *In general.* For purposes of this subpart, a U.S. intermediate holding company, or with respect to its combined U.S. operations, a foreign banking organization, shall calculate its net credit exposure to a counterparty by adjusting its gross credit exposure to that counterparty in accordance with the rules set forth in this section.

(b) *Calculation of net credit exposure for repurchase transactions, reverse repurchase transactions, securities lending transactions, and securities borrowing transactions.* With respect to any repurchase transaction, reverse repurchase transaction, securities lending transaction, and securities borrowing transaction with a counterparty that is subject to a bilateral netting agreement with that counterparty and that meets the definition of ''repo-style transaction'' in section 217.2 of the Board's Regulation Q (12 CFR 217.2), the net credit exposure of a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization to a counterparty shall be equal to the exposure at default amount calculated under § 217.37(c)(2) of the Board's Regulation Q (12 CFR 217.37(c)(2)); provided that:

(1) The U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization shall apply the standardized supervisory haircuts as provided in 12 CFR 217.37(c)(3)(iii) of the Board's Regulation (12 CFR 217.37(c)(3)(iii), and is not permitted to use its own internal estimates for haircuts;

(2) The U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization shall, in calculating its net credit exposure to a counterparty as a result of the transactions described in paragraph (b), disregard any collateral received from that counterparty that does not meet the definition of ''eligible collateral'' in § 252.171(k); and

(3) The U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization shall include the adjusted market value of any eligible collateral, as further adjusted by the application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if applicable, when calculating its gross credit exposure to the collateral issuer, including in instances where the underlying repurchase transaction, reverse repurchase transaction, securities

lending transaction, or securities borrowing transaction would not be subject to the credit limits of § 272.172.

(c) *Eligible collateral.*

(1) In computing its net credit exposure to a counterparty for any credit transaction other than transactions described in paragraph (b) of this section, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization must reduce its gross credit exposure on the transaction by:

(i) The adjusted market value of any eligible collateral, in cases where the eligible collateral has the same or greater maturity as the credit transactions; or

(ii) The adjusted market value of any eligible collateral, as further adjusted by application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), but only if the eligible collateral has an original maturity equal to or greater than one year and a residual maturity of not less than three months, in cases where the eligible collateral has a shorter maturity than the credit transaction.

(2) A U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization that reduces its gross credit exposure to a counterparty as required under paragraph (c)(1) must include the adjusted market value of the eligible collateral, as further adjusted by the application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if applicable, when calculating its gross credit exposure to the collateral issuer, including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.172. Notwithstanding the foregoing, in no event will the gross credit exposure of the U.S. intermediate holding company or, with respect to its combined U.S. operations, of the foreign banking organization to the issuer of collateral be in excess of its gross credit exposure to the counterparty on the credit transaction.

(d) *Eligible guarantees.*

(1) In calculating net credit exposure to a counterparty for any credit transaction, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization must reduce its gross credit exposure to the counterparty by any eligible guarantees from an eligible protection provider that covers the transaction by:

(i) The amount of any eligible guarantees from an eligible protection provider that covers the transaction, in cases where the eligible guarantee has the same or greater maturity as the credit transaction; or

(ii) The amount of any eligible guarantees from an eligible protection provider that covers the transaction as further adjusted by application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), if the eligible guarantees have an original maturity equal to or greater than one year and a residual maturity of not less than three months, in cases where the eligible guarantee has a shorter maturity than the credit transaction.

(2) A U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization that reduces its gross credit exposure to a counterparty as required under paragraph (d)(1) must include the amount of eligible guarantees when calculating its gross credit exposure to the eligible protection provider, including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.172. Notwithstanding the foregoing, in no event will the gross credit exposure of the U.S. intermediate holding company or, with respect to its combined U.S. operations, of the foreign banking organization to an eligible protection provider with respect to an eligible guarantee be in excess of its gross credit exposure to the counterparty on the credit transaction prior to recognition of the eligible guarantee.

(e) *Eligible credit and equity derivatives.*

(1) In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization must reduce its gross credit exposure to the counterparty by:

(i) The notional amount of any eligible credit or equity derivative from an eligible protection provider, in cases where the eligible credit or equity derivative has a maturity that is the same or greater than the maturity of the credit transaction; or

(ii) The notional amount of any eligible credit or equity derivative from an eligible protection provider, as further adjusted by application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), but only if the eligible credit or equity derivative has an original maturity equal to or greater than one year and a residual maturity of not less than three months, in cases where the eligible credit or equity derivative has a shorter maturity than the credit transaction.

(2)(i) In general, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization that reduces its gross credit exposure to a counterparty as provided under paragraph (e)(1) must include the notional amount of the eligible credit or equity derivative from an eligible protection provider, as further adjusted by the application of the maturity mismatch adjustment approach of § 217.36(d) of the Board's Regulation Q (12 CFR 217.36(d)), as applicable, when calculating its gross credit exposure to the eligible protection provider, including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.172. Notwithstanding the foregoing, in no event will the gross credit exposure of the U.S. intermediate holding company or, with respect to its combined U.S. operations, of the foreign banking organization to an eligible provider with respect to an eligible credit or equity derivative be in excess of its gross credit exposure to that counterparty on the credit transaction prior to recognition of the eligible credit or equity derivative; and

(ii) In cases where the eligible credit or equity derivative is used to hedge covered positions and available-for-sale exposures that are subject to the Board's market risk rule (12 CFR part 217, subpart F) and the counterparty on the hedged transaction is not a financial entity, the amount of credit exposure that a company must recognize to the eligible protection provider is the amount that would be calculated pursuant to § 252.173(a), including in instances where the underlying credit transaction would not be subject to the credit limits of § 272.172.

(f) *Other eligible hedges.* In calculating net credit exposure to a counterparty for a credit transaction, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization may reduce its gross credit exposure to the counterparty by the face amount of a short sale of the counterparty's debt or equity security, provided that:

(1) The instrument in which the covered company has a short position is junior to, or *pari passu* with, the instrument in which the covered company has the long position; and

(2) The instrument in which the covered company has a short position and the instrument in which the

covered company has the long position are either both treated as trading or available-for-sale exposures or both treated as held-to-maturity exposures.

(g) *Unused portion of certain extensions of credit.*

(1) In computing its net credit exposure to a counterparty for a credit line or revolving credit facility, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization may reduce its gross credit exposure by the amount of the unused portion of the credit extension to the extent that the U.S. intermediate holding company or any part of the combined U.S. operations of the foreign banking organization does not have any legal obligation to advance additional funds under the extension of credit, until the counterparty provides the amount of adjusted market value of collateral of the type described in paragraph (g)(2) of this section in the amount (calculated in accordance with § 252.171 of this subpart) required with respect to the entire used portion of the extension of credit.

(2) To qualify for this reduction, the credit contract must specify that any used portion of the credit extension must be fully secured by collateral that is:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government-sponsored enterprise as determined by the Board; or

(iv) Obligations of the foreign banking organization's home country sovereign entity.

(h) *Credit transactions involving exempt and excluded persons.* If a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization has a credit transaction with any person, exposures to which are exempt from this subpart under § 252.175 or otherwise excluded from the limits in this subpart, and the U.S. intermediate holding company or foreign banking organization has reduced its credit exposure on the credit transaction with that person by obtaining collateral from that person or a guarantee or credit or equity derivative from an eligible protection provider, the U.S. intermediate holding company or foreign banking organization shall calculate its credit exposure to the issuer of the collateral or protection provider, as applicable, in accordance with the rules set forth in this section to the same extent as if the credit transaction with the person were subject to the requirements in this subpart, including § 252.172.

**§ 252.175 Investments in and exposures to securitization vehicles, investment funds, and other special purpose vehicles.**

(a) *In general.* (1) This section applies only to covered entities with $250 billion or more in total consolidated assets or $10 billion or more in on-balance-sheet foreign exposures, subject to paragraph (d) of this section.

(2)(i) If a covered entity can satisfy the requirements of paragraph (a)(3), a covered company must calculate its gross credit exposure to each securitization vehicle, investment fund, and other special purpose vehicle in which it invests pursuant to § 252.173(a), and the covered entity is not required to calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle.

(ii) If a covered entity cannot satisfy the requirements of paragraph (a)(3), the covered entity must calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle using the look-through approach in paragraph (b) of this section.

(2) A covered entity is not required to calculate its gross credit exposure to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle, as applicable, if the covered entity can demonstrate that its gross credit exposure to each such issuer, considering only the credit exposures to that issuer arising from the covered entity's investment in a particular securitization vehicle, investment fund, or other special purpose vehicle, is less than 0.25 percent of the covered entity's:

(i) Capital stock and surplus in the case of a covered entity subject to the credit exposure limit of § 252.172(a); or

(ii) Tier 1 capital in the case of a covered company subject to the credit exposure limit of § 252.172(b).

(b) *Look-Through Approach.* (1) A covered entity that cannot satisfy the requirements of paragraph (a)(3) must calculate its gross credit exposure, for purposes of § 252.173(a), to each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle, pursuant to paragraph (b)(3) of this section.

(2) If a covered entity that cannot satisfy the requirements of paragraph (a)(3) is unable to identify each issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle, the covered entity, for purposes of paragraph (b)(3) of this section, must attribute the gross credit exposure to a single unknown counterparty, and the limits of § 252.172 shall apply to that counterparty as a single counterparty.

(3) A covered entity that is required to calculate its gross credit exposure to an issuer of assets held by a securitization vehicle, investment fund, or other special purpose vehicle pursuant to paragraph (b)(1), or to an unknown counterparty pursuant to paragraph (b)(2), must calculate the gross credit exposure as follows:

(i) Where all investors in the securitization vehicle, investment fund, or other special purpose vehicle rank *pari passu,* the gross credit exposure is equal to the covered entity's pro rata share multiplied by the value of the assets attributed to the issuer or the unknown counterparty, as applicable, that are held within the structure; and

(ii) Where all investors in the securitization vehicle, investment fund, or other special purpose vehicle do not rank *pari passu,* the gross credit exposure is equal to:

(A) The lower of the value of the tranche in which the covered entity has invested, calculated pursuant to § 252.173(a), and the value of each asset attributed to the issuer or the unknown counterparty, as applicable, that are held by the securitization vehicle, investment fund, or other special purpose vehicle; multiplied by

(B) The pro rata share of the covered entity's investment in the tranche.

(c) *Exposures to Third Parties.* (1) Notwithstanding any other requirement in this section, a covered entity must recognize, for purposes of this subpart, a gross credit exposure to each third party that has a contractual or other business relationship with a securitization vehicle, investment fund, or other special purpose vehicle, such as a fund manager or protection provider, whose failure or material financial distress would cause a loss in the value of the covered entity's investment in or exposure to the securitization vehicle, investment fund, or other special purpose vehicle.

(2) For purposes of § 252.172, with respect to a covered entity's gross credit exposure to a third party that a covered entity must recognize pursuant to paragraph (c)(1), the covered entity shall

recognize an exposure to the third party in an amount equal to the covered entity's gross credit exposure to the associated securitization vehicle, investment fund, or other special purpose vehicle, in addition to the covered entity's gross credit exposure to the associated securitization vehicle, investment fund, or other special purpose vehicle.

(d) Notwithstanding paragraph (a)(1) of this section, in order to avoid evasion of this subpart, the Board may determine, after notice to the covered entity and opportunity for hearing, that a covered entity with less than $250 billion in total consolidated assets and less than $10 billion in total on-balance-sheet foreign exposures must apply the look-through approach or recognize exposures to third parties that have a contractual or other business relationship for purposes of this subpart.

**§ 252.176 Aggregation of exposures to more than one counterparty due to economic interdependence or control relationships.**

(a) *Aggregation of Exposures to More than One Counterparty due to Economic Interdependence.*

(1)(i) If a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization that has less than $250 billion in total consolidated assets and less than $10 billion in total on-balance-sheet foreign exposures has an aggregate net credit exposure to any unaffiliated counterparty that exceeds 5 percent of the consolidated capital stock and surplus of the covered company, or 5 percent of its tier 1 capital in the case of a U.S. intermediate holding company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures, the U.S. intermediate holding company or, with respect to its combined U.S. operations, the foreign banking organization shall analyze its relationship with the unaffiliated counterparty under paragraph (a)(2) of this section to determine whether the unaffiliated counterparty is economically interdependent with one or more other unaffiliated counterparties of the covered company.

(ii) For purposes of this paragraph, two counterparties are economically interdependent if the failure, default, insolvency, or material financial distress of one counterparty would cause the failure, default, insolvency, or material financial distress of the other counterparty, taking into account the factors in paragraph (a)(2) of this section.

(iii) If a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization or the Board determines pursuant to paragraph (a)(2) or (a)(3) of this section, as applicable, that one or more other unaffiliated counterparties of a U.S. intermediate holding company or, with respect to its combined U.S. operations, of a foreign banking organization are economically dependent, the U.S. intermediate holding company or, with respect to its combined U.S. operations, the foreign banking organization shall aggregate its net credit exposure to the unaffiliated counterparties for all purposes under this subpart, including but not limited to § 252.172.

(2) In making a determination as to whether any two counterparties are economically interdependent, a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization shall consider the following factors:

(i) Whether 50 percent or more of one counterparty's gross revenue or gross expenditures are derived from transactions with the other counterparty;

(ii) Whether one counterparty (counterparty A) has fully or partly guaranteed the credit exposure of the other counterparty (counterparty B), or is liable by other means, and the credit exposure is significant enough that counterparty B is likely to default if presented with a claim relating to the guarantee or liability;

(iii) Whether 25 percent or more of one counterparty's production or output is sold to the other counterparty, which cannot easily be replaced by other customers;

(iv) Whether the expected source of funds to repay any credit exposure between the counterparties is the same and at least one of the counterparties does not have another source of income from which the extension of credit may be fully repaid;

(v) Whether the financial distress of one counterparty (counterparty A) is likely to impair the ability of the other counterparty (counterparty B) to fully and timely repay counterparty B's liabilities;

(vi) Whether one counterparty (counterparty A) has made a loan to the other counterparty (counterparty B) and is relying on repayment of that loan in order to satisfy its obligations to the covered company, and counterparty A does not have another source of income that it can use to satisfy its obligations to the covered company; and

(vii) Any other indicia of interdependence that the covered company determines to be relevant to this analysis.

(3) In order to avoid evasion of this section, the Board may determine, after notice to the company and opportunity for hearing, that one or more unaffiliated counterparties of a U.S. intermediate holding company or, with respect to its combined U.S. operations, of a foreign banking organization are economically dependent for purposes of this subpart. In making any such determination, the Board shall consider the factors in paragraph (a)(2) of this section as well as any other indicia of economic interdependence that the Board determines to be relevant.

(b) *Aggregation of exposures to more than one counterparty due to certain control relationships.*

(1) A U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization shall assess whether counterparties are connected by control relationships due to the following factors:

(i) The presence of voting agreements;

(ii) Ability of one counterparty to significantly influence the appointment or dismissal of another counterparty's administrative, management or governing body, or the fact that a majority of members of such body have been appointed solely as a result of the exercise of the first counterparty's voting rights; and

(iii) Ability of one counterparty to exercise a controlling influence over the management or policies of another counterparty.

(2) If a U.S. intermediate holding company or, with respect to its combined U.S. operations, a foreign banking organization or the Board determines pursuant to paragraph (b)(1) or (b)(3) of this section that one or more other unaffiliated counterparties of the U.S. intermediate holding company or, with respect to its combined U.S. operations, of the foreign banking organization are connected by control relationships, the U.S. intermediate holding company or, with respect to its combined U.S. operations, the foreign banking organization shall aggregate its net credit exposure to the unaffiliated counterparties for all purposes under this subpart, including but not limited to, § 252.172.

(3) In order to avoid evasion of this section, the Board may determine, after notice to the company and opportunity for hearing, that one or more unaffiliated counterparties of a U.S. intermediate holding company or, with respect to its combined U.S. operations, of a foreign banking organization are connected by control relationships for

purposes of this subpart. In making any such determination, the Board shall consider the factors in paragraph (b)(1) of this section as well as any other control relationships that the Board determines to be relevant.

**§ 252.177 Exemptions.**

(a) *Exempted exposure categories.* The following categories of credit transactions are exempt from the limits on credit exposure under this subpart:

(1) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, only while operating under the conservatorship or receivership of the Federal Housing Finance Agency, and any additional obligations issued by a U.S. government-sponsored entity as determined by the Board.

(2) Intraday credit exposure to a counterparty.

(3) Trade exposures to a qualifying central counterparty related to the covered entity's clearing activity, including potential future exposure arising from transactions cleared by the qualifying central counterparty and pre-funded default fund contributions.

(4) Direct claims on, and the portions of claims that are directly and fully guaranteed as to principal and interest by, the foreign banking organization's home country sovereign entity, notwithstanding the risk weight assigned to that sovereign entity under the Board's Regulation Q (12 CFR part 217).

(5) Any transaction that the Board exempts if the Board finds that such exemption is in the public interest and consistent with the purpose of this section.

(b) *Additional Exemptions by the Board.* The Board may, by regulation or order, exempt transactions, in whole or in part, from the definition of the term ''credit exposure,'' if the Board finds that the exemption is in the public interest and is consistent with the purpose of § 165(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365(e)).

**§ 252.178 Compliance.**

(a) *Scope of compliance.* A foreign banking organization or U.S. intermediate holding company with $250 billion or more in total consolidated assets or $10 billion or more in total on-balance-sheet foreign exposures must ensure its compliance with the requirements of this section on a daily basis at the end of each business day and submit to the Board on a monthly basis a report demonstrating its daily compliance. A foreign banking organization or U.S. intermediate holding company with less than $250 billion in total consolidated assets or $10 billion in total on-balance-sheet foreign exposures must comply with the requirements of this section on a quarterly basis and submit on a quarterly basis a report demonstrating its quarterly compliance, unless the Board determines and notifies that company that more frequent compliance and reporting is required.

(b) *Qualifying Master Netting Agreement.* A foreign banking organization must ensure that its U.S. intermediate holding company and combined U.S. operations establish and maintain procedures that meet or exceed the requirements of § 217.3(d) of the Board's Regulation Q (12 CFR 217.3(d)) to monitor possible changes in relevant law and to ensure that the agreement continues to satisfy the requirements of a qualifying master netting agreement.

(c) *Noncompliance.* Except as otherwise provided in this section, either the U.S. intermediate holding company or the foreign banking organization is not in compliance with this subpart solely due to the circumstances listed in §§ 252.178(c)(1)–(4) below, the covered entity will not be subject to enforcement actions for a period of 90 days (or such other period determined by the Board to be appropriate to preserve the safety and soundness of the covered company or U.S. financial stability) if the covered entity uses reasonable efforts to return to compliance with this subpart during this period. Neither the U.S. intermediate holding company nor the combined U.S. operations may engage in any additional credit transactions with such a counterparty in contravention of this subpart, unless the Board determines that such credit transactions are necessary or appropriate to preserve the safety and soundness of the foreign banking organization or U.S. financial stability. In considering this determination, the Board will consider whether any of the following circumstances exist:

(1) A decrease in the U.S. intermediate holding company's or foreign banking organization's capital stock and surplus;

(2) The merger of the U.S. intermediate holding company or foreign banking organization with a bank holding company with total consolidated assets of $50 billion or more, a nonbank financial company supervised by the Board, a foreign banking organization, or U.S. intermediate holding company;

(3) A merger of two unaffiliated counterparties; or

(4) Any other circumstance the Board determines is appropriate.

(d) *Other measures.* The Board may impose supervisory oversight and reporting measures that it determines are appropriate to monitor compliance with this subpart.

By order of the Board of Governors of the Federal Reserve System, March 4, 2016.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2016–05386 Filed 3–15–16; 8:45 am]

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# FEDERAL REGISTER

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Part V

## The President

Memorandum of March 11, 2016—Delegation of Authority Under Section 11 of the Export-Import Bank Reauthorization Act of 2012

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**Title 3—**

**The President**

**Memorandum of March 11, 2016**

## Delegation of Authority Under Section 11 of the Export-Import Bank Reauthorization Act of 2012

**Memorandum for the Secretary of the Treasury**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authorities vested in the President by section 11 of the Export-Import Bank Reauthorization Act of 2012, as amended.

In exercising functions and authority delegated by this memorandum, you shall ensure that all actions taken by you are consistent with the President's constitutional authority to (A) conduct the foreign affairs of the United States, including the commencement, conduct, and termination of negotiations with foreign countries and international organizations; and (B) withhold information the disclosure of which could impair the foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties.

You are authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
*Washington, March 11, 2016*

[FR Doc. 2016–06131
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Billing code 4811–33–P

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